

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Honorable G. Thomas Cooper, Circuit Court Judge

HENRY JAMES ROSS, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000768

APPENDIX

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S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 31, 2011	1
APPLICATION FOR POST-CONVICTION RELIEF	346
RETURN.....	356
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 20, 2016	363
ORDER OF DISMISSAL.....	405
INDICTMENT.....	414

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DARLINGTON	)	
	)	
THE STATE,	)	
	)	JANUARY 31, 2011
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
HENRY JAMES ROSS,	)	2010-GS-16-0774
	)	
DEFENDANT.	)	
_____	)	

BEFORE

THE HONORABLE HOWARD P. KING

APPEARANCES

Patti M. Parker, Esquire
 John Holt, Esquire
 ATTORNEYS FOR THE STATE

William E. Grove, Esquire
 J. Richard Jones, Esquire
 ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
 Circuit Court Reporter

Call of the Case by the Solicitor	Page 008
Jury Qualification	Page 008.
Jury Voir Dire	Page 020
Jury dismissed for the day	Page 031

DAY TWO OF TRIAL

Motions	Page 033

PROFFERED WITNESS

WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
Maureen Valazak	037	062		
Danny Watson	074	None		
Excuses juror number 150, Abby Williams				Page 098
Swearing of the jury				Page 101

THE STATE VERSUS HENRY ROSS

Introduction to the Case	Page 101
Opening Statement by Ms. Parker	Page 108
Opening Statement by Mr. Swilley	Page 114

DAY THREE OF TRIAL

WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
Christie Williamson	124	145	161	
Chun Mei Lui	164	168		
Maureen Valazak	171	198	204	
Jason Huggins				
David Sessums				
State Rest				Page 219
Motion for a Directed Verdict				Page 221

Fifth Amendment Examination of Henry James Ross, Jr., by the Court	Page 223
Presentation of prior record	Page 225

PRESENTATION OF THE DEFENDANT'S CASE

WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
Mary Lee Ross	230	235	239	
Henry James Ross, Sr.	239	242	246	
Bryan Ross	247	250		
Travis Benjamin	250	None		
Terry Burgess	252			

REPLY TESTIMONY FROM THE STATE

WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
Danny Watson	257	259		

Motions	Page 261
Charge Conference	Page 262

DAY THREE OF TRIAL

Closing Arguments by Mr. Swilley	Page 267
Closing Arguments by Ms. Parker	Page 277
Charge on The Law	Page 298
Jury Begins Deliberations at 11:03 a.m.	Page 322
Jury Announces a Verdict at 11:54 p.m.	Page 322
Publication of the verdict	Page 324
Polling of The Jury	Page 326

SENTENCING HEARING

Motion	Page 332
Statement by Ms. Williamson	Page 334
Presentation of Prior Record	Page 335
Probation Hearing	Page 338
Statement by Mr. Swilley	Page 340
Statement by Mr. Ross, Sr.	Page 341
Sentence of the Court	Page 343
Certificate of Reporter	Page 345

Case No.: 2008-GS-16-1500 Date: January 31, 2011
 Plaintiff: The State Attorney: Patti McKenzie-Parker
 Defendant: Henry James Ross, jr Attorney: William Grove
 Presiding Judge: Howard P. King Reporter: Pamela Ozment-Cartee

*****		***** STRIKES *****				
Juror #	Juror Name	Race	Sex	Court	State	Defd
130	MICHAEL D. SIMONS	B	M		X	-
032	JULIA I. COURTNEY	W	F		✓	✓
137	BRENDA D. STRATTON	W	F		X	-
017	PATRICIA A. BYRD	B	F		✓	✓
039	JENNIFER L. DEWITT	W	F		✓	X
150	ABBY R. WILLIAMS	B	F		✓	✓
008	ROBIN G. BARR	W	F		✓	X
154	JANET D. MOORE	W	F		✓	X
025	LADRONE S. COE	B	M		X	-
126	KATHERINE R. ROLLER	W	F		✓	X
050	LUCAS R. FINE	W	M		✓	X
113	BRENT E. PHILLIPS	B	M		✓	✓
043	AMY D. DIXON	W	F		✓	X
042	TAMMY L. DIXON	B	F		X	-
153	JOEL J. JONES	W	M		✓	✓
074	FLOYD J. ISOM	W	M		✓	X
152	CHARLES HAYES	W	M		✓	X
035	FRANCES G. DANIELS	B	F		✓	✓
124	WILLIAM S. ROGERS	W	M		✓	X
019	RICHARD L. CADDELL, III	W	M		✓	✓
063	JOHN D. GRIGGS, JR.	W	M		✓	✓
059	MICHAEL D. GRAHAM	B	M		X	-
133	HAZEL A. SOX	W	F		✓	X
058	JAMES B. GRACE, II	W	M		✓	✓
001	BETTY A. ADDISON	B	F		✓	✓
144	BRENDA H. TILLER	W	F		✓	X
125	REGAN ROGERS	W	F		✓	✓

STATE EXHIBITS

NUMBER	DESCRIPTION	PAGE
1	PHOTOGRAPH	121
2	PHOTOGRAPH	121
3	PHOTOGRAPH	121
4	PHOTOGRAPH	121
5	PHOTOGRAPH	121
6	PHOTOGRAPH	121
7	PHOTOGRAPH	121
8	PHOTOGRAPH	121
9	PHOTOGRAPH	121
10	PHOTOGRAPH	121
11	PHOTOGRAPH	121
12	PHOTOGRAPH	121
13	PHOTOGRAPH	121
14	PHOTOGRAPH	121
15	PHOTOGRAPH	121
16	PHOTOGRAPH	121
17	PHOTOGRAPH	121
18	PHOTOGRAPH	121
19	DIAGRAM ON POSTER BOARD	139
20	WHITE TOBOGGAN CAP	208
21	911 TAPE - DVD	221
22	VIDEO STATEMENT - DVD	196

THE STATE VERSUS JAMES HENRY ROSS, JR.

8

1 (Whereupon, Court comes to order at 12:37 p.m. on
2 Monday, January 31, 2011.)

-- DAY ONE OF TRIAL --

3
4 **THE COURT:** All right. Madame Solicitor, go ahead and
5 call your next case.

6 **MS. PARKER:** Thank you, Your Honor. At this time the
7 State calls the case of The State versus Henry Ross. Mr.
8 Ross, we need to get him from the back.

9 (Whereupon, the defendant enters the courtroom at
10 12:39 p.m.)

11 **THE COURT:** All right. The state has called the
12 matter of The State versus Henry Ross. If I could get the
13 Indictments, please?

14 **MS. PARKER:** Your Honor, Mr. Ross is charged with
15 burglary in the first degree. That is 2010-GS-16-0774.
16 Also Indictment Number 2010-GS-16-0775, charging him with
17 armed robbery, 2010-GS-16-0776, assault and battery of a
18 high and aggravated nature, and 2010-GS-16-0777, possession
19 of a weapon during the commission of a violent crime.

20 **THE COURT:** All right. Ladies and gentlemen of the
21 petit jury panel, if you would give me your attention.

22 As you have heard, the state has called the case of The
23 State of South Carolina versus Henry James Ross, Jr., who is
24 charged with the offenses as outlined by the Solicitor.
25 What I am going to tell you is just a brief summary of what

1 is contained in the Indictments. It is not proof of
2 anything. It is simply an allegation. But I tell you this
3 so that you can determine if you know anything about the
4 case, or anything that would prevent you from serving as a
5 juror in this matter. But the state does charge in
6 Indictment Number 2010-774 that Mr. Ross did in Darlington
7 County on or about November 27, 2009, enter the dwelling of
8 Christy Williamson, located at First Street Extension in
9 Darlington, without consent with intent to commit a crime,
10 and while armed with a weapon, specifically a knife, and the
11 charge is one of burglary in the first degree.

12 The second Indictment charges Mr. Ross did --- this is
13 Indictment 775, on that same date that he, while armed with
14 a deadly weapon, did take and carry away the property of
15 Christy Williamson from or in the immediate possession of
16 Ms. Williamson, with intent to deprive her of possession of
17 the property, and that charge is one of armed robbery.

18 The third Indictment is Indictment Number 776, and it
19 charges that on or about November 27, 2009, that Mr. Ross
20 did commit an assault and battery upon Christy Williamson,
21 accompanied by circumstances of aggravation, specifically
22 use of a weapon, and the difference in the sexes of the
23 parties.

24 And third, the Indictment Number 2010-777, charges that
25 on November 27, 2009, that the defendant did display a ---

THE STATE VERSUS JAMES HENRY ROSS, JR.

10

1 what appeared to be a knife during the commission of a
2 violent crime, specifically burglary first. And the charge
3 is possession of a weapon during a violent crime.

4 To these charges the defendant has pled not guilty, and
5 has requested a trial.

6 The defendant, Mr. Ross, is represented by Mr. Swilley,
7 and Mr. Swilley do you have help in this case, or are you
8 going to handle it yourself?

9 **MR. SWILLEY:** I do, Your Honor. I believe Mr. Jones
10 and Mr. Grove will be assisting me in this case.

11 **THE COURT:** All right. Mr. Swilley, Mr. Jones, and
12 Mr. Grove will be representing the defendant, if you would
13 have Mr. Ross stand and face the jury please.

14 This is the defendant, Henry Ross, Jr. Thank you. You
15 may be seated.

16 All right. Ladies and gentlemen, before we select a
17 jury, I need to ask you some questions to make sure that you
18 are qualified to serve as jurors in this case.

19 Is there any member of the jury panel related by blood,
20 connected by marriage to the defendant, Henry Ross, Jr., if
21 so, please stand?

22 All right. Yes, sir. Your name?

23 **JUROR:** LeRoy Patterson.

24 **THE COURT:** Mr. Patterson. All right. Mr.
25 Patterson, are you related to Mr. Ross?

THE STATE VERSUS JAMES HENRY ROSS, JR.

11

1 **JUROR:** Yes, sir.

2 **THE COURT:** What is the relationship?

3 **JUROR:** Cousin.

4 **THE COURT:** Cousin. All right. Thank you, Mr.
5 Patterson.

6 The following individuals may appear as witnesses in
7 this case. And I would ask if the witnesses are present in
8 court if they would stand or indicate their presence with
9 the name is called. Christy Williamson. Officer, and
10 someone is going to have to pronounce this for me, Chun Mei
11 Lui, is that correct, Ms. Parker --

12 **MS. PARKER:** It is Officer Lui, she is not present.

13 **THE COURT:** All right. Captain Danny Watson of the
14 Darlington Police Department, Investigator Maureen Valazak,
15 Jason Huggins, Travis Benjamin, Mary Lee Ross, Henry James
16 Ross, Sr., Bryan Ross, Corinthian Robinson, Antwain
17 Robinson, Shakeetha Coward, Ikea Cottingham, and Terry
18 Burgess. Is any members of the jury panel related by blood,
19 or connected by marriage to any of the proposed witnesses,
20 other than what has already been disclosed to me; if so,
21 please stand? Thank you.

22 The state is represented by Ms. Parker and Mr. Holt.
23 Is any member of the jury panel represented now, been
24 represented in the last five years by either of these
25 lawyers or any member of the Fourth Circuit Solicitor's

THE STATE VERSUS JAMES HENRY ROSS, JR.

12

1 Office, if so, please stand?

2 Is any member of the jury panel represented now, or
3 been represented in the last five years by Mr. Swilley or
4 any member of the Fourth Circuit Public Defender's Office,
5 if so, please stand?

6 Is any member close, personal friends of any of the
7 parties, their lawyers, or any of the witnesses whom I have
8 read off to you; if so, please stand?

9 Does any member of the jury panel know anything about
10 the facts of this case, as I have briefly recited them to
11 you; if so, please stand?

12 Has any member of the jury panel, or a member of your
13 immediate family, and I define immediate family as spouse,
14 parent, brother, sister, or child, been a victim of a
15 violent crime; if so, please stand?

16 All right. I think we know some of them, but maybe we
17 had better put it on the record anyhow, just to make sure we
18 have it taken care of.

19 If those three individuals would come up please.

20 **BAILIFF:** Number 133.

21 **JUROR:** In 2008, I was in Hartsville, and my home was
22 broken into and it was vandalized. It was when that robber
23 was vandalizing all the houses. I was one of them.

24 **THE COURT:** Would that experience, knowing who did
25 this, prevent you from giving both the state and the

THE STATE VERSUS JAMES HENRY ROSS, JR.

13

1 defendant a fair and impartial trial in this case?

2 JUROR: I would listen to both sides.

3 THE COURT: That is what I've got to know. Would you
4 be able to put that aside, and decide this case based upon
5 what you hear in this courtroom?

6 JUROR: Yes, sir.

7 THE COURT: Would you do that?

8 JUROR: Yes, sir.

9 THE COURT: Thank you, ma'am.

10 BAILIFF: Juror Number 113.

11 THE COURT: Yes, sir.

12 JUROR: I had --- my brother was killed, a murder
13 victim.

14 THE COURT: I think you told us that before?

15 JUROR: Yes, sir.

16 THE COURT: Would that prevent you from giving both
17 the state and the defense a fair and impartial trial in this
18 case?

19 JUROR: No, sir.

20 THE COURT: Would you be able to put that aside, and
21 decide this case based on the evidence you have in the
22 courtroom?

23 JUROR: Yes, sir.

24 THE COURT: Would you do that?

25 JUROR: Yes, sir.

THE STATE VERSUS JAMES HENRY ROSS, JR.

14

1 THE COURT: Thank you, sir.

2 BAILIFF: Juror Number 105.

3 JUROR: I know what it is, because it all began ---
4 breaking and entering and attempted murder.

5 THE COURT: Would that prevent you from giving --

6 JUROR: Yes --

7 THE COURT: -- a fair and impartial trial?

8 JUROR: Yes, sir.

9 THE COURT: Thank you, ma'am.

10 BAILIFF: Juror 144.

11 THE COURT: Yes, ma'am.

12 JUROR: Like I said before, my son was stabbed.

13 THE COURT: I know that. But we have a different
14 case here, so --

15 JUROR: You said you wanted me to come back.

16 THE COURT: So, would that prevent you from giving to
17 the state and to the defense a fair and impartial trial in
18 this case?

19 JUROR: I don't feel like it would.

20 THE COURT: My questions is, could you put that
21 aside, and decide this case based upon what you hear in this
22 courtroom?

23 JUROR: Yes.

24 THE COURT: Would you do that?

25 JUROR: Yes.

THE STATE VERSUS JAMES HENRY ROSS, JR.

15

1 **THE COURT:** Thank you.

2 **BAILIFF:** Juror 155.

3 **THE COURT:** Mr. Patterson, you are disqualified from
4 this case because of your relationship to the defendant.

5 **BAILIFF:** Juror 19.

6 **JUROR:** I had a question previously. I had been
7 represented by someone a couple of years ago. I had to come
8 to court here. I was represented --- I am not sure if it
9 was by a public defender, but I just wanted you to know. I
10 can't remember his name.

11 **THE COURT:** What kind of trouble were you in?

12 **JUROR:** It involved a traffic collision that I had in
13 2003 --- 2002.

14 **THE COURT:** Did you have to go to court for that?

15 **JUROR:** It was actually here. I think it was that
16 judge actually.

17 **THE COURT:** It probably wasn't, but anyhow, what were
18 you charged with?

19 **JUROR:** I was following too closely.

20 **THE COURT:** What happened to it?

21 **JUROR:** They ruled in my favor. It was civil.

22 **THE COURT:** Okay. It was a civil matter. So that
23 would not have a public defender involved.

24 **JUROR:** I just didn't know. I just wanted to make
25 sure.

THE STATE VERSUS JAMES HENRY ROSS, JR.

16

1 **THE COURT:** You don't know the lawyers in this case
2 that I have introduced to you?

3 **JUROR:** I know them, just through my immediate family.
4 Not immediately, not close.

5 **THE COURT:** Who do you know?

6 **JUROR:** It was my uncle -- Hoyt.

7 **THE COURT:** Would that prevent you --

8 **JUROR:** No.

9 **THE COURT:** You would be able to put all of that
10 aside and base your opinion on what you have heard from this
11 witness stand?

12 **JUROR:** Yes.

13 **BAILIFF:** Juror Number 39.

14 **JUROR:** I was robbed last year, and had my car broken
15 into.

16 **THE COURT:** Would that prevent you from giving to
17 both the state and the defendant a fair and impartial trial?

18 **JUROR:** No, sir.

19 **THE COURT:** Could you put that aside and decide this
20 case based on the evidence presented?

21 **JUROR:** Yes.

22 **THE COURT:** Would you do that?

23 **JUROR:** Yes, sir.

24 **THE COURT:** Thank you.

25 **BAILIFF:** 137.

THE STATE VERSUS JAMES HENRY ROSS, JR.

17

1 **THE COURT:** Yes, ma'am.

2 **JUROR:** My son was sent to the camp in Columbia last
3 year, and I can't remember who represented him.

4 **THE COURT:** But that was your son. What was he
5 charged with?

6 **JUROR:** Breaking into Ace Hardware, and driving a
7 truck and stuff around.

8 **THE COURT:** So a YOA active, is that what it was, and
9 he got a ninety-day boot camp sentence?

10 **JUROR:** Yes.

11 **THE COURT:** Has he completed that?

12 **JUROR:** Yes.

13 **THE COURT:** Would that prevent you from giving to
14 both the state and the defense a fair and impartial trial in
15 this case?

16 **JUROR:** No, sir.

17 **THE COURT:** Can you put that aside and decide this
18 case --

19 **JUROR:** Yes, sir.

20 **THE COURT:** Thank you, ma'am. Has any member of the
21 jury panel, or is any member of the jury panel, or a member
22 of your immediate family, or have you in the last five years
23 been employed by any law enforcement agency? If so, please
24 stand.

25 All right. Give me your name again?

THE STATE VERSUS JAMES HENRY ROSS, JR.

18

1 **JUROR:** William Rodgers.

2 **THE COURT:** All right. Mr. Rodgers, and I believe
3 you told us that your brother is a trooper, is that correct?

4 **JUROR:** Yes, sir.

5 **THE COURT:** All right. Would that prevent you from
6 giving to both the state and the defendant a fair and
7 impartial trial based on the evidence?

8 **JUROR:** No, sir.

9 **THE COURT:** Would you be able to put that aside and
10 decide the case based upon what you hear in this courtroom?

11 **JUROR:** Yes, sir.

12 **THE COURT:** And would you do that?

13 **JUROR:** Yes, sir.

14 **THE COURT:** Thank you. Has any member of the ---
15 Oops, yes, sir?

16 **JUROR:** Yes, sir. Juror Number 50, Mr. Fine.

17 **THE COURT:** All right. Mr. Fine.

18 **JUROR:** My father was a policeman.

19 **THE COURT:** All right. Your father was a police
20 officer. Would that fact, prevent you from giving to the
21 state and the defense, a fair and impartial trial based on
22 the evidence?

23 **JUROR:** No, sir.

24 **THE COURT:** Would you be able to put that aside, and
25 decide this case based upon what you hear in this courtroom?

THE STATE VERSUS JAMES HENRY ROSS, JR.

19

1 JUROR: Yes, sir.

2 THE COURT: And would you do that?

3 JUROR: Yes, sir.

4 THE COURT: Thank you, sir. Is there any member of
5 the jury panel employed now, or been employed within the
6 last five years, or a member of your immediate family
7 employed now --- been employed within the past five years by
8 the Fourth Circuit Solicitor's Office; if so, please stand?

9 Any member of the jury panel a member of, or a
10 contributor to an organization such as MADD, SADD, CAVE, or
11 any other victims rights group; if so, please stand. Thank
12 you.

13 Other than what has been disclosed to me, is there any
14 member of the jury panel who has any interest or any bias or
15 any prejudice for or against the defendant, Henry Ross Jr.,
16 if so, please stand?

17 Has any member of the jury panel formed or expressed an
18 opinion as to the guilt or the innocence of the defendant
19 Henry Ross Jr., if so, please stand?

20 Can each member of the jury panel other than what has
21 been disclosed to me, can each member of the jury panel give
22 to the state and the defendant, Henry Ross, Jr., a fair and
23 impartial trial; if not, please stand.

24 Other than what has been disclosed to me, does any
25 member of the jury panel know of any reason whatsoever why

THE STATE VERSUS JAMES HENRY ROSS, JR.

20

1 he or she should not serve as a juror in this case; if so,
2 please stand.

3 Are there additional questions on behalf of the state,
4 Ms. Parker?

5 **MS. PARKER:** None, Your Honor.

6 **THE COURT:** On behalf of the defense, Mr. Swilley?

7 **MR. SWILLEY:** There are none, Your Honor.

8 **THE COURT:** All right. Ladies and gentlemen, we will
9 again go through the process.

10 Counsel, come up just a moment, please?

11 (Whereupon, a bench conference was held.)

12 **THE COURT:** All right. Mr. Clerk, if you would give
13 us a jury please.

14 **CLERK OF COURT:** Juror Number 130, Michael Simon.
15 What says the state?

16 **MS. PARKER:** Please excuse this juror from the trial
17 of this case.

18 **CLERK OF COURT:** You have been excused at this time.
19 Please have a seat in the audience for me.

20 Juror Number 32, Julia Courtney. What says the state?

21 **MS. PARKER:** Please present this juror.

22 **CLERK OF COURT:** What says the defense?

23 **MR. SWILLEY:** Please seat, Ms. Courtney.

24 **CLERK OF COURT:** Please have a seat in the jury box
25 for me, Ms. Courtney.

THE STATE VERSUS JAMES HENRY ROSS, JR.

21

1 Juror Number 137, Brenda Stratton. What says the
2 state?

3 MS. PARKER: Please excuse this juror for the trial
4 of this case.

5 CLERK OF COURT: Juror Number 17, Patricia Byrd. What
6 says the state?

7 MS. PARKER: Please present Ms. Byrd.

8 CLERK OF COURT: What says defense?

9 MR. SWILLEY: Please swear Ms. Byrd.

10 CLERK OF COURT: Please have a seat in the jury box
11 for me please.

12 Juror Number 39, Jennifer DeWitt. What says the state?

13 MS. PARKER: Please present Ms. DeWitt.

14 CLERK OF COURT: What says defense?

15 MR. SWILLEY: Please excuse Ms. DeWitt in the trial
16 of this case.

17 CLERK OF COURT: You have been excused in this case,
18 Ms. DeWitt, thank you.

19 Juror Number 150, Abby Williams. What says the state?

20 MS. PARKER: Please present Ms. Williams.

21 CLERK OF COURT: What says the defense?

22 MR. SWILLEY: Please swear Ms. Williams.

23 CLERK OF COURT: Please have a seat in the jury box,
24 Ms. Williams.

25 Juror Number 8, Robin Barr. What says the state?

THE STATE VERSUS JAMES HENRY ROSS, JR.

22

1 **MS. PARKER:** Please present, Ms. Barr.

2 **CLERK OF COURT:** What says the defense?

3 **MR. SWILLEY:** Please excuse Ms. Barr, from the trial
4 of this case.

5 **CLERK OF COURT:** You have been excused in the trial
6 of this case. Thank you.

7 Juror Number 154, Janet Moore. What says the state?

8 **MS. PARKER:** Please present Ms. Moore.

9 **CLERK OF COURT:** What saith the defense?

10 **MR. SWILLEY:** Please excuse Ms. Moore from the trial
11 of this case.

12 **CLERK OF COURT:** You have been excused from this
13 case, Ms. Moore.

14 Juror number 25, LaDrone Coe. What saith the state?

15 **MS. PARKER:** Beg the Court's indulgence.

16 (PAUSE.)

17 **MS. PARKER:** Please excuse Ms. Coe from the trial of
18 this case.

19 **CLERK OF COURT:** You have been excused from this
20 case, Ms. Coe. Thank you.

21 Juror number 126, Katherine Roller. What saith The
22 State?

23 **MS. PARKER:** Please present Ms. Roller.

24 **CLERK OF COURT:** What saith the defense?

25 **MR. SWILLEY:** Beg the Court's indulgence.

1 (PAUSE.)

2 MR. SWILLEY: Please excuse Ms. Roller from the
3 trial of this case.

4 CLERK OF COURT: You have been excused from this
5 case Ms. Roller. Thank you.

6 Juror number 50, Lucas Fine. What saith The State?

7 MS. PARKER: Please present Mr. Fine.

8 CLERK OF COURT: What saith the defense?

9 MR. SWILLEY: Please excuse Mr. Fine from the trial
10 of this case.

11 CLERK OF COURT: You have been excused from this
12 case. Thank you.

13 Juror number 113, Brent Phillips. What saith The
14 State?

15 MS. PARKER: Please present Mr. Phillips.

16 CLERK OF COURT: What saith the defense?

17 MR. SWILLEY: Please swear Mr. Phillips.

18 CLERK OF COURT: Please have a seat in the jury box
19 for me, Mr. Phillips.

20 Juror number 43, Amy Dixon. What saith The State?

21 MS. PARKER: Please present Ms. Dixon.

22 CLERK OF COURT: What saith the defense?

23 MR. SWILLEY: Please excuse Ms. Dixon from the trial
24 of this case.

25 CLERK OF COURT: You have been excused Ms. Dixon.

THE STATE VERSUS JAMES HENRY ROSS, JR.

24

1 Juror number 42, Tammy Dixon. What saith The State?

2 MS. PARKER: Please excuse Ms. Dixon from the trial
3 of this case.

4 CLERK OF COURT: You have been excused Ms. Dixon
5 from the trial of this case.

6 CLERK OF COURT: You have been excused in the trial
7 of this case, Ms. Dixon. Thank you.

8 Juror number 153, Joel Jones. What saith The State?

9 MS. PARKER: Please present Mr. Jones.

10 CLERK OF COURT: What saith the defense?

11 MR. SWILLEY: Please swear Mr. Jones.

12 CLERK OF COURT: Please have a seat in the jury box
13 for me, Mr. Jones.

14 Juror number 74, Floyd Isom. What saith The State?

15 MS. PARKER: Please present Mr. Isom.

16 CLERK OF COURT: What saith the defense?

17 MR. SWILLEY: Please excuse Mr. Isom from the trial
18 of this case.

19 CLERK OF COURT: You have been excused in this case,
20 Mr. Isom. Thank you.

21 Juror number 152, Charles Hayes. What saith The State?

22 MS. PARKER: Please present Mr. Hayes.

23 CLERK OF COURT: What saith the defense?

24 MR. SWILLEY: Please seat Mr. Hayes.

THE STATE VERSUS JAMES HENRY ROSS, JR.

25

1 **CLERK OF COURT:** Have a seat in the jury box for me
2 please, Mr. Hayes.

3 Juror number 35, Frances Daniels. What saith The
4 State?

5 **CLERK OF COURT:** What saith the defense?

6 **MR. SWILLEY:** Please swear Mr. Daniels.

7 **CLERK OF COURT:** Have a seat in the jury box for me
8 please, Mr. Daniels.

9 Juror number 124, William Rodgers. What saith The
10 State?

11 **MS. PARKER:** Please present Mr. Rodgers.

12 **CLERK OF COURT:** What saith the defense?

13 **MR. SWILLEY:** Please excuse Mr. Rodgers from the
14 trial of this case.

15 **CLERK OF COURT:** You have been excused from this
16 case, Mr. Rodgers.

17 Juror number 19, Richard Caddell. What saith The
18 State?

19 **MS. PARKER:** Please present Mr. Caddell.

20 **CLERK OF COURT:** What saith the defense?

21 **MR. SWILLEY:** Please swear Mr. Caddell.

22 **CLERK OF COURT:** Please have a seat in the jury box
23 for me, Mr. Caddell.

24 Juror number 63, John Griggs. What saith The State?

25 **MS. PARKER:** Please present Mr. Griggs.

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26

1 **CLERK OF COURT:** What saith the defense?

2 **MR. SWILLEY:** Please seat Mr. Griggs.

3 **CLERK OF COURT:** Please have a seat in the jury box
4 for me, Mr. Griggs.

5 Juror number 59, Michael Graham. What saith The State?

6 **MS. PARKER:** Please excuse Mr. Graham from the trial
7 of this case.

8 **CLERK OF COURT:** You have been excused from this
9 case, Mr. Graham. Thank you.

10 Juror number 133, Hazel Sox. Is there any show for
11 cause from the state?

12 **MS. PARKER:** There is none.

13 **CLERK OF COURT:** What saith the defense?

14 **MR. SWILLEY:** Please excuse Ms. Sox from the trial ,
15 of this case.

16 **CLERK OF COURT:** You have been excused, Ms. Sox.

17 Juror number 58, James Grace, any show for cause from
18 the state?

19 **MS. PARKER:** None.

20 **CLERK OF COURT:** What saith the defense?

21 **MR. SWILLEY:** Please swear Mr. Grace.

22 **CLERK OF COURT:** Please have a seat in the jury box,
23 Mr. Grace.

24 Juror number 1, Betty Addison, is there any show for
25 cause from the state?

THE STATE VERSUS JAMES HENRY ROSS, JR.

27

1 **MS. PARKER:** None.

2 **CLERK OF COURT:** What saith the defense?

3 **MR. SWILLEY:** Please swear Ms. Addison.

4 **CLERK OF COURT:** Please have a seat in the jury box
5 for me please, Ms. Addison.

6 Juror number 144, Brenda Tiller. Is there any show for
7 cause from the state?

8 **MS. PARKER:** There is none.

9 **CLERK OF COURT:** What saith the defense?

10 **MR. SWILLEY:** Please excuse Ms. Tiller from the
11 trial of this case.

12 **CLERK OF COURT:** You have been excused in this case,
13 Ms. Tiller.

14 Juror number 125, Regan Rogers. Is there any show for
15 cause from the state?

16 **MS. PARKER:** None.

17 **CLERK OF COURT:** Any show for cause from the
18 defense?

19 **MR. SWILLEY:** There is none.

20 **CLERK OF COURT:** Please have a seat in the jury box
21 for me please, Ms. Rogers.

22 **THE COURT:** Alternate please counsel, two and one ---
23 or one and two.

24 **CLERK OF COURT:** Juror number 91, Bradley Lutz.
25 What saith The State?

THE STATE VERSUS JAMES HENRY ROSS, JR.

28

1 **MS. PARKER:** Please present Mr. Lutz.

2 **CLERK OF COURT:** What saith the defense?

3 **MR. SWILLEY:** Please excuse Mr. Lutz from the trial
4 of this case.

5 **CLERK OF COURT:** You have been excused in this case,
6 Mr. Lutz. Thank you.

7 Juror number 24, Eric Chittum. What saith The State?

8 **MS. PARKER:** Please present Mr. Chittum.

9 **CLERK OF COURT:** What saith the defense?

10 **MR. SWILLEY:** Please present Mr. Chittum.

11 **CLERK OF COURT:** Please have a seat in the first
12 chair outside of the jury box for me please, Mr. Chittum.

13 **THE COURT:** Anything with regard to the selection of
14 the jury on behalf of the state, Ms. Parker?

15 **MS. PARKER:** No, Your Honor.

16 **THE COURT:** On behalf of the defense, Mr. Swilley?

17 **MR. SWILLEY:** There is not, Your Honor.

18 **THE COURT:** All right. Ladies and gentlemen of the
19 jury selected in the trial of this case, as you know we have
20 a case scheduled for trial, and we have some matters that we
21 have to attend to this afternoon. So, what I am going to do
22 is designate you as jury number two. And what I am going to
23 ask that you do is that you call back tonight after 6:00 to
24 the number that you have, and if you don't have it be sure
25 and get it from one of the bailiffs or the clerk before you

1 leave. And that is an answering machine very much like the
2 one that you have got at home. And your reporting
3 instructions will be on that answering machine. In other
4 words, if something were to happen, and we don't try the
5 other case tomorrow, we will try this case tomorrow. But if
6 the other case goes forward, I wouldn't want to bring you
7 back up here just to send you home and say we are not ready
8 to go with it. So, this is a system that most all of the
9 courts have gone to that alleviates the necessity of us
10 having to run the jury back and forth to the courthouse more
11 than is absolutely necessary.

12 So, what I am going to ask you to do is call that
13 answering machine after 6:00 tonight, and you can call it
14 anytime all night long. Like I said, it is an answering
15 machine just like you have got at home. And it will have
16 some reporting instructions for tomorrow. It will either
17 tell you to maybe come back after lunch, or maybe not to
18 come back until Wednesday. I just don't know. It all
19 depends on that first case that we have scheduled for trial.

20 There are two or three things that I want to tell you
21 before I turn you loose.

22 First of all, I know that you do not know anything
23 about this case except what I have told you were the
24 allegations of the Indictment. But it would be improper for
25 you to discuss this matter with anyone while you are away

THE STATE VERSUS JAMES HENRY ROSS, JR.

30

1 from the courthouse. When you see your family or your
2 friends, do not discuss this case with them. You have got
3 to decide this case based upon what you hear in the
4 courtroom and not on the basis of what anyone else might
5 say. It would also be improper for anyone to talk to you
6 about the case. If anyone approaches you, or tries to talk
7 with you about the case, get their name and their
8 description and report it when you come back, and I will
9 deal with them.

10 And also when you do reassemble in the jury room, do
11 not discuss the case among yourselves. Any deliberations on
12 your part before I tell you it is time to begin your
13 deliberations will be premature. So anytime when you are
14 there in the jury room, do not discuss the case among
15 yourselves. You can talk about anything you want to,
16 family, friends, weather, sports, anything at all, but do
17 not talk about this case until I tell you that it is proper
18 for you to do so.

19 So, with those admonitions --- Also, I don't know if
20 there will be any publicity about this matter, but if there
21 is, you should not read any news stories or listen to any
22 t.v. or radio broadcast regarding the matter. Again, you
23 have got to decide the case based upon what you hear in the
24 courtroom, and not on the basis of what you may hear through
25 the news media.

1 So, with those admonitions then I am going to excuse
2 you now. You will definitely be excused for the rest of the
3 afternoon. Call that number this evening to find out what
4 your instructions are for tomorrow. And we may see you
5 tomorrow, or it may be later in the week when I see you.
6 But that will --- we will use the answering machine to
7 communicate with you and that will prevent you from having
8 to come back and forth to the courthouse more than is
9 absolutely necessary.

10 Thank you. You are free to go for the rest of the day,
11 and call that number tonight. Be sure and get it.

12 (Whereupon, the jury was dismissed at 1:22 p.m. on
13 Monday, January 31, 2011.)

14 **THE COURT:** All right. Ladies and gentlemen of the
15 jury panel not selected in the trial of one of these two
16 cases, and also not selected for the Grand Jury, this is
17 going to conclude your services for this week, and you will
18 not have to call back, nor will you have to come back.

19 I want to thank you on behalf of the state and the
20 county for your willingness to serve. And I will tell you
21 that next week sometime you will get a small check from Mr.
22 Suggs for your appearance here today. It will not in any
23 way compensate you for the time even that you have been up
24 here this morning. But it is a small check on behalf of the
25 county for your services. I don't think it is going to be a

THE STATE VERSUS JAMES HENRY ROSS, JR.

32

1 problem, but don't spend it all in one place.

2 I will also tell you that by appearing here this week,
3 and appearing here on the panel, even though you were not
4 selected on the jury, you have met your citizenship
5 responsibilities for jury service in the Circuit Court for
6 the next three years. That means that if you were to get
7 selected for the Circuit Court, either common pleas or
8 general sessions that you could not be required to serve.
9 The first year you are actually disqualified. Second and
10 third years you have an exemption, and you can be excused if
11 you wanted to or you could serve if you wanted too. But,
12 you cannot be required to serve more than once every three
13 years.

14 But I do appreciate your service on behalf of the
15 state, and you are free to go. Thank you very much.

16 (Whereupon, the panel was released at 1:25 p.m. on
17 Monday, January 31, 2011.)

18 **-- END OF DAY ONE OF TRIAL --**

19

20

1 (Whereupon, court comes to order at 10:46 a.m. on
2 Wednesday, February 2, 2011.)

3 -- DAY TWO OF TRIAL --

4 **THE COURT:** All right. We are back on the record
5 with regard to the matter of The State versus Henry Ross.
6 Mr. Ross is present in the courtroom with his attorney Mr.
7 Matthew Swilley. The state is present and represented by
8 Ms. Patti McKenzie Parker. Are there any motions on behalf
9 of the state, Ms. Parker?

10 **MS. PARKER:** Your Honor, none at this time. No
11 recommendations, we are here on behalf of the defense.

12 **THE COURT:** All right. Mr. Swilley, what motions on
13 behalf of defense?

14 **MR. SWILLEY:** Your Honor, I have a motion to
15 suppress out of court identification of defendant's pursuant
16 to Neil v Biggers, as well as a Motion to Suppress out of
17 court statements made by the defendant pursuant to Jackson v
18 Denno.

19 **THE COURT:** All right. The defense having made a
20 motion to suppress the out of court identification as well
21 as the statement or confession of the defendant, the state
22 must now produce evidence to show that the identification
23 was valid, and not suggestive and to show that the statement
24 was freely and voluntarily made.

25 Let me ask a couple of questions just as a preliminary

THE STATE VERSUS JAMES HENRY ROSS, JR.

34

1 matter, so that I will kind of get my mind geared as to
2 which way it was going. Tell me, basically an overview of
3 the identification issue Ms. Parker. What kind of
4 identification was it, a show up identification, what was
5 it?

6 **MS. PARKER:** No, Your Honor. The day after the
7 incident, Investigator Valazak had the victim go down to the
8 Darlington Police Department. The victim at that time went
9 through what they call a master database of pictures. They
10 are face shots, or excuse me, head shots that most of them
11 are from The Department of Motor Vehicles on people they
12 have dealt with. It is not necessarily people that has even
13 been arrested, just people in their database. Ms. Valazak
14 restricted it to just black males. And the victim, Ms.
15 Williamson sat down at the computer and went through from
16 what I was told hundreds if not over a thousand head shots
17 and picked out the suspect as being the possible suspect.
18 Not a hundred percent sure.

19 **THE COURT:** I understand. Okay. We will go from
20 there. All right. Tell me about the statement. What kind
21 of statement did he make?

22 **MS. PARKER:** Your Honor, the day after his arrest Mr.
23 Ross was brought up to the Darlington Police Department, at
24 that time he did enter the interview room with investigators
25 on the case. It was recorded. He received his Miranda

THE STATE VERSUS JAMES HENRY ROSS, JR.

35

1 Rights that is also on video. And he made a statement
2 admitting that he did --

3 THE COURT: So, is it a post arrest, or --

4 MS. PARKER: -- It is a post arrest, Your Honor.

5 THE COURT: He had already been arrested?

6 MS. PARKER: Yes, Your Honor.

7 THE COURT: He was not free to go, so Miranda
8 Warnings would be required and those sort of things. Is that
9 what it was?

10 MS. PARKER: Yes, Your Honor.

11 THE COURT: Did he make a written statement or a
12 video statement, or what, just a verbal statement?

13 MS. PARKER: It was not --- it was not writing. It
14 was not produced to a writing but he is just on video.

15 THE COURT: Okay. All right. I just wanted to see
16 what we were talking about. Is there anything you want to
17 add before I let the state present their testimony, Mr.
18 Swilley?

19 MR. SWILLEY: Not at this time, Your Honor.

20 MS. PARKER: Your Honor, if I may. I want to bring
21 the Court's attention to --- there was also a statement made
22 by the defendant on the day before his arrest, on November
23 30, 2009. Now, Mr. Swilley has not made any motion
24 regarding that statement. It is summarized by officers in
25 the supplements. It was provided to him in Rule 5

THE STATE VERSUS JAMES HENRY ROSS, JR.

36

1 discovery. I of course would want to --

2 THE COURT: That is a pre-arrest statement?

3 MS. PARKER: It is a pre-arrest statement.

4 THE COURT: Verbal?

5 MS. PARKER: Yes, Your Honor.

6 THE COURT: Made to how many officers?

7 MS. PARKER: Two.

8 THE COURT: Two. What is your position on that, Mr.
9 Swilley?

10 MR. SWILLEY: Your Honor, my position on that was
11 that it was done during the course of an investigation at
12 the Police Department. I believe that it was custodial.
13 And Your Honor --

14 THE COURT: So you believe we should suppress that
15 statement as well?

16 MR. SWILLEY: Yes, Your Honor.

17 THE COURT: All right. You will have to prove both
18 of them, Ms. Parker.

19 MS. PARKER: Okay. Thank you, Your Honor.

20 THE COURT: That would be the pre-arrest statement,
21 and the post-arrest statement.

22 All right. Ms. Parker, you may call your first
23 witness.

24 MS. PARKER: Your Honor, at this time the state calls
25 Ms. Maureen Valazak.

MAUREEN C. VALAZAK - DIRECT EXAMINATION

37

1 THE COURT: All right.

2 WHEREUPON, MAUREEN C. VALAZAK

3 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS.

4 MS. VALAZAK: Yes, sir.

5 DIRECT EXAMINATION BY MS. PARKER

6 Q. Please state your full name for the record.

7 A. Maureen Catherine Valazak.

8 Q. And where are you employed?

9 A. Darlington City Police Department.

10 Q. And what is your position there?

11 A. Detective Sergeant Investigations.

12 Q. And would you recite to the Court when you first got
13 involved with this case involving Mr. Henry Ross?

14 A. Yes. I was the actual investigator on call that
15 weekend. It was a holiday weekend after Thanksgiving.
16 It was a Friday, or early Friday morning when I got a
17 call from the Sergeant on duty that at Byrd Street
18 they had a burglary and the victim came home and
19 discovered suspect in her residence. They had located
20 the suspect before I got on the scene. I arrived on
21 the scene, photographed it, processed it for any
22 possible DNA, or fingerprints. I wasn't able to gather
23 anything feasible to actually send it to SLED for DNA
24 or fingerprinting.

25 Q. Okay. Did the victim in this case, Ms. Williamson,

MAUREEN C. VALAZAK - DIRECT EXAMINATION

38

1 did she report to you that she got a look at the
2 defendant?

3 A. She did. She said that when she opened her --- she
4 noticed two of her bedroom doors to the spare rooms
5 were open. She shut one. When she opened the first
6 one, when she noticed it was open and observed the
7 curtain window down she tried to put it back up, and
8 couldn't get it back up, so she walked down the
9 hallway, noticed the other bedroom door open. When she
10 opened the door the suspect was standing right in front
11 of her in the crack of the door.

12 Q. Okay.

13 A. And she did describe --- When she did give me a
14 description of him, she did say at that time he had
15 something over his face from his mouth down.

16 Q. In general --

17 A. -- She did get a look at him.

18 Q. In general terms, how did she describe him?

19 A. She said he was medium skin color, a tall black male
20 wearing a black jacket, blue jeans, and a white ---
21 some type of white toboggan on his head.

22 Q. Did she make any description about his body type --

23 A. -- She said she was thin --

24 **THE COURT:** Wait just a minute now. Y'all are
25 talking over each other. Wait until she finishes the

1 question, you wait until she is finished with the answer
2 before you ask the question. Now, ask the question again.

3 **MS. PARKER:** Yes, sir. Go ahead.

4 A. She said that he was thin built, had a slim face, was
5 probably --- I believe she said, he was between five
6 nine and six foot that she thought he was. And he
7 didn't weigh maybe a hundred and forty pounds.

8 Q. Okay. Now, would you tell the Court what happened the
9 next day?

10 A. This would have been actually later on that same
11 evening --- I mean that same morning, just later on
12 around 11:00, I had Ms. Williamson, the victim, come up
13 to the Police Department, and I asked her if she could
14 go through some photos and possibly see if anyone in
15 the photos maybe matched the description of the suspect
16 that she saw, or maybe give an idea of what we might be
17 looking for. And she did come up to the Police
18 Department. I sat her down at the computer. The first
19 thing I did before I sat her at the computer, I clicked
20 in so it would only pull up black males, because there
21 was no sense of her going through white males, or white
22 females, or black females. She sat at the computer,
23 looked at a file we have. It is a master I.D. file and
24 it just pulls up just the head shots of just through
25 these files. And there were over a thousand pictures

MAUREEN C. VALAZAK - DIRECT EXAMINATION

40

1 in there.

2 Q. Okay. And when she was going through those files, that
3 displays the time on the screen --

4 A. -- yeah.

5 Q. -- kind of explain how that looks.

6 A. Yes. The first shot comes up, the face shot. When she
7 is ready to move on to the next item, she just clicks
8 the mouse button and it will bring up the next picture.
9 It goes through one at a time.

10 Q. Did you let her --- Did you control like the amount of
11 time she spent looking at any one picture, or did you
12 let her have control over that aspect of the procedure?

13 A. Yes. She had total control over it.

14 Q. Was there any identifying information that would
15 accompany those head shots, like put a name to these
16 guys with a particular head shot or anything of that
17 nature?

18 A. No, nothing. The only way to get that information is
19 to actually go to the print button, and that would get
20 printed out in a whole other part of the building.

21 Q. Okay. So only the picture was on the screen, is that
22 what you are saying? On the screen she was only
23 looking at head shots?

24 A. Correct.

25 Q. Okay. And when did this occur?

MAUREEN C. VALAZAK - DIRECT EXAMINATION

41

1 A. The incident itself actually happened Friday morning,
2 and it was between 1:00 and 2:00 in the morning, I
3 believe it was. Between 1:30 and 2:00 in the morning
4 when they got called out. So this was actually later
5 on in the same morning on that Friday. I just wanted
6 her to get time to kind of calm down, and get her head
7 straight from what had happened.

8 Q. Okay. And when Ms. Williamson was going through those
9 head shots, did she identify a possible suspect?

10 A. She did. She actually picked out the defendant Henry
11 Ross. As she looked at his picture, and she paused a
12 while, and I was sitting there and I said, is there
13 something --- is there something that you see about
14 this particular person? And she said, well he looks
15 like the suspect. She said he really looks like, but I
16 can't be 100% sure. I am not a 100% sure.

17 Q. I am going to show you what has been marked Court's
18 Exhibit Number 2. Do you recognize that?

19 A. Yes.

20 Q. And what is that?

21 A. This is just the statement from Ms. Christy Williamson,
22 a written statement saying that she did pick out I.D.
23 Number 10195 as a possible suspect after she had been
24 looking through a bunch of pictures.

25 Q. How long would you say she went through those before

MAUREEN C. VALAZAK - DIRECT EXAMINATION

42

1 she picked him out? How long did it take her to pick
2 out --

3 A. It was probably a good at least thirty minutes, at
4 least if not a little bit longer.

5 Q. Are you saying that she clicked through pictures for
6 about thirty minutes?

7 A. Right.

8 Q. And after that picture came up, how long was it before
9 she said I think that may be him?

10 A. When she paused and looked at it, just after a few
11 seconds, she said this looks like --- as soon as it
12 comes up she kind of went --- took a breath and I said
13 is there something about that picture? And she said, I
14 think that is the suspect. It looks like the suspect.
15 And again she said she couldn't be a hundred percent
16 sure.

17 Q. Did she have that kind of reaction to any of the other
18 head shots that she went through?

19 A. No.

20 Q. And I want to go back to Ms. Williamson's report, as
21 far as what happened at her house earlier that day in
22 the wee morning hours of the 27th. Was there any point
23 in the incident where Ms. Williamson reported to you
24 that she got a good look at the defendant's face? At
25 what point was that?

MAUREEN C. VALAZAK - DIRECT EXAMINATION

43

1 A. Yes. She said that at one point when she ended up
2 giving the suspect --- she said he had a knife, and was
3 holding a knife on her, she ended up backing --- she
4 managed to back up to the front door from the hallway
5 where the bedroom was located. And when she got to the
6 front door, the suspect had pinned her up against the
7 door, and had a knife to her throat. So he was kind of
8 in her face at that point definitely. And then she
9 managed to get the screen door unlocked and get out of
10 the house. She ran out of the house, ran back in ---
11 the suspect came out of the house, and she said she
12 turned back to look and he was running toward the side
13 of the carport. So she thought he was running behind
14 the house and he was going to leave. So she ran back
15 in the house, grabbed her phone, locked the door and
16 dialed 911. As she is on the phone talking to 911, he
17 is back at the door trying to get back in. He tried to
18 force the door back open. And there is on her door, it
19 is like a half moon glass and he was standing --- at
20 that point she said that he did not have the cover on
21 his face any longer. That he was looking back in the
22 door as he was trying to get the door back open.

23 Q. Okay. Ms. Valazak, I am going to switch gears and ask
24 you some questions about when you were further on in
25 your investigation and then we are going to skip

MAUREEN C. VALAZAK - DIRECT EXAMINATION

44

1 forward to November 30, 2009. Did you --- I guess
2 during the course of your investigation after this
3 attempt was made --- some sort of contact with the
4 defendant?

5 A. Yes. Actually, that Monday, myself and Corporal
6 Huggins went to Henry's residence, which is located
7 about three houses down from the victim's house on the
8 same side of the street. Henry wasn't there. We
9 talked to his father, Henry Sr., and he said that he
10 would let him know that we needed to talk with him when
11 he came home. So, we went back to the police
12 department. Later that afternoon --- it probably
13 wasn't even a couple of hours later Henry came up to
14 the Police Department with a friend of his. They
15 walked up there to talk to us.

16 Q. Okay. And after they got to the Police Department,
17 kind of walk us through --- what happened next? Where
18 did y'all talk at? Where did you go? What happened?

19 A. I believe I talked with Henry first in my office. I
20 really was just doing an interview with him at that
21 point. He was just a person of interest at that time.
22 I really didn't, you know have any specific probable
23 cause to believe that he did anything at that time. He
24 came up there. I talked to him. I told him I was
25 investigating a burglary that happened in the area. I

1 asked him if he could tell me where he had been that
2 night, the night before, the night of the incident, and
3 that was the conversation.

4 Q. Okay. Before we get into what he said, you said this
5 conversation occurred in your office at the Police
6 Department?

7 A. Right. Uh-huh.

8 Q. Was anyone else present?

9 A. No.

10 Q. Okay. At that time was Mr. Ross free to leave if he so
11 desired?

12 A. Oh, yes. In fact I told him, I said, look you are not
13 in any trouble. You are not under arrest. I just, you
14 know need to talk to you about this particular
15 incident.

16 Q. Was the door to your office open or closed?

17 A. My door was open.

18 Q. Okay. And before you started having that conversation
19 with him, did you give him Miranda Warnings?

20 A. No.

21 Q. Okay. So now go ahead and tell us what he told you ---
22 what you asked him about what he told you --- that
23 exchange in your office on the thirteenth?

24 A. I asked him if he could tell me where he was the
25 evening of the incident. He said that he was in the

MAUREEN C. VALAZAK - DIRECT EXAMINATION

46

1 country with his family. They had dinner. And came
2 home around 5:00, 5:30 in the evening. Shortly after
3 that they went --- he walked over to his girlfriend's
4 house who lives on cross town, I think it was

5 . And he even told me how --- which direction he
6 walked. I didn't ask him that, but I thought that was
7 strange. But the route that he told me took would have
8 been out of the way for me. I wouldn't have probably
9 taken --- there were some shorter paths for him to
10 take. He said that he had been at his girlfriend's.
11 He came home. I believe he said he left his
12 girlfriend's house around 11:00 or 11:30, and came home
13 and was home until his father woke him up --- came in
14 his room and told him they were going Black Friday
15 shopping. I think that was at 3:00 or 4:00 in the
16 morning.

17 Q. Did he tell you what he was wearing that night? Did
18 you ask him that?

19 A. I did ask him if he remembered what he was wearing. He
20 said he had on a black jacket, blue jeans, and a black
21 toboggan.

22 Q. Now during this exchange --- this conversation, was the
23 defendant --- how long would you say the defendant was
24 there in your office?

25 A. Maybe twenty to thirty minutes, if that, in my office.

MAUREEN C. VALAZAK - DIRECT EXAMINATION

47

1 That was basically the extent of the conversation that
2 we had that first time.

3 Q. Was he under arrest at that time?

4 A. No.

5 Q. And did he show up there voluntarily to speak with you?

6 A. He did. Uh-huh.

7 Q. Now, I understand that he was in your office, and y'all
8 also spoke with Travis Benjamin. Even though this
9 hearing is not about what Travis did, but was
10 information obtained while talking to Travis that was
11 then taken back to Mr. Ross?

12 A. Yes.

13 Q. And what was that?

14 A. What he was wearing that night.

15 Q. So, how long would you say after the first initial
16 exchange with him that it was before you talked with
17 him again?

18 A. Maybe fifteen minutes.

19 Q. Okay. Did he just wait there in your office?

20 A. He was --- Yeah. He was in one of the offices waiting
21 on Travis.

22 Q. Okay.

23 A. Because --

24 Q. -- okay. It was your understanding that he was waiting
25 on his buddy, and they were going to leave together?

MAUREEN C. VALAZAK - DIRECT EXAMINATION

48

1 A. Uh-huh, yes.

2 Q. Okay. And how long would you say you talked to Henry
3 after you talked to Travis, the second time in your
4 office?

5 A. Maybe another fifteen minutes.

6 Q. Okay. What did you ask him at that point?

7 A. I asked him if he was sure about what time he came
8 home, and what he had been wearing that night.

9 Q. Okay. And did Mr. Ross make any other statement to you
10 about what he was wearing that night?

11 A. I did say that he --- after I asked him about what he
12 was wearing again, he did say he did have a white
13 toboggan.

14 Q. During that second exchange with you in your office did
15 you give him any Miranda Warnings?

16 A. No, I didn't.

17 Q. Did any other officer?

18 A. I believe Captain Watson actually gave him Miranda
19 Warning and asked him if he would consent to a DNA
20 sample.

21 Q. Okay. During that whole exchange was Mr. Ross free to
22 go?

23 A. He was.

24 Q. Okay. Also I wanted to ask you about a statement that
25 you obtained from Mr. Ross after his arrest. What date

1 was Mr. Ross arrested?

2 A. On the first, I believe. Yes, 12/1.

3 Q. Okay. And did you speak with him after his arrest?

4 What date was that?

5 A. He came into the Police Department on the first, and on
6 the second he had bond arraignment and was charged with
7 some of the charges, and that was around 10:00, 10:30,
8 so we spoke after his bond arraignment. I spoke with
9 him and that was around probably 10:00 or 10:30. That
10 is our usual bond arraignment time. So after his
11 arraignment I spoke to him.

12 Q. Okay. And where did you speak with him at this
13 particular time?

14 A. At this point he was under arrest, and I wanted to do a
15 video interview with him, so we went into the video
16 room.

17 Q. And who all was present while this was going on?

18 A. Captain Watson and myself and Henry Ross.

19 Q. And was the defendant under the influence of any
20 alcohol or drugs that you believe would impair his
21 ability to understand what was going on?

22 A. No. In fact, that was part of the video statement.
23 After we read the Miranda Rights we asked specifically
24 --- Captain Watson asked him if he graduated from high
25 school, if he was under the influence of any drugs or

MAUREEN C. VALAZAK - DIRECT EXAMINATION

50

1 alcohol, and he said no, he didn't do any drugs, and
2 that he wasn't under the influence of alcohol, and that
3 he had no medical conditions that would prohibit him
4 from talking to us.

5 Q. Okay. And tell us about this room where y'all did the
6 interview --- where you do the interview tape at the
7 Police Department?

8 A. It's just a room that we have. It has a door on it.
9 It has a video camera on the corner, which I always
10 point out that there is a camera so they know that it
11 is being videotaped. And I normally explain that to
12 them. It has a table and two chairs. Henry was not
13 handcuffed. I got him a drink. It's not --- I mean,
14 it is not a --- it is just a regular room. There is
15 nothing fancy about it.

16 Q. Were any threats or promises made in exchange for the
17 statement that he gave you on that day?

18 A. No.

19 Q. Now, we have talked about how the defendant was already
20 under arrest at that time, and was brought over from
21 the Detention Center. Did you go over Miranda Warnings
22 with him?

23 A. Yes.

24 Q. And was he advised of those Miranda Warnings prior to
25 even questioning regarding what happened at Ms.

Williamson's residence on the 27th?

A. Yes.

Q. Okay. And did you do a form --- in other words did you present a form to Mr. Ross?

A. Yes.

Q. I am going to show you what is marked State's Exhibit --- Court's Exhibit 1. Do you recognize what that exhibit is?

A. Yes. This is the custodial voluntary statement, which has the Miranda Warning --- actually has the Miranda Rights written on it, and a little space after that where the person that is being interviewed can initial it that he understands his rights.

Q. Okay. And did the defendant in this case actually initial --- make those markings on that form?

A. Yes, he did.

Q. And would you go ahead and read through those rights for the Court's record?

A. This one is you have the right to remain silent. He initialed that. Anything you say can and will be used against you in a court of law. And he initialed that. You have a right to talk to a lawyer and have him present with you while you are being present. He initialed that. If you cannot afford to hire a lawyer, one will be appointed to represent you before any

MAUREEN C. VALAZAK - DIRECT EXAMINATION

52

1 questioning if you wish. He initialed that. And you
2 can decide at any time to exercise these rights and not
3 answer any questions or make any statements. And he
4 initialed that. And there is also a little paragraph
5 below that that says, I do not wish to talk to a
6 lawyer, and I hereby knowing and purposefully waive my
7 right to remain silent, and my right to have a lawyer
8 present while I make the following statement to the
9 aforesaid person, knowing that I have the right and
10 privilege to terminate any interview at any time
11 hereafter and have a lawyer present with me before
12 answering anymore questions or making anymore
13 statements if I choose to do so. That was initialed.
14 The last little paragraph is I declare the following
15 voluntary statement is made of my own free will without
16 promise of hope or reward, without fear or threat of
17 physical harm, without coercion, favor, or offer of
18 favor, without leniency or offer of leniency by any
19 person or persons whomsoever. That was also initialed.

20 Q. Okay. Did you go over that form with Mr. Ross?

21 A. I did. I always try to go over it just to make sure
22 that there is a clear understanding of a person's
23 Miranda Warnings and rights. That he didn't have to
24 answer any questions that I asked. And that he had a
25 right to have a lawyer with him before he said anything

1 to me. And that again to make sure that he understood.

2 Q. Okay. And did it appear that he understood his rights?

3 A. Yes.

4 Q. And did the answers to his questions appear rational
5 and responsive? Or in other words, did Henry appear
6 too emotional or have any other troubles like that
7 answering the questions or do you believe that he was
8 being rational at the time?

9 A. No.

10 Q. Did anyone threaten or coerce the defendant to answer
11 any questions?

12 A. No.

13 Q. Who else did you say was present with you?

14 A. Captain Watson.

15 Q. Was any promise of hope or reward or anything like that
16 offered to the defendant?

17 A. No.

18 Q. Okay. At any point did he change his mind and say that
19 he wanted an attorney? At any point did he ever wish
20 to stop the questioning?

21 A. No.

22 Q. And you say this statement was recorded --

23 **THE COURT:** Excuse me. Is the warnings recorded, or
24 just the statement? I am not interested at this point in
25 the contents of the statement. I am only making a

MAUREEN C. VALAZAK - DIRECT EXAMINATION

54

1 determination as to whether it is freely and voluntarily.
2 So, if the video only contains the statement, I don't need
3 to see that.

4 **MS. PARKER:** The video also contains the warnings.

5 **THE COURT:** All right. Go ahead. Turn the volume
6 up a little bit.

7 (Whereupon, the video statement was presented to
8 the Court.)

9 **THE COURT:** All right. We are getting into the
10 merits now. Turn it off. We are getting into the actual
11 statement, and in the interest of time, that is not the
12 issue before the Court now, it is just the voluntariness.

13 Let me ask Mr. Swilley one thing. Mr. Swilley, is
14 there any claim on the part of the defendant that after he
15 began making the statement that he wanted to stop, or that
16 he requested a lawyer? Or is there anything further that
17 you think on this video that I need to see regarding
18 voluntariness?

19 **MR. SWILLEY:** Yes, Your Honor. Mr. Ross does not
20 make any assertions that he wishes to stop. However, and
21 this is probably a collateral issue as to the Jackson v
22 Denno, but I do think it goes to the coercive nature. And I
23 have an outline that I can give you too.

24 **THE COURT:** Tell me what it is that you claim that
25 after the warnings have been extensively given that you

1 claim would make it involuntary?

2 **MR. SWILLEY:** Your Honor, several times there is
3 references to Mr. Ross' prior record, other crimes in which
4 he is indicated to have been a part of that he is questioned
5 about. There is reference to a polygraph towards the end of
6 the video.

7 **THE COURT:** How do they effect --- that may be
8 inadmissible for play for purposes before the jury. But how
9 does that affect the voluntariness issue?

10 **MR. SWILLEY:** Your Honor, I think that attributes to
11 the coercive nature of the environment. All these things
12 that were stated.

13 **THE COURT:** All right. I will listen to the whole
14 thing.

15 (Whereupon, the presentation of the video
16 statement was continued.)

17 **THE COURT:** All right. Let's take a brief recess for
18 about five minutes.

19 (Whereupon, a recess was taken from 12:26 p.m.
20 until 12:30 p.m..)

21 **THE COURT:** All right. We are back on the record for
22 just a minute with regard to Mr. Ross. I have just been
23 advised that the jury has reached a verdict in the other
24 matter, and I think we probably ought to go ahead and do
25 that while we have a break, and let's get that taken care

MAUREEN C. VALAZAK - DIRECT EXAMINATION

56

1 of. So we will be in recess on this matter --- Mr. Suggs,
2 what time is the Ross jury coming in, 2:00?

3 **DEPUTY CLERK:** Yes, sir.

4 **THE COURT:** All right. We may have to have them wait
5 a little while. But in the meantime, y'all stick around.
6 We may take a short recess for lunch, and then come back
7 maybe at 1:30 and try to finish this and then we will be
8 ready to go forward. So let's figure --- y'all go ahead and
9 get your lunch and we will try to get ours. We may not be
10 ready to start at 1:30. We will just have to see. But we
11 will go ahead and take a break on this matter now. But be
12 prepared and be back up here at 1:30, and we will finish the
13 Jackson v Denno, and the other Biggers matter at that time.

14 Now let me tell you one other thing, and of course I
15 will view the video at this point from the standpoint of
16 voluntariness. But, I will tell you, if I am going to
17 listen to it, but I have this outline from Mr. Swilley, Ms.
18 Parker, and it looks like to me that you have got an awful
19 lot of things in there that are inadmissible. And I don't
20 know how you are going to clean it up.

21 **MS. PARKER:** Your Honor, if I may.

22 **THE COURT:** It seems like to me that you may have to
23 clean it up by just having her testify as to what he said
24 without showing the video.

25 **MS. PARKER:** Your Honor, that may be an option. Also,

1 I was looking at --- if you look in his outline, there is a
2 break between six minutes and fifteen seconds and thirteen
3 twenty-three. And that was the same break I had noted in my
4 notes where I think it is clean for those five minutes.

5 **THE COURT:** Between six fifteen and thirteen
6 twenty-three?

7 **MS. PARKER:** Yes, Your Honor.

8 **THE COURT:** All right. We will take a look at that,
9 but otherwise there is a lot of stuff in there about --

10 **MS. PARKER:** -- Yes, Your Honor --

11 **THE COURT:** -- prior bad acts, and previous crimes
12 and other things of that nature, if I decide that it is
13 voluntary. But I will have to listen to the whole thing if
14 I am to determine voluntariness at this point.

15 **MS. PARKER:** Yes, Your Honor.

16 **THE COURT:** So let's stand aside until say 1:30 on
17 this matter, and try to be ready to go forward at that time.
18 Court personnel is going to take a break for lunch, but it
19 depends on how long it takes me to conclude matters with
20 regards to the Addison matter. Okay?

21 **MS. PARKER:** Yes, sir.

22 (Whereupon, this hearing stands down at 12:35 p.m.
23 to take a verdict in another trial.)

24 (Whereupon, court reconvenes at 1:45 p.m.)

25 **THE COURT:** All right. We are back on the record

MAUREEN C. VALAZAK - DIRECT EXAMINATION

58

1 with regard to The State versus Henry James Ross, Jr. We
2 need Mr. Ross in the courtroom.

3 (PAUSE.)

4 THE COURT: All right. We are back on the record
5 with regard to the matter of The State versus Ross. Mr.
6 Ross is present with his counsel, Mr. Swilley. Ms. Parker
7 is here on behalf of the state. And we are in the process
8 of taking testimony in the Neil versus Biggers Hearing, as
9 well as the Jackson versus Denno hearing. The testimony has
10 been presented, and at the present time I am viewing the
11 video of the interview at the jail, and I will continue to
12 watch that.

13 All right. Proceed.

14 (Whereupon, the video is presented to the Court.)

15 THE COURT: Stop it right there for just a moment.
16 All right. Mr. Swilley, let me ask you, and I have just
17 read the outline here, and I am going to ask Ms. Parker
18 first. Is it your intention to introduce anything with
19 regard to the video after this point right here, at the
20 13:29 mark, which is where she talks about --- up until that
21 time he has talked about the break-in of this particular
22 house. But then we are going to the mention of the carwash,
23 and then we are going into some other things after that that
24 would probably be inadmissible. Is that the part that you
25 plan to introduce is between 6:15 and 13:29, where it is

1 talking about this house?

2 **MS. PARKER:** Yes, Your Honor. At some point later in
3 the interview they do get back to talking about this house.
4 But I don't think just to preserve the statement, and to
5 prevent the jury from seeing something that is chopped up,
6 because there are some references to some prior bad acts of
7 his record throughout the remainder of the video, it
8 probably would be best to stop right there. And I clocked
9 that at 13:20 where she starts talking about the carwash.

10 **THE COURT:** And that is where it is right now, 13:29.
11 Mr. Swilley, if the state agrees that they are not going to
12 try to show the video beyond 13:20, is there any necessity
13 from the standpoint of the voluntariness issue for me to
14 review the rest of the video?

15 **MR. SWILLEY:** Your Honor, honestly, I think there
16 is. My position is that with him talking about Henry's
17 background, all occurrences in which he has been involved
18 with Captain Watson, the Darlington Police, his record,
19 discussing the polygraph, discussing DNA, that all goes to
20 the voluntariness --

21 **THE COURT:** But he has already made the statements.

22 **MR. SWILLEY:** He speaks more about the --- more
23 about the house later on in the burglary. He is questioned
24 about it more throughout --

25 **THE COURT:** But she is not going to offer that

though. He has already made the statements at this point about the house, and where he saw her, and all that sort of thing. Where is the relevance of what happens after this as it goes to voluntariness? I am not sure I understand your argument.

MR. SWILLEY: Your Honor, my argument is that there is other evidentiary stuff that is talked about, other collateral matters. I think it contributes to the ambiance of a cohesive environment.

THE COURT: But that is afterwards.

MR. SWILLEY: And before, I believe. I believe
there is --

THE COURT: I will consider anything before that. But if she stops the statement at 13:20 or 13:30, and doesn't go any further then what is the compulsory nature of anything that happens after that? What makes what he said before that involuntary?

MR. SWILLEY: I just think it says something to the cohesive nature of the situation.

THE COURT: What situation?

MR. SWILLEY: Of the environment. I mean, Your Honor, it shows that he was interviewed for a long time in general.

THE COURT: Proceed.

(Whereupon, the video continues.)

MAUREEN C. VALAZAK - DIRECT EXAMINATION

61

1 **THE COURT:** All right. Ms. Parker, you may continue
2 with the presentation with regard to anything the state
3 wants to present with regard to the two motions to suppress
4 the identification and suppress the statement.

5 **MS. PARKER:** Okay. Your Honor, if I may, while I was
6 watching that, I do believe there is a point right after
7 eighteen minutes where they go back over the incident again.
8 I don't believe there is anything that takes that section of
9 the statement from eighteen minutes to about nineteen
10 minutes and fifty seconds, it is a short little segment that
11 I may also want to introduce that as well, and we would fast
12 forward it certainly omitting the parts --

13 **THE COURT:** We will see about that. I will get to
14 that later.

15 **MS. PARKER:** Yes, sir.

16 **THE COURT:** We will come to that later. Let's go
17 ahead and get any more testimony evidence you want on these
18 two issues.

19 **MS. PARKER:** Your Honor, at this time I would be
20 through with my testimony of Investigator Valazak and ready
21 for cross.

22 **THE COURT:** All right. Ms. Valazak, come back around
23 so I can let Mr. Swilley cross examine you.

24 **MR. SWILLEY:** Thank you, Your Honor, just very
25 briefly.

MAUREEN C. VALAZAK - CROSS EXAMINATION

62

CROSS EXAMINATION BY MR. SWILLEY

1 Q. You stated that you went to Ms. Williamson's home the
2 next day; correct?

3 A. Yes. Well, it was really the morning. It was the same
4 night, because the incident actually happened early in
5 the morning on Friday evening. It was Thanksgiving
6 evening, but it was going over into Friday. Do you
7 understand what I mean? It was actually that day, that
8 afternoon.

9 Q. I understand. You said you examined the house, and you
10 took DNA swabs, and dusted for fingerprints; correct?

11 A. First of all I was not able to get any fingerprints.
12 There were fingerprint smudges on the window that was
13 entered into. And it did appear to have fingerprint
14 marks on it, but I didn't do any DNA swabs or
15 fingerprinting.

16 Q. Let me fast forward a little bit. You had Ms.
17 Williamson come in the next day on the 28th to look at
18 photos?

19 A. It was just later on in the afternoon. It was later on
20 that day.

21 Q. I see. You testified that somewhere between a hundred
22 photos, a hundred to a thousand, something like that?

23 A. Over a thousand.

24 Q. You think there was over a thousand? Okay. How many
25

1 other photos did she pick out that someone might have
2 been who she thought to be the assailant?

3 A. None.

4 Q. None?

5 A. Yes, sir.

6 Q. Okay. You said she sat there by herself with a few
7 photos, by herself without your assistance?

8 A. Correct.

9 Q. So you are not exactly sure about how many photos she
10 went through are you?

11 A. No, but she sat there for a little while, so it doesn't
12 take long to look at an individual picture. I was in
13 the same room with her. She sat there at the computer
14 while looking at pictures.

15 Q. Like I said, they are only head shots, correct? Do you
16 know about how long she spent on each photo? Were you
17 doing something else at the time she as looking through
18 these?

19 A. I was still in the same room. I didn't sit and watch
20 her looking at the pictures. She was pretty intent on
21 looking at the photos. I mean some were obviously ones
22 that she just clicked right through, because it was not
23 any of the features that stuck out in her head.

24 Q. Okay. Now, after she picked out Mr. Ross, that day you
25 called his home, you said?

MAUREEN C. VALAZAK - CROSS EXAMINATION

64

1 A. Yes.

2 Q. The next day?

3 A. The next day. No, it was actually --- that was a
4 weekend, and so it would have been Monday.

5 Q. Okay. So it would have been around the first?

6 A. Correct.

7 Q. Henry came down to the station that day, correct?

8 A. Correct.

9 Q. With Mr. Travis Benjamin, correct?

10 A. Correct.

11 Q. Did you know Mr. Benjamin before that?

12 A. Yes.

13 Q. Was he a person of interest in this matter?

14 A. No.

15 Q. And when Henry got down to the station, it was very
16 apparent --- Strike that. When Henry got down to the
17 station, did you make it clear to him that there was a
18 burglary that you were investigating?

19 A. I did.

20 Q. Right off the bat?

21 A. Yes.

22 Q. Okay. So he would have known reasonably he was a
23 person of interest; correct?

24 A. I don't know.

25 Q. Okay. That's fine. But he knew he was being --- I'm

1 sorry. Did you make it clear to him that he was being
2 investigated about this --- about this investigation?

3 A. No.

4 Q. Okay. Did you tell him he was a person of interest?

5 A. No. All I explained to Henry and Travis both was there
6 was a break-in in the area, and I needed to talk with
7 them about that particular incident.

8 Q. Okay. You allowed Henry to go home --- I'm sorry.
9 After you spoke to Henry and Travis, later that day,
10 according to your notes, you allowed Henry to go home,
11 and get a white skully, and give it to you, correct?

12 A. He was given a ride home after we got through talking
13 to him. He was given a ride home, and he did give the
14 officers that took him home a hat.

15 Q. And at what time --- or what point after that was
16 warrants issued?

17 A. It would have been the next day.

18 Q. The second, correct?

19 A. Yes.

20 Q. Two days?

21 A. Uh-huh.

22 Q. Okay. And Mr. Ross turned himself in, correct?

23 A. Correct.

24 Q. Okay. And that was in the morning?

25 A. That was in the evening when he turned himself in.

MAUREEN C. VALAZAK - CROSS EXAMINATION

66

1 Q. On the second?

2 A. Yes.

3 Q. Okay.

4 A. I'm sorry, that was on the first. He was arraigned on
5 the second.

6 Q. Okay. So you dropped him off or someone dropped him
7 off for the beanie, and then he turned himself in later
8 that day when he got word that he had warrants on him?

9 A. Yeah. I think you've got it mixed up. The incident
10 occurred on the 27th.

11 Q. Thursday night.

12 A. Well, yeah, going into Friday.

13 Q. Yes.

14 A. All right.

15 THE COURT: I am not clear on this time. Be a little
16 more specific. He is talking about Thursday night and going
17 into Friday. Was it --

18 MS. VALAZAK: It was the --

19 THE COURT: Wait just a minute. Was it on the 27th,
20 or the 28th?

21 MS. VALAZAK: It was on the 27th, Your Honor.

22 THE COURT: During that evening of the 27th?

23 MS. VALAZAK: Correct.

24 THE COURT: Approximately what time, according to the
25 victim?

MAUREEN C. VALAZAK - CROSS EXAMINATION

67

1 **MS. PARKER:** It was at 2:00 a.m.

2 **THE COURT:** No, I am asking the witness.

3 **MS. VALAZAK:** Yes, sir. We got the call about ---
4 the call came out about a quarter till, about ten till two
5 in the morning.

6 **THE COURT:** Ten to two in the morning, on the 27th or
7 the 28th?

8 **MS. VALAZAK:** Now, I am confused. It would have been
9 the 27th.

10 **THE COURT:** Friday?

11 **MS. VALAZAK:** Yes.

12 **THE COURT:** Thanksgiving having been on Thursday?

13 **MS. VALAZAK:** Correct.

14 **THE COURT:** So the break-in allegedly took place,
15 according to the information that you have been able to
16 develop from the victim at approximately 2:00 a.m. on the
17 morning of the 27th?

18 **MR. SWILLEY:** Friday would have been the --

19 **THE COURT:** -- Wait just a minute. I am getting this
20 time line straight. You've been talking too many vague
21 times. What time did you go out there?

22 **MS. VALAZAK:** I arrived at the residence that morning
23 about 8:00.

24 **THE COURT:** Eight a.m., right?

25 **MS. VALAZAK:** Yes, sir.

MAUREEN C. VALAZAK - CROSS EXAMINATION

68

1 **THE COURT:** All right. And then when did the victim
2 come to the station to look at pictures?

3 **MS. VALAZAK:** On the 27th at around 10:30 or 11:00 in
4 the morning.

5 **THE COURT:** And then there was no further contact
6 with either the victim or the defendant in this case until
7 the first when he was called and came in on that day?

8 **MS. VALAZAK:** That is correct, Your Honor. It was on
9 a weekend. Saturday would have been --- I believe Saturday
10 would have been the 29th, so the 30th would have been that
11 Monday. So it would have been Monday when we spoke with
12 him.

13 **THE COURT:** And that was what date?

14 **MS. VALAZAK:** That was the 30th.

15 **THE COURT:** All right. So it wasn't the first, it
16 was 11/30/09, and he came in on that day?

17 **MS. VALAZAK:** Yes, sir. I just need to look on my
18 report, because I am so confused on what day that was.

19 **THE COURT:** Well, I have been confused too, and that
20 is why I'm trying to pin it down.

21 **(PAUSE.)**

22 **MS. VALAZAK:** Yes, sir. It is correct on the 30th.
23 We did speak to Henry for the first time when he came to the
24 Police Department.

25 **THE COURT:** And he left and went home that day?

1 MS. VALAZAK: That's correct.

2 THE COURT: The warrant was then issued on the first?

3 MS. VALAZAK: Correct.

4 THE COURT: Which is the next day?

5 MS. VALAZAK: Correct.

6 THE COURT: And he came in on that day and was
7 arrested?

8 MS. VALAZAK: He came in on the first, that's correct
9 and was arrested.

10 THE COURT: And then on the second was when he was
11 arraigned and had a bond hearing?

12 MS. VALAZAK: Correct.

13 THE COURT: And then on the second is when you
14 interviewed him on this video?

15 MS. VALAZAK: That's correct.

16 THE COURT: Okay. All right. That is what I wanted
17 to know.

18 Go ahead, Mr. Swilley.

19 Q. Sergeant Valazak, on the 30th, after the defendant was
20 dropped off, November 30, 2009 when Henry was dropped
21 off at his house, between that point and the point
22 where the warrants were issued for him, what happened?
23 What made --- What gave --- From those two points where
24 had the probable cause threshold been met?

25 A. After to talking to Henry, and after to talking with

MAUREEN C. VALAZAK - CROSS EXAMINATION

70

1 Travis, I verified what Henry told us as far as his
2 whereabouts. After attempting to do that, I just felt
3 that between the statements that I had, and from the
4 photo lineup picture that I got from the victim, the
5 close proximity to how close he lives to the residence,
6 how quickly the officers got to the residence, and did
7 not observe anybody matching the description of suspect
8 that was given out, I had enough probable cause to make
9 that arrest.

10 Q. Now, about what time --- you said it was Tuesday
11 evening, December 1, 2005, correct?

12 A. Correct.

13 Q. He was interviewed and his video was just watched on
14 the second Wednesday, December 2, 2009. How long had
15 he been in custody before this interview?

16 A. He turned himself in after 7:00 and I was gone for the
17 day. So from 5:30 until approximately 9:30 or 10:00 in
18 the morning when the judge brought him up for
19 arraignment.

20 Q. So about fourteen hours, you would say?

21 A. Close to that.

22 Q. I see. Did anyone speak with Henry regarding this
23 matter before you and Captain Watson approached him for
24 this interview?

25 A. Not to my knowledge.

1 Q. What was said to Henry proceeding to the interview to
2 get him to give you the interview? Do you recall?

3 A. What do you mean?

4 Q. I guess did you and Captain Watson approach Henry after
5 the bond hearing that morning?

6 A. Oh, yes I did.

7 Q. Did you do this by yourself?

8 A. Yes.

9 Q. Okay. And do you recall what you said to him?

10 A. I just asked Henry if he wanted to talk to me, and give
11 me an interview.

12 Q. How did he respond to that talk?

13 A. He said he would.

14 Q. Okay. And about how long between that time and the
15 camera come on?

16 A. Within a few minutes. I set the computer up, got it
17 ready to record. Put the case number in, my name, his
18 name, as being the interviewer, and hit the record
19 button on it.

20 Q. In the beginning of the interview, Henry seems to be
21 somewhat upset and appears to be crying. Did this
22 start proceeding to the video coming on?

23 A. No. I think he was upset because of the situation he
24 was in.

25 Q. Do you remember any words preceding the camera coming

MAUREEN C. VALAZAK - CROSS EXAMINATION

72

1 on after you had talked to him at the bond hearing?

2 A. No.

3 Q. Did Captain Watson talk to him after the bond hearing
4 before the camera came on?

5 A. Not that I can remember.

6 Q. So the first time Captain Watson came in and spoke to
7 Henry about this was during the video; correct?

8 A. As far as I know, yes, sir.

9 Q. Okay. And I just have a couple more for you. Have you
10 ever had --- have you yourself ever dealt with Mr. Ross
11 before?

12 A. Yes.

13 Q. Okay. And have these interactions been cordial?

14 A. Yes.

15 Q. As far as police and defense goes?

16 A. Yes.

17 Q. Towards the end of the interview you made the statement
18 that you would give Henry a polygraph, what changed
19 those plans?

20 A. I honestly don't know. I don't know what happened with
21 that. I know it was set up for 2:00, but I don't know
22 why there wasn't an examination.

23 **MR. SWILLEY:** Thank you, Sergeant Valazak, that's
24 all the questions I have.

25 **THE COURT:** Any redirect?

MAUREEN C. VALAZAK - CROSS EXAMINATION

73

1 **MS. PARKER:** No, Your Honor.

2 **THE COURT:** All right. You may step down. Counsel,
3 I am in a few minutes making a phone call to Judge Lockemy.
4 I am going to have to do that, and we are going to take
5 about five minutes.

6 (Whereupon, a recess was taken from 2:43 p.m.
7 until 2:47 p.m..)

8 **THE COURT:** All right. We are back on the record
9 with regard to the matter of The State versus Henry James
10 Ross, Jr. Mr. Ross is present with his counsel. The state
11 is present and represented by Ms. Parker.

12 All right. We have concluded the testimony of this
13 witness, Valazak, with regard to the two issues. And Ms.
14 Parker, you can present whatever additional testimony or
15 evidence you wish to present.

16 **MS. PARKER:** Your Honor, I'm not going to call any
17 additional witnesses in this matter.

18 Mr. Watson did participate in the video statement,
19 however you viewed the video.

20 **THE COURT:** All right. That would be on the Motion
21 to Suppress the confession or the statement, which would be
22 the Jackson v Denno. How about the ID, is there anything
23 additional you want to present on that, The Neil versus
24 Driggers question, or do you rest on what is in the record?

25 **MS. PARKER:** I will rest on what is in the record.

DANNY WATSON - DIRECT EXAMINATION

74

1 **THE COURT:** All right. Mr. Swilley, you have a right
2 or your client has a right to testify in connection to these
3 two issues, both the ID issue and the confession issue. I
4 don't know what he can offer in way of the ID issue, because
5 he wasn't there. But with regard to the confession issue,
6 he has the right to testify on that issue without waiving
7 his fifth amendment rights. Do you wish to present him, or
8 does he wish to testify in that regard?

9 **MR. SWILLEY:** He does not, Your Honor.

10 **THE COURT:** All right. You have the right to present
11 any other testimony and evidence that you wish to present
12 with regard to either of these issues.

13 **MR. SWILLEY:** I believe I would like to call Captain
14 Danny Watson with the Darlington County Police.

15 **THE COURT:** All right. Come around Captain Watson.

16 **WHEREUPON, DANNY WATSON**

17 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

18 **CAPTAIN WATSON:** I do.

19 **DIRECT EXAMINATION BY MR. SWILLEY**

20 Q. Good afternoon, Captain. In this matter, I know that
21 it is Sergeant Valazak's case, when Mr. Ross was
22 brought over to the interview room, had you spoken to
23 him preceding to the camera coming on?

24 A. Not that I remember. Not that I remember. I do
25 remember going into there obviously and talking to him,

DANNY WATSON - DIRECT EXAMINATION

75

1 because I know him real well. I know him and his
2 family real well. If I had it would have been nothing
3 more than in passing, hey Henry, how are you doing,
4 that kind of stuff. I would not have talked to him
5 about the case. Not that I remember.

6 Q. All right. And you have dealt with Mr. Ross before,
7 obviously?

8 A. Sure.

9 Q. Okay. On the video you seem a little frustrated with
10 him. Is there anything underlying, can you explain
11 that?

12 A. As far as frustrated is concerned, you know, everybody
13 that you try to help in our line of work, you hope that
14 they will take the minimum amount of correction
15 necessary to put their life on the right track. We
16 have helped Henry numerous times. And we have tried to
17 help his father help him. And it is somewhat, you know
18 disappointing for someone to repeatedly get into
19 trouble when you have tried to help him.

20 Q. I see. And you never saw Henry or spoke with him from
21 the point where he turned himself in until the bond
22 hearing that morning, did you?

23 A. Not that I can remember, Mr. Swilley. I mean I am sure
24 I probably saw him when he came into the building, you
25 know. Not that I remember.

DANNY WATSON - DIRECT EXAMINATION

76

1 **MR. SWILLEY:** I have nothing further.

2 **THE COURT:** Cross examination, Ms. Parker?

3 **MS. PARKER:** No, Your Honor.

4 **THE COURT:** All right. Thank you, you may step down.
5 All right. Mr. Swilley, is there anything else you would
6 like to offer in the way of evidence or testimony on these
7 two issues?

8 **MR. SWILLEY:** Not in that way, Your Honor.

9 **THE COURT:** All right. Then the matters before the
10 Court then are for decision on the admissibility of the
11 statements, and the identity. Let's talk first about the ID
12 issue, Ms. Parker. It came first. According to the time
13 line as testified to by the officer the break-in occurred at
14 approximately 2:00 a.m., or somewhere in that neighborhood
15 on the morning of the 27th of November. And I believe that
16 she went to the house around 8:00 a.m. that morning, and
17 then the victim came in on the 27th around 10:30 or so. So,
18 I'll be glad to hear from you with regard to the matter ---
19 by way of argument with regard to the matter of Neil versus
20 Biggers, and the identification issues.

21 **MS. PARKER:** Thank you, Your Honor.

22 **THE COURT:** What you are moving to suppress is the
23 testimony of Ms. Valazak that she picked out this
24 individual, and also at the call of the victim that she
25 picked this individual out. Is that what you are moving to

1 suppress?

2 **MR. SWILLEY:** Your Honor, I am moving to suppress
3 any reference to the out of court identification of the
4 defendant by the prosecuting witness Ms. Williamson. I
5 think and my standpoint is that the procedure could very
6 substantially cause a likelihood of misidentification.

7 **THE COURT:** All right. So you are moving not the
8 testimony of Ms. Valazak about the procedure that was used,
9 but you are moving to suppress it, and I suppose she is
10 going to testify when the case is called before the jury
11 that this is the individual she picked out, and that is what
12 you are moving to suppress?

13 **MR. SWILLEY:** That's correct.

14 **THE COURT:** All right. Let me hear from you by way
15 of argument with regard to the identification issue, Ms.
16 Parker.

17 **MS. PARKER:** Your Honor, Neil v Biggers, the Court
18 looks at two things. Was the identification procedure
19 conducted in a manner that was unduly suggestive? And if
20 so, was the procedure so suggestive as to give rise of a
21 very substantial likelihood of irrefutable misidentification
22 under the totality of the circumstances?

23 Your Honor, Investigator Valazak testified that the
24 victim came in. This crime was fresh. It had occurred just
25 a few hours prior at 2:00 a.m. in the morning of the 27th.

DANNY WATSON - DIRECT EXAMINATION

78

1 She was at the Police Department before 11:00 a.m. looking
2 at pictures, Ms. Valazak described them as head shots, all
3 of black males. Went through a very large number of head
4 shots, and stopped on this suspect and said, I think that
5 might be him. I'm not a 100% sure, but I think that looks
6 like him. And Your Honor, this is what sparked the
7 investigation and took it into the direction that it went
8 from that point forward.

9 Your Honor, we would just assert that there was not
10 anything unduly suggestive about her sitting at a computer
11 and going through hundreds of pictures, all of black males,
12 head shots, they weren't presented as mug shots. There was
13 no other identifying information around that picture. She
14 was simply looking at head shots on a computer, clicking
15 through one at a time to try to get a starting point on this
16 investigation for a crime that had occurred earlier that
17 morning, in the wee hours of that morning, Your Honor.

18 We would assert that we do not believe it is
19 suggestive. And furthermore, I do believe there is
20 testimony in the record --- Investigator Valazak testified
21 that the victim did have an opportunity to view the subject
22 at the time of the crime. That the victim would have seen
23 the defendant through the window of that door. She was
24 obviously face to face with him while in the house. You
25 know, Ms. Valazak testified that the victim reported part of

DANNY WATSON - DIRECT EXAMINATION

79

1 his face was covered, but that when he reappeared in the
2 window at that front door with his face no longer covered,
3 the victim had a pretty accurate description of the suspect,
4 describing him as skinny, a young black male that was
5 skinny, about six foot tall. And there was a description
6 there, and I believe there would have been adequate time for
7 the victim to get a look at the defendant during that
8 encounter, Your Honor. All those factors would go to
9 further make the identification reliable.

10 **THE COURT:** All right. Mr. Swilley.

11 **MR. SWILLEY:** Your Honor, in this procedure,
12 obviously Ms. Williamson picked a picture of Mr. Ross out of
13 several photos of black males, several hundred as was
14 testified. However, none of these other photos were
15 referred to me or anyone else to my knowledge to be able to
16 put together with the photo of Mr. Ross. And I think the
17 --- the focus of totality of circumstances, and where there
18 is a substantial likelihood of identification.

19 We have here the five factors that Biggers annunciated
20 for the act --- to evaluate the totality of circumstances.
21 I don't think number one would be the opportunity for the
22 witness to view the criminal at the time of the crime. It
23 appears --- I don't think that there was a very good
24 opportunity for the prosecuting witness to view her
25 assailant. She testified originally that when he was inside

DANNY WATSON - DIRECT EXAMINATION

80

1 the house --

2 THE COURT: She can testify that she saw him three
3 separate times.

4 MR. SWILLEY: Your Honor, I believe that it was --

5 THE COURT: -- One time when she first opened the
6 bedroom door, and he was standing right in front of her.

7 MR. SWILLEY: With his face covered with --

8 THE COURT: Secondly was when he went to the door,
9 and he had a knife to her neck inside. Then he went outside
10 and ran and came back around and she saw him through a half
11 moon window when he didn't have anything over his face. So,
12 there were three opportunities that she was face to face
13 with him. Wouldn't that have been three separate
14 opportunities?

15 MR. SWILLEY: Well, Your Honor, one --- the
16 opportunity when he was in the house I believe he had his
17 face covered.

18 THE COURT: Partly.

19 MR. SWILLEY: Partially from the face down.

20 THE COURT: From here.

21 MR. SWILLEY: From the nose down, I apologize.

22 Inside where she would have claimed to have seen him outside
23 would have been dark. Inside there would have been light --

24 THE COURT: On what you are saying. There is no
25 testimony one way or the other whether it was light or dark.

DANNY WATSON - DIRECT EXAMINATION

81

1 I mean the porch light could have been on, but there wasn't
2 testimony in the record regarding that.

3 **MR. SWILLEY:** No, Your Honor. But it was at 2:00 in
4 the morning when it would have been dark.

5 A second factor being the witness's degree of
6 attention. At the time it was testified that the assailant
7 had a knife in his hand. And I know this isn't in the
8 testimony thus far, but I think her attention would have
9 been focused more on the knife than on her assailant's face.

10 **THE COURT:** You don't think if she had a knife to her
11 neck that her attention wouldn't have been focused on that
12 assailant?

13 **MR. SWILLEY:** I think it would have been focused on
14 the knife with it purportedly being at her neck.

15 The first factor would be the accuracy of the witness's
16 prior description of the criminal. She gave a general
17 description of a younger slender black male. I don't think
18 that really narrows down --- narrows it down enough to be
19 any kind of accurate description.

20 Number four would be the role demonstrated by the
21 witness at the confrontation. She testified that she
22 thought it might be him, but she wasn't sure. And I know
23 nobody can ever be positive of anything, but she did
24 equivocate as to --- she did equivocate some as to whether
25 she knew this fellow was her actual assailant.

DANNY WATSON - DIRECT EXAMINATION

82

1 And number five, the length of time between the crime
2 and the confrontation. It was several hours between the
3 incident and her opportunity to look at photos. So, Your
4 Honor, I believe that these factors which would suggest that
5 the procedure in this matter was --- that the procedure in
6 this matter was unreliable.

7 **THE COURT:** Well, tell me, and of course the test is
8 reliability but tell me what there is in the whole procedure
9 that made it unduly suggestive?

10 **MR. SWILLEY:** Well, Your Honor, I don't --- there
11 were just several photos of black males. She didn't talk
12 about skin tones, eye color. I think she claims she could
13 have seen the eyes of her assailant. There was talk about a
14 hat, but there wasn't talk about any kind of specific hair
15 color. And I think there is something to be said about
16 that.

17 **THE COURT:** All right. Counsel, the testimony is in,
18 and I have heard the arguments of counsel. And, of course,
19 the leading case for determining the admissibility of out of
20 court identification is as set forth in the case of Neil
21 versus Biggers. A U.S. Supreme Court case cited at 409 U.S.
22 188, 575. In that case the South Carolina enumerated the
23 number of factors to be considered in evaluating the
24 likelihood of misidentification because of the
25 suggestiveness or confrontation procedure for purposes of

DANNY WATSON - DIRECT EXAMINATION

83

1 determining admissibility of testimony, and certainly out of
2 court identification. These factors are:

3 First of all, the opportunity to view the suspect, or
4 the defendant at the time of the crime. And in this
5 particular case, as I have enumerated earlier, my
6 recollection of the testimony of the officer, who was
7 relating the testimony --- relating what was told to her by
8 the victim is that she did not see the victim when she first
9 went in the house, but went into the second bedroom, and he
10 was standing right in front of her face to face, albeit his
11 face was covered from the nose down.

12 Secondly at the front door when he had a knife at her
13 throat.

14 And thirdly through the half-moon window when he was on
15 the outside after he had left and was trying to get back in.

16 Each one of those to me is a significant opportunity to
17 view the witness. It is not like he just ran through the
18 house or anything like that. She was face to face with him.
19 And not only that she saw him two times and then he came
20 back a third time after he had already been in the house.
21 So I think there was a substantial opportunity to view him
22 at the time of the crime.

23 The second Bigger's factor is the witness's degree of
24 attention. In my view the witness's degree of attention
25 would be great for an intruder inside of her house,

DANNY WATSON - DIRECT EXAMINATION

84

1 especially when there is no one else in the house that would
2 be distracting. It was a one on one situation. And I also
3 believe the degree of attention would be highlighted by a
4 threat to her life, when a knife was pulled on her and
5 placed to her neck. So her degree of attention had to be
6 highlighted and enhanced at the time that she came in
7 contact with him.

8 The third Bigger's factor is the accuracy of the
9 witness's prior description of the criminal. I have of
10 course observed the defendant in the video and in the
11 courtroom here. The witness described the description that
12 was given her by the victim as a tall, slim or skinny black
13 male, medium brown skin. And I think that is a very similar
14 general description of the defendant in this case.

15 The fourth and probably the only one that may be a
16 little bit --- a little bit suspect, but not really in this
17 case is the level of certainty demonstrated by the witness
18 at the time of the confrontation. She went through a bunch
19 of pictures, and then hesitated just briefly just before
20 picking him out, and then said that that was the individual.
21 I think that that demonstrates a sufficient level of
22 certainty to allow the identification, and does not take the
23 identification, and if there is any question about whether
24 she had an absolute certain identity of him that would be a
25 matter of weight to go to the jury.

DANNY WATSON - DIRECT EXAMINATION

85

1 And finally, the final Biggers factor here is the
2 length of time, and it was only a matter of a few hours.
3 This happened at about 2:00 a.m. in the morning. The
4 officer testified that she did not bring her in immediately,
5 because she wanted to give her a little bit of time to rest
6 and settle down, from what I am sure would have been a very
7 trying experience. But did bring her in by 11:00 that
8 morning and I don't think there would be a long length of
9 time between the time that the crime occurred and the time
10 that she viewed these pictures.

11 As is said in State versus Washington, a South Carolina
12 Supreme Court case, 315 S.C. 108, 432 S.E.2d 448, the test
13 is whether a pretrial identification from a photographic
14 lineup is admissible, and the test is whether or not it was
15 unduly suggestive so as to give rise to substantial
16 likelihood of irreparable misidentification. I have found
17 no suggestive factors here that would suggest that the
18 witness was given any clue or any idea of who the defendant
19 was when she made the identification by photographs
20 identification. And I do not think that it gives rise to
21 any substantial likelihood or irreparable misidentification
22 when viewed under the totality of the circumstances, and
23 with all of the things that went forth in this case.

24 So the Motion to Suppress the identification is denied.

25 All right. Now, let me hear from you Ms. Parker with

DANNY WATSON - DIRECT EXAMINATION

86

1 regard to the Jackson v Denno and the statement. And I will
2 tell you that I had thought perhaps that it would shorten
3 this a little bit by an agreement not to go forward beyond
4 that point which I thought started getting into inadmissible
5 things at about 13:23 mark. But I will tell you now that if
6 the statement --- if I admit the statement, and it can be
7 edited, I will allow you to do so. I am not going to just
8 hold you just to that at this time, but I have got to make
9 that decision based upon the matter of Jackson v Denno. So
10 I will be glad to hear from you with regard to any arguments
11 you have at this time.

12 **MS. PARKER:** Thank you, Your Honor. Your Honor, at
13 this time the state would just argue that the video
14 statement I know in its entirety will not be admissible.
15 But we do assert that the statement was voluntary, and
16 Investigator Valazak was seen on video going over the
17 defendant's rights. She went over the form, which has been
18 marked as Court's Exhibit 1 in detail with the defendant.
19 He initialed on several lines going over those Miranda
20 Rights. He was advised of what he was being questioned
21 about. I do understand that he had been placed under arrest
22 the previous night. He went to the Darlington Police
23 Department so he had been at the Detention Center a night --

24 **THE COURT:** Well, let's break this down into two
25 parts. Do you intend to offer anything that he said when he

DANNY WATSON - DIRECT EXAMINATION

87

1 came in before he was arrested, and just talked to the
2 police? Do you plan to offer that?

3 **MS. PARKER:** Yes, Your Honor, I would like to offer
4 that.

5 **THE COURT:** All right.

6 **MS. PARKER:** And I will speak to that first.

7 **THE COURT:** That's fine. If that is the case, do you
8 contest whether or not that is admissible or not?

9 **MR. SWILLEY:** I do, Your Honor. I think that it was
10 --- I do contest it be admissible.

11 **THE COURT:** On what grounds?

12 **MR. SWILLEY:** Your Honor, I think it was a custodial
13 interrogation. I think that Mr. Ross was at the police
14 station. I think it was during the course of an
15 investigation. I think that his answers would suggest that
16 a reasonable person would have thought that they were not
17 free to go at that point.

18 **THE COURT:** Isn't the only testimony in the record on
19 that point is the testimony of the police officer that she
20 told him that he was free to go?

21 **MR. SWILLEY:** No, I don't believe she ever testified
22 that she told Mr. Ross that he was free to go at any point
23 during that encounter. Maybe I misheard, but I don't
24 believe that is what I heard.

25 **THE COURT:** What is your recollection of that

DANNY WATSON - DIRECT EXAMINATION

88

1 testimony, Ms. Parker? Did she tell him that he was free to
2 go? I know she testified to it that he was free to go. The
3 question is did she tell him that he was free to go?

4 **MS. PARKER:** I do not believe that was her testimony
5 that she told him. I do not recall that. I believe I asked
6 her several times, and she stated several times that he was
7 free to go. Your Honor, on that day the defendant went up
8 to the Police Department with a buddy of his Travis
9 Benjamin, they went up there voluntarily on their own
10 accord, and walked in the front door just like you or I
11 would if we went down there today. And they knew that Ms.
12 Valazak and Mr. Watson wanted to speak with them, and that
13 conversation occurred in Ms. Valazak's office.

14 **THE COURT:** And I think he walked out, or went out
15 and met his friend and left is what the testimony was.

16 **MS. PARKER:** Yes, Your Honor. They did give him a
17 ride --- Another officer did give him a ride home.

18 **THE COURT:** Okay.

19 **MS. PARKER:** That was offered, but I believe they
20 came on foot.

21 **THE COURT:** All right. All right. I will hear from
22 you with further argument Mr. Swilley as to why you think
23 that particular testimony is not admissible.

24 You take the position that it was custodial
25 interrogation and required Miranda?

DANNY WATSON - DIRECT EXAMINATION

89

1 **MR. SWILLEY:** I do, Your Honor. Mr. Ross and Travis
2 Benjamin, his cohort came to the Police Station. They were
3 both questioned separately in Sergeant Valazak's office at a
4 law enforcement facility about a crime that had recently
5 down. I think that a reasonable person would not feel free
6 to leave at that point. I know I wouldn't.

7 **THE COURT:** Well, let me ask you. What did he say in
8 that conversation that was incriminating?

9 **MR. SWILLEY:** Well, Your Honor, he did say, I
10 believe --- I think it was testified to that he did not own
11 a white skull --- or beanie skully cap. I think it was also
12 testified to that he --

13 **THE COURT:** He didn't make any admission did he?

14 **MR. SWILLEY:** I think only --- I think he waffled
15 back and forth about the white skully cap is all that comes
16 to my mind at this time.

17 **THE COURT:** Okay. All right. Ms. Parker, let me
18 hear from you with regard to the video recording, as to the
19 admissible to that.

20 **MS. PARKER:** Okay. Yes, Your Honor. We will concede
21 that that was a custodial interrogation. He had been placed
22 under arrest. We would assert that he didn't receive
23 sufficient Miranda Warnings. He received a form which he
24 initialed. And Ms. Valazak you could hear her on the video
25 going through those rights with him. She discussed with him

DANNY WATSON - DIRECT EXAMINATION

90

1 that he had a right to an attorney. And that even after she
2 had gone through the form, instead of just reading it off
3 the form, she just kind of informally in exchange told him
4 you don't --- you know you don't have to talk to us. And
5 yet he --- and yet the interview continued. Your Honor, we
6 would just assert that it was voluntary statement. Your
7 Honor, there wasn't any lengthy detention. Mr. Ross has
8 about a tenth grade education. He is not of any what we
9 would say low intelligence. I mean he went to school
10 through the tenth grade. He was not under the influence of
11 any drugs or alcohol at that time. He was also asked if he
12 had ever been treated for a mental illness, which he replied
13 no. We would just assert to the Court that the statement
14 was voluntary, and that proper Miranda was given.

15 **THE COURT:** All right. Mr. Swilley.

16 **MR. SWILLEY:** Your Honor, at the time the interview
17 would have taken place, I think Sergeant Valazak testified
18 that he would have been in custody for about fourteen hours
19 directly after his bond hearing. I think Withrow v
20 Williams, which is a Supreme Court case, 507 U.S. 680
21 enunciated some of the factors to be considered in viewing
22 the totality of the circumstances, some of which Ms. Parker
23 talked about. The wait for the interrogation I think was
24 about thirty-five minutes. It did occur at the police
25 station. Mr. Ross has a very, very limited education. If

DANNY WATSON - DIRECT EXAMINATION

91

1 you notice his physical condition he was very upset. He was
2 very almost frantic it seemed. I think that the most
3 probative factor in this was Mr. Ross's condition as to
4 nervousness. It looked as though he didn't want to be
5 there, he didn't want to be talking to law enforcement
6 during the course of that interview.

7 **THE COURT:** He didn't testify to that factor. He had
8 the right to testify to that without giving up his fifth
9 amendment rights.

10 **MR. SWILLEY:** I am aware of that, Your Honor. But I
11 think that is manifested by his physical behavior.

12 Also there was a time during the interview where I
13 think there is an implied promise of leniency for his
14 cooperation. I think when Captain Watson and him were
15 conversing he mentioned something about tell me everything
16 you have done or else, you know, I'll throw you to the dogs,
17 something along those lines.

18 **THE COURT:** Where is that in the --

19 **MR. SWILLEY:** -- That is towards, I believe --

20 **THE COURT:** -- Sir?

21 **MR. SWILLEY:** The latter half of the interview.

22 **THE COURT:** Okay.

23 **MR. SWILLEY:** I think Captain Watson said that he
24 tried to help Henry before. It just appears that his
25 conduct would suggest that he was trying to do everything

DANNY WATSON - DIRECT EXAMINATION

92

1 that he could to mitigate whatever trouble he thought that
2 he was in.

3 Your Honor, in summation, I think the biggest factor to
4 be considered is how upset Mr. Ross was during the course of
5 this entire interview. There are times where he begs
6 Sergeant Valazak to reduce the charge to a burglary second.
7 He purports to her that he can't handle having to go through
8 this. He doesn't want to put his family through it. He
9 remits about having to go back to jail. He is just very
10 upset during the course of the interview. And I think that
11 speaks volumes to the voluntariness of the statement that he
12 gave.

13 **THE COURT:** Well, hasn't it been your experience Mr.
14 Swilley, you have been in this business for a while, but
15 hasn't it been your experience Mr. Swilley that most people
16 who get arrested are upset?

17 **MR. SWILLEY:** Many of them are, Your Honor, but you
18 would be surprised about some of the people that take it
19 pretty easy, which is an anomaly that --- an enigma of
20 myself. But I rarely see people that are as upset when they
21 get arrested and taken into custody as Mr. Ross was during
22 the course of this interview.

23 **THE COURT:** All right. Under Jackson v Denno it is
24 axiomatic that a defendant in a criminal case is entitled an
25 independent evidentiary hearing to determine voluntariness

1 of statements made prior to the submission of such
2 statements to the jury. Therefore there is conflicting
3 evidence by the statement, and the Court must first make the
4 finding as to the validity of the statement, and if the
5 statement was found to be valid it would be submitted to the
6 jury.

7 In making this determination, the trial judge shall
8 examine the totality of the circumstances, including the
9 background, experience, and conduct of the accused
10 surrounding the statements to determine whether the state
11 has met its burden of proof so as to warrant the admission
12 of the --- in this case two statements.

13 The test of admissibility of a statement is whether it
14 was knowingly, intelligent and voluntarily given. A
15 confession may not be extracted by any sort of threat or
16 violence obtained by any direct or implied promises however
17 slight, or by the exertion of improper influence. Part
18 of the state's burden during this hearing is to prove by
19 preponderance of the evidence is the statement was
20 voluntarily taken --- voluntary and taken in compliance with
21 Miranda, then the defendant's custody, is he in custody or
22 his freedom to leave has been restricted.

23 The state bears this burden though even when the
24 defendant has signed a waiver of rights form.

25 Although custody is a fact to be considered in

DANNY WATSON - DIRECT EXAMINATION

94

1 determining voluntariness, a defendant need not show that he
2 was in custody at the time the statement was made to request
3 a Jackson v Denno Hearing on the voluntariness of the
4 statement.

5 First of all, with regard to the statement made, when
6 he voluntarily came in and spoke with the officers, and no
7 Miranda Warnings were given, I find that the defendant was
8 not in custody at that time. That he was free to go, and
9 that he could have left at any time, and he freely and
10 voluntarily made the statements of his own free will and
11 volition. The only statement that I think he might have
12 made had to do with certain items of clothing, and I do not
13 think that required a Miranda Warning under the
14 circumstances it was given.

15 With regard to the video statement that he made, I find
16 that Miranda Warnings were properly given, that the
17 defendant understood those, that the statement was
18 knowingly, intelligently, and voluntarily made. And as I
19 said he was in custody when the Miranda Warnings were given.
20 I don't think that there were any implied promises of
21 leniency. The admissions that he made in that statement
22 primarily were between six minutes and fifteen seconds and
23 thirteen minutes and twenty-three seconds, which was before
24 the matters that Mr. Swilley is referring to as what Captain
25 Watson said to him. But even so, I believe he was not upset

DANNY WATSON - DIRECT EXAMINATION

95

1 to the point, and I watched the video, and he understood the
2 questions. He answered them very carefully and very
3 intelligently. And he knew exactly what he was doing, and
4 he could have stopped it at any time after being given his
5 Miranda Warning.

6 The Court will therefore find that the statement given
7 was knowingly, intelligently, voluntarily made. That the
8 statement is therefore valid and admissible into evidence.

9 I continue to be concerned Ms. Parker with a bunch of
10 things that are in that statement that are not admissible
11 including prior bad acts, and reference to other crimes, and
12 just too many things that cause me a problem. And I don't
13 like the idea of trying to fast forward through those. I
14 think that that looks bad before the jury. It seems like to
15 me that the main part of it would be the part with regard to
16 the voluntariness which she asked him at the first of this
17 video about or went over his Miranda Warnings with him, and
18 that is an issue for the jury to consider as well as for the
19 Court. And then for the actual statements that were made,
20 but if you want to edit the video, and show it to Mr.
21 Swilley, and we will look at the edited video of exactly
22 what you wish to put forward, then I will consider anything
23 else. But I am not going to stop and start, and take a
24 chance with things being said that should not be said in the
25 video. My concern here is that law enforcement knows how to

DANNY WATSON - DIRECT EXAMINATION

96

1 take a statement. If they wanted to interview him, and ask
2 him all of these other sorts of things they can do that, and
3 they can do it on the video. But if they were interviewing
4 him to get a statement to use in court, then they should
5 have stuck with the matters that were admissible. So, if
6 you through technology want to edit that disc, to clean it
7 up, and let me look at it before it is shown to the jury,
8 then I will do so. Otherwise it is limited to the part
9 between voluntariness of the statement at the very first,
10 the part where he makes the statements regarding this
11 particular crime between six minutes and fifteen seconds,
12 and thirteen minutes and twenty-three second. You can clean
13 it up if you want to.

14 **MS. PARKER:** Thank you, Your Honor.

15 **MR. SWILLEY:** Thank you, Your Honor.

16 **THE COURT:** All right. Anything before we bring the
17 jury in?

18 **MS. PARKER:** No, Your Honor. What I may do is put
19 Ms. Valazak on the stand today, and I don't know that I
20 would be ready to play that video today, if we do get to
21 that point to publish it to the jury.

22 **THE COURT:** You can do it any way you want to. If
23 you want to wait until tomorrow you can do that. I don't
24 care if you want to try to get your technical people to edit
25 it or to do whatever they want to do. That is alright too.

DANNY WATSON - DIRECT EXAMINATION

97

1 I will leave that up to you.

2 The Court ruling is that is the only part of it that is
3 admissible at this time, until --- And that is not based on
4 the voluntariness though. The voluntariness I have ruled in
5 your favor.

6 My concern is I don't want a mistrial because certain
7 things come out before the jury that should not come out
8 before the jury in regard to what is in that statement. The
9 only way I know to withhold that without the jury wondering
10 what we have cut out is to have that video edited. And I
11 will leave that up to you.

12 So, if you want to go forward with opening statements
13 to the jury and I will let you present whatever you want to
14 present. But if you want to put the investigator up for
15 partial testimony, maybe up through the identification if
16 you want to and we can stop and you can bring her back
17 tomorrow and get into the other we can do that as well.

18 **MS. PARKER:** Okay. Yes, Your Honor. Because I agree
19 it would be beneficial to play the part about the Miranda
20 Rights, and that voluntariness part --- the beginning part
21 of the statement, some portion of that. But I am afraid
22 there are still some comments when she first walks in the
23 room. Henry, why do you keep doing these things Henry? I
24 think that is bad too. So it is going to have to be edited
25 unless I just fast forward to six minutes. You know, six

DANNY WATSON - DIRECT EXAMINATION

98

1 minutes thirty seconds. So I may have to put part of her
2 testimony up today, and then resume with her tomorrow.

3 **THE COURT:** I'll allow you to do that.

4 **MS. PARKER:** Okay.

5 **THE COURT:** Anything before we bring the jury in, Mr.
6 Swilley?

7 **MR. SWILLEY:** There is not, Your Honor.

8 **THE COURT:** All right. Bring the jury in.

9 **MS. PARKER:** Your Honor, yesterday in chambers we
10 discussed the problem with that one juror.

11 **THE COURT:** Tell me what that was.

12 **MS. PARKER:** Let's approach.

13 **THE COURT:** Hold off on the jury for just a moment.

14 **BAILIFF:** Okay.

15 (Whereupon, a bench conference was held.)

16 **THE COURT:** Please bring out Juror Number 150, Abby
17 Williams.

18 Ms. Williams, you can stand right there for just a
19 moment, please. And this of course is not your fault or
20 anybody's fault; it was one of the things that we appreciate
21 you bringing this to our attention.

22 But we understand that after the jury was selected in
23 this case that you did not realize at the time, but that you
24 know or have some acquaintance with the victim in this case;
25 is that right?

DANNY WATSON - DIRECT EXAMINATION

99

1 **MS. WILLIAMS:** Yes, sir.

2 **THE COURT:** All right. She brought it to our
3 attention. It wasn't your fault. You didn't know it, okay.
4 And that is what she is supposed to do, and she brought it
5 to our attention. And that wasn't your fault whatsoever.
6 And that is why we draw alternates. So, I am going to
7 excuse you, and you are not going to have to serve in
8 connection to this matter, and we will replace you with the
9 alternate. But you are free to go, and you need not call
10 back. This will be the only case this week. Thank you,
11 very much.

12 All right. Counsel, I have been advised that the jury
13 has selected juror number 35, Ms. Daniels as the foreperson
14 of this jury. And we will make her the forelady, and then
15 replace Ms. Williams with the alternate, who was juror
16 number 24, Mr. Chittum. Is there any objection to that
17 procedure?

18 **MS. PARKER:** No, Your Honor.

19 **THE COURT:** Any objection.

20 **MR. SWILLEY:** There is none, Your Honor.

21 **THE COURT:** Thank you. Bring in the jury please.

22 (Whereupon, the jury enters the courtroom at 3:27
23 p.m..)

24 **THE COURT:** Good afternoon, ladies and gentlemen. I
25 apologize to you for keeping you in the jury room. We had a

DANNY WATSON - DIRECT EXAMINATION

100

1 number of things that we had to do in connection with this
2 case and also we were running late in finishing the other
3 case today. It ran us a little bit late. We had some
4 matters we had to attend to there and we also had some legal
5 questions that we had to get resolved in this case before we
6 could go forward. I do apologize for keeping you waiting in
7 the jury room. I try not to keep jurors waiting
8 unnecessarily in the jury room. It was not unnecessary, but
9 it was an unfortunate delay. We are ready to go forward
10 now.

11 Just a couple of things I want to bring up. I believe
12 you are Ms. Daniels, is that correct? Your fellow jurors
13 have selected you as the foreperson of this jury. So you
14 will sit where you are seated and that will be your seat
15 throughout this trial. For the rest of you there are no
16 seats reserved in the jury box, except for the seat where
17 the forelady is sitting, and the seat where the alternate is
18 sitting. The rest of you can sit in any of the seats in the
19 jury box and it does not matter what order you come and go
20 from the courtroom. Just go all the way down so it wouldn't
21 be a situation of crawling over one another.

22 Now, the other thing I'm going to do, I'm talking about
23 the alternate. We have already excused one of the members
24 of the jury because it was not her fault, but it was brought
25 to our attention by one of the parties in this case that

DANNY WATSON - DIRECT EXAMINATION

101

1 there was possibly some knowledge that that particular
2 person knew one of the members of the jury. And it turned
3 out that was the case. It was not the juror's fault. She
4 did not know this. She did not fail to disclose anything.
5 But that's our purpose in drawing an alternate.

6 So what we are going to do is replace her with the
7 alternate. I'm going to ask you now to come out and have a
8 seat over here and you become a part of the main jury. We
9 will not have an alternate in this case.

10 All right, having said that then, Mr. Suggs, you may
11 swear the jury.

12 **CLERK OF COURT:** Yes, sir, Your Honor. I would ask
13 that you stand and raise your right hand for me.

14 (Whereupon, the jury is sworn at 3:30 p.m. on
15 February 2, 2011.)

16 **CLERK OF COURT:** If everyone who accepted the oath
17 will indicate so by saying, I will.

18 **JURY:** I will.

19 **CLERK OF COURT:** If everyone who took the oath will
20 take a seat.

21 **INTRODUCTION TO THE CASE**

22 **THE COURT:** Okay, ladies and gentlemen, before we
23 actually begin the actual trial of this case, I thought it
24 might be helpful if I explained to you basically how a trial
25 proceeds. I know all of you have seen trials on television,

DANNY WATSON - DIRECT EXAMINATION

102

1 but I think you find that it is a great deal different in
2 real life.

3 First of all, the state will make an opening statement.
4 Opening statement is not evidence. It is simply an outline
5 to help you understand what the state expects the evidence
6 will show. The defendant may, if he wishes to present an
7 opening statement, but he doesn't have to for reasons that I
8 will explain later.

9 Following the opening statement, you will hear the
10 testimony and evidence in this case. This will consist of
11 testimony from the state's witnesses as well as any physical
12 exhibits which may be introduced into evidence.

13 Following the completion of the testimony, the
14 attorneys will again make or will again have an opportunity
15 to make what is called a closing statement, or a summation
16 to you. This is an opportunity for the attorneys to
17 summarize the case from their respective points of view.
18 Again, these arguments are not evidence.

19 Following the closing statements by the attorneys I
20 will instruct you on the law in South Carolina as it
21 pertains to the issues that have arisen in this case. And
22 when I have completed my instructions to you, you will be
23 permitted to begin your deliberations in order to reach a
24 verdict.

25 Now, ladies and gentlemen, you are now the jury in this

DANNY WATSON - DIRECT EXAMINATION

103

1 case, and I want to take a few minutes to tell you something
2 about your duties as jurors, and give you some preliminary
3 instructions. At the end of this trial I will give you more
4 detailed instructions, and those instructions will control
5 your deliberations.

6 It will be your duty to decide from the evidence what
7 the facts are. You and you alone are the judges of the
8 facts. You will hear the evidence, decide what the facts
9 are, and then apply those facts to the law which I will give
10 to you. That is how you will reach a verdict. In doing so,
11 you must follow the law whether you agree with it or not.
12 The evidence will consist of testimony of witnesses,
13 documents, and other things received into evidence as
14 exhibits, and any facts on which the lawyers agree or which
15 I may instruct you to accept.

16 Now, you should not take anything that I may say or do
17 during this trial as indicating what I think of the evidence
18 or what I think of the facts. The law does not permit me to
19 have an opinion on the facts. Therefore, I will have no
20 opinion as to what your verdict should be.

21 Now the same law that makes you the judge of the facts
22 makes me the judge of the law. Take the law as I give it to
23 you regardless of what you think the law is, or what the law
24 ought to be. If I am wrong on the law there is another time
25 and place for that error to be corrected. But for this case

DANNY WATSON - DIRECT EXAMINATION

104

1 you must accept the law as I instruct it to you.

2 Now, this is a criminal case brought by the state of
3 South Carolina. The state charges the defendant with
4 different offenses in the Indictments that I hold in my
5 hand. The charges against the defendant are --- Counsel,
6 come up just a moment, please.

7 (Whereupon, a bench conference was held in the
8 presence of the jury, but out of the hearing of the jury.)

9 **THE COURT:** There are four offenses that the state
10 has charged the defendant in these Indictments. The first
11 is burglary in the first degree. The second is armed
12 robbery. The third is assault and battery of a high and
13 aggravated nature. And the fourth is possession of a weapon
14 during a violent crime. All of these are alleged to have
15 happened on November 27, 2009, and the allegation is that
16 the defendant broke into the home of Christy Williamson and
17 that is the charge for burglary. That while there he did
18 take certain property from the person of Christy Williamson,
19 and that is the armed robbery. And that he did while there
20 on the 27th commit an assault and battery upon Christy
21 Williamson. And finally, that during this incident that he
22 did have in his possession a weapon and that is the
23 possession of a weapon during the commission of a violent
24 crime. These are in four separate Indictments and to these
25 Indictments the defendant has plead not guilty. And I will

DANNY WATSON - DIRECT EXAMINATION

105

1 tell you that the Indictments are not evidence of anything.
2 They are simply the charges that are brought by the state
3 against the defendant, and you cannot consider the
4 Indictments as evidence of anything. But to these
5 Indictments the defendant has plead not guilty, and he is
6 presumed innocent unless and until proven guilty beyond a
7 reasonable doubt. A reasonable doubt is the kind of doubt
8 that would cause a reasonable person to hesitate to act. A
9 defendant has the right not to testify and never has to
10 prove innocence or present any evidence. The burden of
11 proof is always on the state of South Carolina.

12 Now, there are certain things that are not evidence,
13 and you must not consider them as evidence in deciding the
14 facts of this case. Statements and arguments of the
15 attorneys are not evidence. Questions and objections of the
16 attorneys are not evidence. And testimony that I instruct
17 you to disregard is not evidence. Evidence may be direct or
18 circumstantial. Direct evidence is testimony by a witness
19 about what that witness personally saw, or heard, or did.
20 Circumstantial evidence is indirect evidence. The law
21 permits you to give equal weight to both. But it is for you
22 to decide how much weight to give to any of the testimony,
23 or any of the evidence.

24 Now, there are certain rules of evidence which control
25 what can be received in the Court. When a lawyer asks a

DANNY WATSON - DIRECT EXAMINATION

106

1 question, or offers an exhibit into evidence, and the lawyer
2 on the other side thinks that it is not permitted by the
3 rules that lawyer may object. If I overrule the objection
4 the question may be answered or the exhibit may be received.
5 If I sustain the objection, the question cannot be answered
6 or the exhibit cannot be received.

7 Whenever I sustain an objection to a question or deny a
8 motion to admit an exhibit into evidence, you must ignore
9 the question or the existence of the exhibit, and you must
10 not guess what the statement would have been, or what the
11 answer would have been, or what the exhibit would have
12 shown. Sometimes it will be necessary for me to request
13 that you leave the courtroom while I discuss with the
14 attorneys legal questions that come up during the course of
15 the trial. If this occurs, you should not speculate about
16 our discussions or the reasons that you were asked to leave
17 the room. This is simply a procedure that the law requires
18 when certain legal issues arise. There also may be
19 occasions when I ask the attorneys to approach the bench, so
20 that I can discuss a legal issue with them privately. I
21 will do this as often as possible, so that you will not be
22 required to leave the courtroom more than is absolutely
23 necessary.

24 Again, if I ask the attorneys to step up to the bench,
25 or if I ask you to leave the courtroom, please don't think

DANNY WATSON - DIRECT EXAMINATION

107

1 that anybody is trying to hide anything from you, or keep
2 any evidence from you. This is simply a procedure used by
3 all lawyers and by all courts to decide and determine legal
4 questions.

5 Now, in deciding the facts in this case you may have to
6 decide which witnesses to believe, and which witnesses not
7 to believe. You may believe everything a witness says, or
8 only part of it, or none of it. In deciding what to believe
9 you may consider a number of factors, including the
10 witness's ability to see, or hear, or know the things the
11 witness is testifying to. The quality of the witness'
12 memory. The witness' manor or demeanor while testifying.
13 Whether the witness has an interest in the outcome of the
14 case, or any motive, bias, or prejudice. Whether the
15 witness is contradicted by anything the witness said or
16 wrote, or by any other evidence which you do believe. And
17 how reasonable was the witness's testimony when considered
18 in the light of other evidence which you do believe.

19 Now, just a few words to you about your conduct as
20 jurors. First of all, do not talk to each other about the
21 case until the end of the case when you go to your jury room
22 to decide on your verdict. The Court will instruct you when
23 to begin your discussions. But until that time you should
24 not talk about this matter among yourselves at all.

25 Secondly, do not talk with anyone else about this case

DANNY WATSON - DIRECT EXAMINATION

108

1 until the trial has ended following your verdict, and you
2 have been discharged as jurors. This means do not discuss
3 the case with members of your family, or friends, or with
4 anyone else. You may tell them that you are a juror, but
5 don't tell them anything about the case until you have been
6 discharged by me. And the reason for that rule is pretty
7 apparent. You have got to decide this case based upon what
8 you hear in this courtroom and not on the basis of anything
9 else that you may hear. Do not let anyone talk to you about
10 the case. When we take a recess, or over the evening, do
11 not let anyone talk to you about the case. If anyone tries
12 to approach you or tries to talk to you about the case, get
13 their name or their description and report it to the
14 bailiffs and they will report it to me and I will deal with
15 them. Do not read any news stories or articles, or listen
16 to any radio or television reports, and do not do any
17 research on the internet or any electronic communications.
18 You are not to consider as evidence anything that you may
19 see or hear when court is not in session. Do not do any
20 research as I have said of any kind, on the internet or
21 anywhere else. Do not consult any dictionaries or other
22 reference materials. And do not make any investigation into
23 the matter on your own. And finally, and probably most
24 important, do not make up your mind as to what you think
25 your verdict should be until you have heard all of the

OPENING STATEMENT BY MS. PARKER

109

1 testimony in this case, the arguments by counsel, and the
2 instructions by the Court. Any discussion of the matter, or
3 anything prior to that time would be premature. So keep an
4 open mind until the end of the case until you retire to the
5 jury room to deliberate your verdict.

6 Are there any additions or exceptions to my initial
7 instructions to the jury on behalf of the state, Ms. Parker?

8 **MS. PARKER:** No, Your Honor. Nothing from the state.

9 **THE COURT:** On behalf of the defense, Mr. Swilley?

10 **MR. SWILLEY:** There are none, Your Honor.

11 **THE COURT:** All right. Now, ladies and gentlemen,
12 the first item of business in connection to any trial is the
13 matter of opening statements. And for that purpose, I will
14 recognize the Assistant Solicitor Ms. Parker. Ms. Parker.

15 **OPENING STATEMENT BY MS. PARKER**

16 **MS. PARKER:** Thank you, Your Honor. May it please The
17 Court?

18 **THE COURT:** Yes, ma'am.

19 **MS. PARKER:** Mr. Swilley, ladies and gentlemen of the
20 jury I thank you for being here this afternoon. I know when
21 you called you hoped you would be cut loose for the rest of
22 the week. But you find yourself here, sitting in the box
23 where we have a trial starting this afternoon.

24 The Defendant in this case is charged with burglary in
25 the first degree, and armed robbery, and assault and battery

OPENING STATEMENT BY MS. PARKER

110

1 of a high and aggravated nature, and possession of a weapon
2 during the commitment of a violent crime. Now that weapon
3 in that last charge is specifically going to be a knife.
4 And the victim in this case is Ms. Christy Williamson. She
5 resides at , here in the City of Darlington,
6 in the county of Darlington. She is part of this community.
7 And I believe as I look out at this jury this afternoon, we
8 have a good representation of our community, different
9 races, different sexes, and men and women. We have black
10 and white, old, young, and I heard you just a few minutes
11 ago take the oath that you would duly try this case, and
12 listen to the evidence, and render a true verdict. Now,
13 ladies and gentlemen, I believe after you have heard all of
14 the evidence in this case you will be truly convinced beyond
15 a reasonable doubt that the defendant Henry Ross, Jr., is
16 the man who went into Christy Williamson's house on a night
17 in the early morning of November 27, 2009. And I will take
18 you back to that night, November 27, 2009 in the early
19 morning of November 27, 2009, this occurred after midnight.
20 On November 26, 2009 was Thanksgiving. So y'all remember
21 Thanksgiving. You have a holiday, spending time with the
22 family, turkey, and then the day following Thanksgiving is
23 black Friday. Women are gearing up to go shopping. They
24 are looking for a deal, you find something on sale. But on
25 this particular Thanksgiving, on this particular black

OPENING STATEMENT BY MS. PARKER

111

1 Friday, Ms. Williamson doesn't have the fond memories of
2 sharing time with family, or going shopping. Ms. Williamson
3 on that day recalls the night that she came home. Now, on
4 Thanksgiving night about 10:15 --- somewhere about 10:00 Ms.
5 Williamson will testify that she left to go out with some
6 friends. They went out had a good time. She returned home
7 somewhere around 1:45 in the morning. She is a single
8 woman, she lives alone. Her sister drops her off, pulls
9 off, pulls off from the driveway, leaves her, and she has a
10 key. She is going inside the door, and she walks into her
11 residence. What does she do, she puts her purse and her
12 keys down on the love seat which is right there as she walks
13 in the front door. And all the way home from where they
14 have been -- they have been to a place called The Hut that
15 night. So she comes in the door, she shuts and locks the
16 door behind her. She puts her stuff down because she has to
17 go to the bathroom. Now that is her house. Nobody else is
18 supposed to be there. She goes to the bathroom. She is a
19 single woman. She lives alone. She probably doesn't shut
20 the door, single people don't. She is alone. When she
21 finishes in the bathroom, she walks out of the bathroom,
22 down the hallway. She is going to her bedroom to put her
23 pajamas on. She goes in there. She puts her pajamas on
24 thinking she is all alone in her house. When she gets her
25 pajamas on, she comes out of the bedroom headed back to the

OPENING STATEMENT BY MS. PARKER

112

1 other end of the house to make sure everything is turned
2 off, all the lights are turned off. She is getting ready to
3 go to bed to get a peaceful night sleep is what she thought.
4 But when she comes through with her pajamas on and she is
5 walking and she notices that there is a door cracked, that
6 she recalls before she left that she had shut the spare
7 bedroom. And she goes inside that door to see why that door
8 is cracked. And she is not thinking on what she is going to
9 walk in on. And in that instance she realizes that she was
10 not home alone. And the defendant Henry James Ross is
11 waiting for her in that bedroom and he was standing there.
12 She opens that door, and he had a knife and said give me
13 your money. Got any money? Give me your money. And
14 immediately at that second Ms. Williamson is probably
15 thinking he is going to kill me, he is going to rape me.
16 All these thoughts are going through her head that I believe
17 she has what I call a flight or fight response. And she
18 tries to grab his wrist where he is holding the knife, and
19 she begins to walk backwards. And she is trying to control
20 that knife and prepare for her safety, to make sure she
21 doesn't get hurt. And she walks back to the love seat where
22 I told you just a couple of minutes ago she just put her
23 things down. She pulls out her wallet, she gives him cash
24 money. She has a hundred and twenty dollars that she is
25 going to testify to. She gives him that money, and tells

OPENING STATEMENT BY MS. PARKER

113

1 him you got to go. You got what you wanted, now go. You
2 got to go. At that time he is holding a knife. She is
3 backed up against her door, trying to reach behind and open
4 that door for him to go out. And he pushes up and asked her
5 if she is ready to die? And then she is able to get the
6 screen door open, she is reaching and working behind as she
7 runs out the front door, barefoot in her pajamas, through
8 her front yard screaming. She looks up and sees the
9 defendant is also running out of the front door and had gone
10 around the carport. So she thinks well I can make it back
11 into the house. Back inside she attempts to shut her door
12 and lock it, and then bolt it. Her phone is right here,
13 right by the front door, she has her cell phone. She is
14 calling 911. And the defendant appears back at that front
15 door. Now she is trying to push it close and he is beating
16 on that door. He is trying to beat back in that door. She
17 is on the phone with the 911 operator, begging for help.
18 Send an officer to help me. Somebody is in her house.

19 Ladies and gentlemen, that is what happened in the
20 early morning hours of November 27, 2009. That is what you
21 are going to hear about over the course of this trial.

22 Now, you are going to hear evidence of how the victim
23 went down to the Police Department the same day around 10:30
24 or 11:00 a.m. And she has a description. She has no idea
25 who this guy is. She has some idea of what he looks like.

OPENING STATEMENT BY MS. PARKER

114

1 She encountered him face to face. She looks through some
2 pictures, and you are going to hear testimony about that.
3 She picks somebody out. She says I think that is him. And
4 then law enforcement did an investigation, and they go talk
5 to this defendant. And you will also hear throughout the
6 course of this trial that that individual was Henry Ross,
7 Jr. They speak with him, and after he was arrested he
8 talked to Investigator Valazak and admitted to being in her
9 house.

10 So, I just urge you as this trial goes forward, and
11 throughout the course of this trial to listen to all of the
12 evidence, and listen to all of the testimony. There will be
13 some testimony that is tangible. You can feel it, you can
14 touch it. Some of these pictures you can look at. But the
15 testimony that comes in from the witnesses who sit in that
16 chair is also evidence.

17 The defense is probably going to say there is a lack of
18 evidence in this case. They are going to point you in a
19 direction they don't have any fingerprints, or DNA, they
20 don't have this, or they don't have that. And I would just
21 encourage you to think about how this investigated started,
22 and the net is cast wide. They had no idea who did this to
23 Ms. Williamson, but the police were able through showing her
24 those photos the suspect was narrowed down and throughout
25 the investigation wherever it might go. So, I would just

OPENING STATEMENT BY MR. SWILLEY

115

1 encourage you to continue to pay attention throughout the
2 course of this trial. I tell most juries that it is not
3 like you see on t.v. There may be some expectation, while
4 you were back there while we were working on legal matters
5 out here. Sometimes you feel like waiting --- it is a
6 waiting game, and you come in and you do things and we have
7 two witnesses, and you go back out and have to wait some
8 more. You come back in. It doesn't happen quite like it
9 does on t.v.

10 Now, I want to thank you in advance for your attention.
11 I do believe at the conclusion of this matter, after this
12 trial is concluded, it will bring closure, closure in this
13 case for Ms. Williamson. And I would just ask that after
14 you have heard all of the evidence and I believe that after
15 you have heard everything that we have to offer in this case
16 that you will be convinced beyond a reasonable doubt that
17 the defendant Henry Ross is guilty as charged of burglary,
18 armed robbery, and of the assault and possession of a knife
19 to Ms. Williamson in her household that night. Thank you.

20 **THE COURT:** Mr. Swilley, does he care to make an
21 opening statement?

22 **MR. SWILLEY:** He does, Your Honor.

23 **THE COURT:** You may.

24 OPENING STATEMENT BY MR. SWILLEY

25 **MR. SWILLEY:** Thank you, ladies and gentlemen. My

OPENING STATEMENT BY MR. SWILLEY

116

1 name is Matt Swilley. I represent Mr. Henry Ross. It is my
2 pleasure this week to show y'all that Henry Ross is not
3 guilty for the crimes of which he is charged.

4 Now, during the course of this trial the state of South
5 Carolina through Mr. Holt and Ms. Parker will not prove
6 Henry Ross guilty beyond a reasonable doubt, and there is an
7 excellent reason for that. He is not guilty. He didn't do
8 it. Everything Ms. Parker said about someone going in to
9 Ms. Williamson's house, holding her at knife point,
10 demanding money from her, and probably putting their hands
11 on her are probably true. But, it wasn't Henry Ross.
12 Whoever went to Ms. Williamson's house that night is not
13 that man sitting next to me at that table right there, and
14 that is what y'all are going to see through the evidence,
15 and that is what you are going to hear during the course of
16 this trial.

17 Now, no one is denying whatever happened to Ms.
18 Williamson is a tragedy. She didn't deserve anything to
19 happen to her. She doesn't deserve to have somebody come
20 into her house, take her money, hold her at knife point.
21 She didn't deserve that. That is a tragedy. But I will
22 tell you something, one tragedy should never begat another
23 tragedy. That tragedy would be to convict Henry Ross of a
24 crime that he didn't commit.

25 Now, some of the facts that Ms. Parker said that are

OPENING STATEMENT BY MR. SWILLEY

117

1 true, and you are going to see throughout the course of this
2 trial through the testimony that is presented before you is
3 that there are no fingerprints of Henry Ross that are
4 evidence for Ms. Williamson. There was no DNA evidence
5 recovered at the residence of Ms. Williamson linking Henry
6 Ross there. No one ever saw Mr. Henry Ross go into Ms.
7 Williamson's house. And Ms. Williamson never really saw the
8 face of the assailant that night. The testimony will say
9 the face was partially covered up from about there down.
10 And also, there was no money recovered from Henry Ross, and
11 there are excellent reasons for that, because Henry Ross did
12 not commit these crimes. And there is also going to be
13 several people that come before you to testify that he has
14 bragged about committing these crimes against Ms.
15 Williamson.

16 Now, the reason Henry Ross is sitting in that chair
17 over there next to me, the defendant in this matter is
18 because there is none. There is nothing tangible. Ms.
19 Williamson said --- she may think he resembles someone who
20 broke into her house, but she wasn't sure. And that is why
21 he is sitting in that chair over there.

22 Now, when this trial is said and done, at the end of
23 the week, you are just going to have to go through it. This
24 is a sorry sad case, and there is just too much reasonable
25 doubt in this case to find Henry Ross guilty, and that is

OPENING STATEMENT BY MR. SWILLEY

118

1 because he is not guilty. It is just a big ugly awful
2 misunderstanding.

3 Now, you twelve have the privilege just like I have the
4 privilege --- you have the ability to get right what the
5 state has got wrong so far. During the course of this
6 investigation, during the course of the prosecution, and it
7 is important to be mindful of that that the state and the
8 prosecution they aren't accused. The government is made up
9 of humans. And we all know the government gets things wrong
10 sometimes. It happens in Darlington, it happens in Columbia
11 as we all know, and it happens in Washington, DC. The
12 government makes mistakes, and they have made a mistake and
13 should not be prosecuting Henry Ross for these crimes.

14 Now, it is important to remember that you are sitting
15 right there, and this is the most power you will probably
16 going to have, unless you ran for public office, this right
17 now is the most power you are ever going to have. You are
18 going to have the power over a man's life, over his future.
19 And that is not something that you take lightly. Like Ms.
20 Parker just said, this trial is closure. It has been marked
21 closed of this process. Very importantly I would like for
22 y'all to remain mindful of three bedrock principals in
23 American law. Number one, the defendant in this case, this
24 matter against Henry Ross, is presumed innocent at all
25 times. He is innocent until someone proves him guilty, or

1 until the state proves him guilty.

2 Number two. The burden of proof of proving Mr. Ross
3 guilty always rests on the state. We don't have to prove
4 anything, and that is the way it should be.

5 And number three, and most importantly, the state has
6 to prove beyond a reasonable doubt, and that is a feat that
7 they are not able to do.

8 Now, I am going to ask throughout the course of this
9 trial, and I know you will keep an open mind, pay attention
10 to what is said. Pay attention to inconsistencies in
11 testimony. Pay attention to minute details, and even big
12 details. It is all important.

13 I want to thank you for your presence her today. I
14 also want to thank you for your attention.

15 **THE COURT:** Approach the bench counsel, please.

16 (Whereupon, a bench conference was held in the
17 presence of the jury, but out of the hearing of the jury.)

18 **THE COURT:** Ladies and gentlemen of the Jury, I have a
19 prior obligation a little bit later this afternoon. I was
20 going to break in about thirty-minutes anyhow. And after
21 talking with counsel I think the better thing for us to do
22 is to go ahead and break for the afternoon, this afternoon
23 before we go into the first witness rather than have that
24 witness's testimony broken up. We will be able to start in
25 the morning and go straight through with it.

THE STATE VERSUS HENRY JAMES ROSS, JR.

120

1 So what I'm going to do is excuse you now. I'm going
2 to ask you to be back in the jury room tomorrow morning at
3 9:00. We will make up the thirty minutes that we missed
4 this afternoon. And we'll start at 9:00 and go straight
5 through. We will be ready and prepared to go forward at
6 that time.

7 I tell you again, don't discuss this case with anyone
8 over the evening recess. Do not allow anyone to discuss it
9 with you. And do not discuss it among yourselves. And in
10 the morning at 9:00 we will go through the testimony at that
11 time.

12 Thank you very much. You are excused for the evening.
13 I'll see you tomorrow morning. Please be in your jury room
14 tomorrow morning at 9:00. Thank you.

15 (Whereupon the jury is excused for the day at 4:05
16 p.m.)

17 **THE COURT:** All right. Counsel, what I will ask you
18 to do is resolve all the matters that you know of so we can
19 go straight through. The Court reporter has handed me
20 state's exhibits 1 through 18 which are photographs that the
21 defendant agreed upon. Those will be admitted through
22 evidence without further identification. What about other
23 exhibits? Do we have other exhibits that we can agree on so
24 we won't have to delay in the morning? I notice you have a
25 sketch here?

THE STATE VERSUS HENRY JAMES ROSS, JR.

121

1 WHEREUPON, STATE EXHIBITS

2 NUMBERS 1 THROUGH 18 ARE

3 MARKED AND ADMITTED INTO

4 EVIDENCE WITHOUT OBJECTION.

5 MS. PARKER: Yes, Your Honor. I mean Mr. Swilley
6 told me he is not going to have a big problem with it, and
7 we can mark it and I was going to show it to the victim and
8 let her testify that that is a pretty accurate depiction of
9 a layout of her house, and then move it into evidence. I
10 don't think --- Mr. Swilley told me he wants to go ahead and
11 agree --

12 THE COURT: That is marked right now for
13 identification as State's Number 19, and State's Number 20
14 is marked for identification as white tasseled cap. And
15 State's Number 21 is the 911 tape. Those are all for
16 identification. But 1 through 18 are admitted into evidence
17 at this time.

18 All right. Anything else Ms. Parker that you need to
19 address this afternoon before going forward in the morning?
20 I would ask you to make your decision with regard to how you
21 want to handle the interview, and either have the tape ---
22 Well, maybe we ought to meet here about ten or fifteen
23 minutes before.

24 MS. PARKER: Yes, sir.

25 THE COURT: Before nine in the morning, and make sure

THE STATE VERSUS HENRY JAMES ROSS, JR.

122

1 we have that covered. So let's get it done.

2 **MS. PARKER:** Yes, sir. If we edit the tape, I will
3 have that here early if you want to look at it.

4 **THE COURT:** If y'all look at it, and y'all agree upon
5 it, I don't have any problem. It is up to y'all. I am not
6 asking you to --- I know you still on record, Mr. Swilley
7 being opposed with what I have told you to do is redact or
8 delete from the disc the parts that would be objectionable
9 for reasons other than voluntariness. So, if you don't have
10 any objection to that then we can go forward, and you will
11 still be reserving your objections with regard to the
12 voluntariness issue.

13 **MR. SWILLEY:** I understand, Your Honor. Thank you.

14 **THE COURT:** All right. Let's be in recess until
15 about 8:45 in the morning.

16 **MR. SWILLEY:** Thank you, Judge.

17 **MS. PARKER:** Thank you, Judge.

18 (Whereupon, this hearing in recess for the day at
19 4:10 p.m. on Wednesday, February 2, 2011.)

20 -- END OF DAY TWO OF TRIAL --
21
22

THE STATE VERSUS HENRY JAMES ROSS, JR.

123

1 (Whereupon, court comes to order at (9:06 a.m. on
2 Thursday, February 3, 2011.)

-- DAY THREE OF TRIAL --

3
4 **THE COURT:** All right back on the record with regard to
5 the matter of The State versus Henry James Ross, Jr. Mr.
6 Ross is present in the courtroom with his counsel, Mr.
7 Swilley. The state is represented by Ms. Parker. I've been
8 advised that all of the jurors are here and we are ready to
9 proceed.

10 Yesterday we swore the jury. I gave my initial
11 remarks. Both sides made their opening statements and they
12 are ready to begin with testimony. Is there anything before
13 we bring the jury in on behalf of the State, Ms. Parker?

14 **MS. PARKER:** No, Your Honor.

15 **THE COURT:** On behalf of the Defense, Mr. Swilley?

16 **MR. SWILLEY:** There is not, Your Honor.

17 **THE COURT:** All right. Bring the jury in please.
18 While they are coming in, let's put this on the record. I
19 did ask counsel if they had been over the video, and they
20 both indicated that it had been edited to their
21 satisfaction.

22 (Whereupon the jury enters the courtroom at 9:06
23 a.m.)

24 **THE COURT:** Good morning, ladies and gentlemen. I
25 thank you for your promptness in being back here. We are

CHRISTY WILLIAMSON - DIRECT EXAMINATION

124

1 ready to proceed.

2 Yesterday you heard my initial remarks and the opening
3 statements by both counsel indicating what they thought the
4 evidence will show in this case. And we will be prepared to
5 go forward with the State's case now.

6 But before we begin, I do need to ask you if anyone has
7 approached you or tried to talk with you about this case in
8 any manner over the evening recess, I would need to know
9 about it now? Negative response and that's good. Also,
10 if anyone, over the evening recess has read news stories, or
11 heard any broadcast media reports on this case over the
12 evening recess I would also need to know about that now.
13 Again negative response and that's good.

14 All right. We are now ready to proceed. The State
15 will now be able to present to you its case in chief. Ms.
16 Parker, you may call your first witness.

17 **MS. PARKER:** Thank you, Your Honor. At this time the
18 State calls Ms. Christy Williamson.

19 **CLERK OF COURT:** Come around and be sworn please.

20 **WHEREUPON, CHRISTY WILLIAMSON**

21 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

22 **MS. WILLIAMSON:** I do.

23 **DIRECT EXAMINATION BY MS. PARKER**

24 Q. Would you please state your full name for the Court's
25 record?

CHRISTY WILLIAMSON - DIRECT EXAMINATION

125

1 A. Yes. My name is Christy Yvonne Williamson.

2 Q. Okay. You may need to adjust that mic a little bit. I
3 want to make sure you are heard, and the Court reporter
4 has to get the record. You might have to speak up a
5 little bit.

6 Ms. Williamson, where do you live?

7 A. At .

8 Q. And tell me about your residence. Does anyone else
9 live there with you?

10 A. No, I live alone.

11 Q. And back in 2009, was anyone living with you at that
12 time?

13 A. No.

14 Q. And how long have you lived at that address?

15 A. At that, now I had been there about a year and a half.

16 Q. Okay. And what's the significance of that home, to
17 your family?

18 A. It's a family home. It was when I was born. And it
19 has always been my home until I left and moved to
20 Raleigh and came back.

21 Q. In what year was that you came back from Raleigh and
22 moved back home to Darlington?

23 A. When I moved back to Darlington was in 2001. When I
24 moved back to my home on First Street it was in 2008,
25 January of 2008.

CHRISTY WILLIAMSON - DIRECT EXAMINATION

126

1 Q. And Ms. Williamson is that address is
2 that located in the County of Darlington?

3 A. In the City.

4 Q. In the City, okay. Is that also in the County of
5 Darlington?

6 A. Yes.

7 Q. Ms. Williamson, where do you work, are you employed?

8 A. I am. I worked at McLeod Child Development Center.
9 I've been there nine years.

10 Q. I want to take you back to November 26, 2009. That was
11 Thanksgiving Day; is that correct?

12 A. That's correct.

13 Q. That Thursday. What did you do that day?

14 A. Well, Thursday morning I got up and was going out to my
15 cousin's house for Thanksgiving. So I got up and put a
16 ham on, cooked my ham. And I lounged around all day
17 until it was time for dinnertime. So about 12:00 I
18 went out to her house. Stayed out there until maybe
19 about 5:00 or 6:00 and then I came home. Well, I call
20 her my sister but she's just a real good friend of
21 mine, we kind of grew up together. In each of our eyes
22 we are sisters. I kind of got up with her. We talked
23 about maybe going out because our alumni, our Mayo
24 alumni was having something, so we kind of talked about
25 going out. She probably arrived at my house probably

CHRISTY WILLIAMSON - DIRECT EXAMINATION

127

1 about 10:30 and we left.

2 Q. Okay. And tell me, Ms. Williamson, at what point after
3 y'all left around 10:30 when did you come home?

4 A. I arrived home about 1:30 and 1:45. But it was before
5 2:00.

6 Q. Okay. And how did you get home? Did your sister bring
7 you home?

8 A. She brought me home, yes. I rode with her. She came
9 and picked me up. I rode with her and she brought me
10 back home.

11 Q. And after you got home what was the first thing you did
12 when you were getting out of the car?

13 A. When I was getting out of the car coming in my front
14 door I was pushed to go to the bathroom. Actually I
15 had on some heels but I had already brought my flats
16 with me. So I was taking off my heels and putting on
17 my flats and rushing to get in the house to go to the
18 bathroom. So I have a love seat right there. So when
19 I opened up my door I locked my door and put everything
20 in my hands, my coat, my pocketbook, my heels right
21 there on the love seat and went to the bathroom. I
22 went to the bathroom, used the bathroom, and stripped
23 down. I stripped and walked from the bathroom to my
24 bedroom.

25 Q. Okay. Ms. Williamson, okay, when you said you walked

CHRISTY WILLIAMSON - DIRECT EXAMINATION

128

1 to your bedroom, I am kind of backtracking for just a
2 second. You said when you walked in that front door
3 and you put your things down on the love seat, did you
4 shut that door behind you?

5 A. Yes, I did. I locked my screen door and I locked both
6 locks on the door.

7 Q. Okay. Now, you said you went to the bathroom and you
8 stripped down. What did you do next?

9 A. I walked across the hall to my bedroom and put on my
10 pajamas, walked back out and saw in the third bedroom
11 that the mini-blind was on the floor when I walked in
12 there. And I said well, I'm not going to mess with
13 that tonight. I will just you know take care of it in
14 the morning. So, I walked back out and noticed there
15 was a crack in the first bedroom. So I knew that door
16 shouldn't been cracked because before I left I went in
17 there to get a red pocketbook out to go with the red
18 shoes that I was wearing that night when I went out.
19 So when I went to push the door open there stood the
20 Defendant.

21 Q. Ms. Williamson, I want to ask you --- okay --- you keep
22 mentioning bedrooms. How many bedrooms are in your
23 home?

24 A. Three. I have three bedrooms.

25 Q. And you talked about the bedroom with the mini-blind

1 down.

2 A. Yes.

3 Q. Which bedroom is that?

4 A. That would be considered the third bedroom. Which when
5 you walk down the hallway I would be facing that
6 bedroom. And then on the left here is one bedroom, the
7 second bedroom, and then the bedroom where the blind
8 was down there.

9 Q. Okay. And which bedroom is it that you sleep in?

10 A. I sleep in the second bedroom.

11 Q. Now, I want you to go back to when you say you were
12 walking down the hallway and you saw the door to the
13 first bedroom cracked.

14 A. Yes.

15 Q. Okay.

16 A. As I was coming back out of the room where the blind
17 was down on the floor --- I leave my lights on so I
18 was going back to turn my lights off. So as I was
19 going back to the front, which is the living room, I
20 noticed that the door to the first bedroom had a crack
21 in it. And I knew I shut that door. Like I said, I
22 went in there to get a pocketbook out of there. So
23 when I went to open it there stood a guy. His face was
24 covered.

25 Q. How was his face covered?

CHRISTY WILLIAMSON - DIRECT EXAMINATION

130

1 A. With something black.

2 Q. What portion of his face?

3 A. All this right here was covered, right here.

4 Q. Okay. Could you give us a description as far as what
5 he appeared to look like as far as you could see?

6 A. His physical appearance as far as being tall or --

7 Q. Yes, ma'am.

8 A. Tall, slender guy. He was tall. At that time I was
9 unable to see his face. So tall, slender guy. I would
10 say a young guy. And the reason why I say a young guy
11 is because of the style of dress that he had on.

12 Q. At that time, were you able to tell what race he was?

13 A. No.

14 Q. Okay. Now, what happened after you opened the door and
15 saw there was a man standing in there?

16 A. When I pushed the door open he was standing right there
17 at the door. My initial instinct was to --- he had the
18 knife pointed at me. Was to put my hands --- I put my
19 hand on his wrist watching the knife. And I told him
20 he had to get out of here, he needed to go. He told me
21 to shut up. And I kept saying, you need to get out of
22 here, you need to get out of here. And he said, give
23 me your money. So as he was --- as I was backing up
24 and he was coming towards me still with my hand on his
25 wrist backing out I backed until I got to the living

CHRISTY WILLIAMSON - DIRECT EXAMINATION

131

1 room and got to the chair where my pocketbook was. I
2 reached down and got my pocketbook, and took my wallet
3 out, and took my money out. I took out \$120.00 because
4 that's what I had in my pocketbook and I gave it to
5 him. He said, make sure you give it all it to me. I
6 told him, you have my money, you need to go now. So as
7 I'm telling him this I'm backing up towards the front
8 door. With my free hand I'm backing up to the front
9 door, I opened up the board door. I stood between the
10 board door and the screen door, and I told him, now you
11 definitely you have to go now. He walked up to me and
12 put the knife to my throat and asked me --

13 **MR. SWILLEY:** Objection. Hearsay.

14 **THE COURT:** A statement by the Defendant is a statement
15 against interest. The objection is overruled.

16 You may answer the question.

17 Q. Ms. Williamson, when you were standing there in the
18 doorway, I want you to kinda go back over what happened
19 when you were there in the doorway.

20 A. Okay. While I was there in the doorway he walked up on
21 me and put the knife up to my throat and asked me was I
22 ready to die, and touched my breasts. At that point
23 and time I opened up the screen door and I ran out. I
24 ran out towards my driveway. Looking back I saw him
25 leave out and take off around the carport and run

CHRISTY WILLIAMSON - DIRECT EXAMINATION

132

1 towards the back. So I took off as fast as I could
2 back in the house, ran in, wasn't able to lock the
3 screen door but was able to lock my board door and
4 standing up against the door reaching over to love seat
5 and getting my cell phone and calling 911. And he was
6 back at my door, hitting the door, kicking the door,
7 trying to get back in. At this point in time he done
8 took whatever he had on his face off. So at my
9 half-moon in my door --- and I'm like at the board door
10 because I've got my body up against the door to make
11 sure that he can't come back in, and I'm looking in his
12 face, because at this time he doesn't have anything on
13 his face. I see the top of this around here.

14 Q. Okay. Yes, ma'am. When you got back in the house,
15 were you able to get that door completely locked before
16 he started trying to come back in?

17 A. Yes, I was able to lock the bottom lock and the board
18 lock because I was up against it, so I was able to lock
19 both of them. My body was up against the door so I was
20 able to lock the door.

21 Q. And tell us what happened after you called 911.

22 A. I'm not sure how long it took them. It didn't take
23 them that long to get there. But they were there and
24 one of the officers, one of the female officers came in
25 and talked with me about what happened, just kind of

CHRISTY WILLIAMSON - DIRECT EXAMINATION

133

1 getting the information about, you know, what had
2 occurred.

3 Q. Was the Defendant still at your house when the officer
4 got there?

5 A. No, he had left by then.

6 Q. At what point did he leave?

7 A. When he saw me on the phone. Like I say, I'm looking
8 at him and he's looking at me. I'm on the phone
9 calling 911. When he saw the cell phone in my hand
10 that is when he took off.

11 Q. Ms. Williamson, you were able to see him you testified
12 through that window that's in your door, tell us at
13 that point --- describe the subject. What was he
14 wearing, what did he look like?

15 A. He had a black jacket with a white --- I called it a
16 skully cap, a white cap down over the top of here. And
17 like I said, by that time he had done took everything
18 off. He was a brown-skinned guy, you know, slender
19 face. The only thing I could see you know was the top
20 of his mouth --- down here I was not able to see.

21 Q. Was he young or old?

22 A. Young. He was younger than me and I knew that.

23 Q. How long do you think it took before the police
24 arrived?

25 A. I don't know. I want to say a couple of minutes.

CHRISTY WILLIAMSON - DIRECT EXAMINATION

134

1 Because like I said, once I was talking with the guy
2 --- the 911 operator we were talking --- I would say a
3 couple of minutes they were around there at my house.

4 Q. Okay. Ms. Williamson, I'm going to backtrack for a
5 second. Tell us about the window in what you call
6 bedroom number three. Is there anything significant
7 about that window?

8 A. That window did have --- that window has panes on it
9 and one of the panes were missing out of it.

10 Q. And this was prior to that night?

11 A. Yes, prior to that night, yes.

12 Q. How long has that pane been missing out of your window?

13 A. Ever since I was there. I was in the process of
14 getting windows done. I had gotten my front windows
15 done, you know, kind of upgrading the house because I
16 had not been there that long. A couple of things
17 happened so that kind of stopped me from getting around
18 to the back of my house. So around the side and the
19 back of the house are the original windows in the
20 house, so I had not gotten to that window yet.

21 Q. Did you have anything over that one little square that
22 was missing? Did you have anything to try to protect
23 that?

24 A. Yes, I did. I had a gift bag, a big, ole gift bag that
25 you put a gift in, I had it over that window ---

1 sitting in that window.

2 Q. Now after you realized that he had broken in, was there
3 anything that changed about that window as far as in
4 reference to the gift bag, or any blinds, or curtains?

5 A. At that night?

6 Q. Yes, ma'am.

7 A. Yes, the mini-blind itself was on the floor. And when
8 I looked in I saw the mini-blind on the floor. I saw
9 the mini-blind on the floor, so the mini-blind had
10 fell. It was on the floor.

11 Q. Was that mini-blind on the floor prior to that night?

12 A. No, it was hanging up with a curtain and with that bag
13 covering that missing window pane.

14 Q. On the outside of your house, did you have an
15 opportunity to observe the outside area under that
16 window after this burglary took place?

17 A. Yes, we went around on that side and noticed that there
18 was a chair that used to be in my back yard that was up
19 under that window.

20 Q. To your knowledge, was that chair there prior to the
21 events in question?

22 A. No, it was not, no.

23 MS. PARKER: Your Honor, permission to approach the
24 witness?

25 THE COURT: Yes.

CHRISTY WILLIAMSON - DIRECT EXAMINATION

136

1 Q. Ms. Williamson, I show you what has been marked as
2 State Exhibit Number 1, it is already in evidence.
3 What is in that picture?

4 A. This is a picture of my house and my car parked in the
5 front yard.

6 Q. Is that customary for you to park your car in the front
7 yard like that?

8 A. Yes, it was.

9 Q. And on the night in question was your car parked --

10 A. -- It was parked right there, yes.

11 MS. PARKER: Your Honor, permission to publish these
12 photos to the jury one at a time?

13 THE COURT: Yes, permission granted. Ladies and
14 gentlemen of the jury, let me tell you that the Solicitor
15 has asked to publish the pictures to the jury. That's
16 simply a legalistic term meaning to show the jury the
17 photographs, and to pass them around while you're sitting
18 there in the jury box. I will grant that motion and allow
19 her to do so.

20 I will also tell you though that anything that's
21 admitted into evidence will go with you to the jury room
22 when you retire to reach your verdict. So you will have as
23 long to look at those photographs or any exhibits as you
24 would like to. So do not be concerned if you do not have as
25 long to look at an exhibit as it is passed around the jury

1 box as you might like to, because anything that is admitted
2 into evidence will go with you when you retire to deliberate
3 your verdict.

4 You may publish the exhibits, Ms. McKenzie --- Ms.
5 Parker.

6 **MS. PARKER:** These are large enough I was hoping to
7 just hold them up in front of the jury and pass them around
8 after.

9 **THE COURT:** That will be fine.

10 Q. Ms. Williamson, I'm going to show you additionally what
11 has been marked as State Exhibit 3 that is in evidence.
12 What does that photograph show?

13 A. That shows a picture of my carport to my house and a
14 car parked in the front of the house in my driveway.

15 Q. Ms. Williamson, State Exhibit 4, what does that
16 photograph show?

17 A. That's the window screen from the window.

18 Q. Was that screen up prior to the burglary and assault?

19 A. Yes, it was.

20 Q. In fact, is that the condition the screen was on the
21 ground the day after?

22 A. Yes.

23 Q. Ms. Williamson, State Exhibit Number 6, what does that
24 picture show?

25 A. The window with the missing panes.

CHRISTY WILLIAMSON - DIRECT EXAMINATION

138

1 Q. Ms. Williamson, I'm going to show you State Exhibits
2 16, 17, and 18. What do those photos show?

3 A. This photo here is a picture of the frame of my door,
4 my deadbolt locks on my door, and it has a crack in it.
5 The crack wasn't there, but it shows.

6 Q. Was that crack there prior to the burglary?

7 A. No, it was not there, no.

8 Q. So was this damage done that night?

9 A. The damage was done that night.

10 Q. Also State Exhibit 17.

11 A. It shows the frame of my door where it is cracked. It
12 was not cracked before. It was cracked that night.

13 Q. Number 18.

14 A. That is also a picture of my door.

15 Q. Ms. Williamson, how did this door get cracked?

16 A. By the person that was out there trying to get back in
17 my door, pushing on my door.

18 Q. Ms. Williamson, at this time I'm going to show you what
19 has been marked State Exhibit 19. I'll hold it this
20 way so the jury cannot see. Does this photograph, is
21 it an accurate depiction of the basic layout of your
22 home?

23 A. Yes.

24 Q. In reference to where the bedrooms are, and in
25 reference to the hallway?

1 A. Yes.

2 MS. PARKER: Your Honor, at this time the State would
3 move to have State Exhibit Number 19, the diagram entered
4 into evidence.

5 THE COURT: Any objection, Mr. Swilley?

6 MR. SWILLEY: None, Your Honor.

7 THE COURT: Entered into evidence without objection.

8 WHEREUPON, STATE EXHIBIT

9 NUMBER 19 IS MARKED AND

10 ADMITTED INTO EVIDENCE WITHOUT

11 OBJECTION.

12 MS. PARKER: Your Honor, at this time with the Court's
13 permission I would like for the witness to step down and
14 show this diagram to the jury with the markings on it.

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

16 Q. Ms. Williamson, on this diagram I would like for you to
17 indicate where is the love seat in your living room.

18 THE COURT: A couple of things. Stand to the side so
19 the jury can see. I think a better thing to do is get on
20 the other side of the diagram so your voice can project this
21 way toward the Court reporter. And keep your voice up
22 because you're away from the microphone. We've still got to
23 be able to hear.

24 A. Okay. This is my front door and my love seat would be
25 right here.

CHRISTY WILLIAMSON - DIRECT EXAMINATION

140

1 Q. Ms. Williamson, would you indicate on the diagram,
2 where is the window that had the missing pane and it
3 has a chair pulled underneath it?

4 A. Right here.

5 Q. And that's bedroom number three. What's in that room?

6 A. It was a storage room. So it had a lot of my clothes
7 and stuff in it.

8 Q. Would you take the green marker and indicate which
9 bedroom do you sleep in?

10 A. I sleep in the second bedroom.

11 Q. And I would like for you to also mark in orange where
12 did you find the intruder, what room was he hiding in?

13 A. In the first bedroom.

14 Q. Ms. Williamson, I'm going to ask you while this diagram
15 is in front of the jury, would you kind of go back over
16 what happened when you walked in the front door that
17 night as far as what you did when you went to the back
18 part of your house?

19 A. Yes. I came in my front door, put my stuff down on the
20 love seat, walked up and down the hallway into my
21 bathroom, used the bathroom, stripped in the bathroom,
22 went across over here to my bedroom to put my pajamas
23 on, put my pajamas on, walked out of my bedroom, looked
24 in the third bedroom and saw that the blind was down.
25 Said to myself that I wasn't going to worry about it

CHRISTY WILLIAMSON - DIRECT EXAMINATION

141

1 that night, I would tend to it tomorrow, walked back
2 out and noticed in the first bedroom that that bedroom
3 door had a crack in it. So I went and pushed the door
4 open and saw the young man standing there with a knife
5 in his hand.

6 Q. Thank you, Ms. Williamson, you can take your seat back
7 on the stand. Ms. Williamson, I want you to tell the
8 jury what you did the day after. This happened kind of
9 early in the morning. Later that day like after the
10 sun was up and later that morning, did anyone else from
11 the Darlington Police Department come out to your
12 house?

13 A. Detective Chun came out around 8:00, came out to go
14 over the scene, go over what had happened earlier that
15 day. And she did actually walk around and took
16 pictures, asked questions, and we walked around the
17 house. She took pictures, you know, of different
18 things. She asked me, you know, what bedroom, which
19 bedroom, where he was, taking fingerprints and taking
20 pictures.

21 Q. And after y'all did that, which was at your residence,
22 did you accompany Ms. Chun Mei Lui, which is her last
23 name, to the police department?

24 A. I did.

25 Q. And what did y'all do there?

CHRISTY WILLIAMSON - DIRECT EXAMINATION

142

1 A. We went to the police department. I was looking
2 through some, I guess database, at some photos, you
3 know, looking at some pictures of a guy that kind of
4 looked like, you know, the guy that robbed me. So I
5 was sitting there at the computer clicking on pictures,
6 looking at pictures, just going through them looking at
7 them, one at a time. And I stumbled across a picture
8 that looked --- that I stopped on, and I looked at it,
9 and I looked at it, and I looked at it, and I said, you
10 know, this kind of looks like the fellow that I saw
11 through my moon window. And Detective Valazak kind of
12 asked, she said, does it have some features? And I
13 say, yes, I'm going to look a little more. I had done
14 looked at quite a few of them.

15 Q. How many photos would you say you had looked through?

16 A. Before I actually stopped on that one and paused for
17 that one I couldn't tell you, but it was quite a few of
18 them. I mean, it was more than a hundred.

19 Q. More than a hundred you say?

20 A. More than, yes.

21 Q. Ms. Williamson, prior to going through those photos or
22 even prior to going down to the police department that
23 morning, did you have any idea who it was that had done
24 this to you?

25 A. No, I didn't.

1 Q. But when you were going through those pictures on the
2 computer you just testified that there was one you
3 stopped on and said that kind of looked like him?

4 **MR. SWILLEY:** Object, Your Honor, leading the witness.

5 **THE COURT:** All right. Objection sustained.

6 Q. Ms. Williamson, after you identified a possible
7 suspect, did you write a statement for Ms. Valazak?

8 A. I did. Can I back up some and clarify what you asked?

9 Q. Yes, ma'am.

10 A. When I was going through those pictures and had gone
11 through a whole bunch of pictures and I paused on that
12 picture, I continued on to look through the database
13 again to see. And I went back, finished the rest of
14 them passed that picture, and I went back through and
15 looked again, and came across that picture. That's the
16 picture I paused on because that was the face that I
17 saw in my moon window.

18 Q. Ms. Williamson, when you were looking at those pictures
19 in that database, were they all people of similar
20 characteristics? Let me rephrase that. Were there any
21 females in that database?

22 A. No, there wasn't.

23 Q. Was there any white males in that database?

24 A. No, there wasn't.

25 Q. You were looking at all black males?

CHRISTY WILLIAMSON - DIRECT EXAMINATION

144

1 A. Looking at all black males.

2 Q. Ms. Williamson, do you see the man that was inside your
3 house that night that held you at knifepoint in this
4 courtroom today?

5 A. Yes, I do.

6 Q. And would you please point him out for the Court?

7 A. Right there, Henry Ross.

8 Q. Ms. Williamson, I'm going to show you one last thing.
9 This has been marked State Exhibit Number 20 for
10 identification purposes. Do you recognize this hat?

11 A. The white hat that he had on his head.

12 Q. Does this look like the hat that he had on his head?

13 A. Yes.

14 **MS. PARKER:** I beg the Court's indulgence just a
15 moment.

16 **THE COURT:** All right.

17 Q. Ms. Williamson, would you describe --- you say the
18 Defendant was holding a knife when you walked in that
19 room --

20 A. -- Yes --

21 Q. -- And that later he held it to your throat.

22 A. Yes.

23 Q. Could you describe that knife for the Court?

24 A. I don't know the inches. It wasn't a big knife. And
25 it was a knife that had a white handle to it. It was

CHRISTY WILLIAMSON - CROSS EXAMINATION

145

1 the only knife that I had that --- I wouldn't say it
2 was one of a kind, but it was one of my good knives.
3 So it was a Pampered Chef knife. It was about this
4 long and the end part of it had a white handle to it.

5 Q. So you recognized that knife?

6 A. I recognized that knife as my knife.

7 Q. Ms. Williamson, at this time, please answer any
8 questions Mr. Swilley may have.

9 **THE COURT:** Cross examination, Mr. Swilley?

10 **MR. SWILLEY:** Thank you, Your Honor.

11 **CROSS EXAMINATION BY MR. SWILLEY**

12 Q. Ms. Williamson, backing up to the night of the 26th,
13 which would have been Thanksgiving of '09, correct?

14 A. That's correct.

15 Q. Okay. You said that you were with a very good friend
16 of yours that you refer to as your sister that night,
17 correct?

18 A. That's correct.

19 Q. And she was driving?

20 A. She was driving.

21 Q. Where was it that y'all were at that night?

22 A. We had gone out to the Hut and that's where we was.

23 Q. Where's the Hut?

24 A. The Hut is --- I guess you can call it a club, a
25 lounge.

CHRISTY WILLIAMSON - CROSS EXAMINATION

146

1 Q. A bar type place?

2 A. Yes.

3 Q. Okay. How long were y'all there for?

4 A. I'll say about an hour and a half.

5 Q. So you were just socializing, partying, drinking,
6 whatnot?

7 A. Socializing. I did have a couple of drinks.

8 Q. What were you drinking that night?

9 A. Absolute.

10 Q. Absolute cocktails?

11 A. Yes.

12 Q. Do you remember how many you had?

13 A. Two.

14 Q. And how far is the Hut in relation to your home?

15 A. The Hut is a block over.

16 Q. Block over?

17 A. Yes.

18 Q. Okay. And your sister was driving her car, correct?

19 A. Yes, she picked me up in her car. We went in her car.

20 Q. So were you feeling a little buzz that night? What I
21 mean by buzz, had the alcohol had any effect on you?

22 A. No, sir, not two drinks, no, sir.

23 Q. None at all?

24 A. No.

25 Q. Ms. Williamson, how was the lighting in your home? How

CHRISTY WILLIAMSON - CROSS EXAMINATION

147

1 was it that night I should say?

2 A. In my house?

3 Q. Yes, ma'am.

4 A. My light over my dining room table, the ceiling fan
5 light was on in the living room. I have a street light
6 that --- on the corner of my street, but I did not have
7 on a porch light.

8 Q. You didn't have a porch light on that night?

9 A. No.

10 Q. Okay. You testified to Ms. Parker that you got home at
11 1:30?

12 A. Yes.

13 Q. And you went in the house and changed clothes?

14 A. Went in my house, put my stuff down, went in the
15 bathroom because I had to go to the bathroom, stripped
16 in the bathroom, and walked across from the bathroom to
17 my bedroom to put on my pajamas.

18 Q. I see. Let me back up. You said this has been your
19 house your whole life?

20 A. It's a family home, yes. I grew up there in that
21 house, yes.

22 Q. So on Sixth Street, same street the Ross Family lives
23 on, correct?

24 A. First Street, First Street.

25 Q. Same street that the Ross family lives on?

CHRISTY WILLIAMSON - CROSS EXAMINATION

148

1 A. That's correct.

2 Q. Do you know the Ross family, are you acquainted with
3 them?

4 A. Mom and dad, yes, I knew them. I knew mom and dad had
5 children, but they were small children when I left.

6 Q. What year did you leave?

7 A. When I graduated high school in 1983. I left to go to
8 school in Raleigh.

9 Q. NC State?

10 A. Saint Augustine.

11 Q. You left Darlington in '83. What was the year that you
12 returned?

13 A. I returned back to Darlington back in 2001, but I
14 didn't live there. I lived in the country with my
15 cousin. I moved back to in January of 2008.

16 Q. So you didn't live in Darlington from '83 to 2001?

17 A. No, I didn't.

18 Q. Did you sporadically come back?

19 A. Yeah.

20 Q. Did you come back to the house in which you were living
21 on the night you were assaulted?

22 A. Yes, because my brother and sister-in-law lived there.

23 Q. They were there the whole time from '83 to '01?

24 A. Yes.

25 Q. About how many times did you come back?

CHRISTY WILLIAMSON - CROSS EXAMINATION

149

1 A. I may come home once a month, not every month. I came
2 home quite a bit.

3 Q. Okay, that's good. Sixth Street, is that the kind of
4 street where people are always moving out and moving
5 in?

6 A. No, sir, it's not, and it is not Sixth Street. It's
7 First Street.

8 Q. I apologize. Is this the kind of street where people
9 move in and out all the time?

10 A. No, sir, it's not.

11 Q. You don't have to call me sir. Most people, most of
12 the families that live on that street, they are there
13 to stay more or less?

14 A. Yes.

15 Q. Have you ever seen Henry Ross before the night in
16 question?

17 A. No..

18 Q. You've never seen Henry Ross even though he lives four
19 houses down from you?

20 A. No.

21 Q. Not even when he was a little boy?

22 A. When I left he was --- he was a little boy when I left,
23 so after he grew up, no. Coming back home actually
24 saying that was the little children from down the
25 street, no, sir.

CHRISTY WILLIAMSON - CROSS EXAMINATION

150

1 Q. And you never saw him walking down the street when you
2 would sporadically come home when you lived in Raleigh?

3 A. I can't say that. I might have, I don't know.

4 Q. But you did say you were acquainted with his mother and
5 father?

6 A. Yes, I knew them.

7 Q. And your family knew them?

8 A. Yes.

9 Q. Let me go back to the night in question. You say that
10 you walked in to go to the bathroom and change clothes,
11 noticed the door was ajar in one of the rooms, and say
12 that you saw a curtain on the floor, and said, I'm not
13 gonna mess with that right now?

14 A. My mini-blind was on the floor. My curtain was still
15 up.

16 Q. You gave two statements to the Darlington Police
17 Department on the 27th and one very shortly thereafter
18 the assault, correct?

19 A. When the officers came.

20 Q. Yes and you gave another statement dated the 27th of
21 '09, I believe later on in the daytime, correct?

22 A. Right.

23 Q. So you remember giving two statements, correct?

24 A. I remember telling the officer that showed up there
25 that ---

CHRISTY WILLIAMSON - CROSS EXAMINATION

151

1 Q. I'm talking about writing statements. Do you recall
2 giving two written statements?

3 A. I don't remember writing two statements if I did.

4 MR. SWILLEY: Permission to approach the witness, Your
5 Honor?

6 THE COURT: Yes, sir.

7 Q. Is that your handwriting right there?

8 A. Yes, it is.

9 Q. Okay, thank you. And is this also your handwriting?

10 A. Yes.

11 Q. Thank you, ma'am. Does that jog your memory a little
12 bit? Do you remember writing these statements down?

13 A. Yes.

14 Q. You recall that?

15 A. Yes.

16 Q. And that was on the 27th of November, 2009, when all of
17 this would have been fresh in your mind, correct?

18 A. That's correct.

19 Q. In your more detailed statement I believe you gave to
20 Sergeant Valazak later that day in the daytime the
21 first one I showed you. Do you remember telling
22 Sergeant Valazak that you came home around 1:45 or
23 2:00, do you remember writing that?

24 A. Yes.

25 Q. And also do you remember that statement that you did

CHRISTY WILLIAMSON - CROSS EXAMINATION

152

1 say that there was a tall, slender guy with a white hat
2 and a black scarf or something around his face, do you
3 remember giving that description?

4 A. Yes.

5 Q. And in this statement did you mention, and I don't use
6 the term race because I believe we are all part of the
7 human race, did you mention the ethnicity of the
8 assailant in this case?

9 A. I don't recall, but I knew he was black.

10 Q. You didn't put that in either statement, did you?

11 A. I'm not sure.

12 **MR. SWILLEY:** Permission to approach the witness, Your
13 Honor?

14 **THE COURT:** All right.

15 Q. I'll let you glance at this. Do you see any mention of
16 the race of the assailant in that statement?

17 A. No, sir.

18 Q. I'm going to let you hold onto that. Is there anywhere
19 in that statement, that detailed statement, do you
20 mention ever seeing the assailant's face? Take your
21 time.

22 A. No, not on this statement.

23 Q. At any time in that statement do you describe the
24 clothing of your assailant?

25 A. Only the description of the white hat and something

CHRISTY WILLIAMSON - CROSS EXAMINATION

153

1 black around him.

2 Q. I'm going to show you a statement you wrote very
3 shortly after you were assaulted. Did anywhere in
4 there did you mention ever seeing the face of the
5 assailant outside your door, your window, excuse me?

6 A. No.

7 Q. And did you mention the ethnicity of your assailant in
8 that statement as well?

9 A. No.

10 Q. And is there any mention in that statement, which was
11 given at 2:20 I believe on the morning of the 27th, did
12 you ever mention any of the -- anything about your
13 assailant pretty much in that statement as far as
14 physical characteristics?

15 A. In the statement that I wrote down?

16 Q. Yes.

17 A. No.

18 Q. And you do remember you gave that directly after the
19 assault at 2:20; do you agree with the date on that
20 thing as far as approximate time goes?

21 A. Yes.

22 Q. I'll take that back from you now.

23 A. That says the 27th of December. I don't know if you
24 were trying to write over it or ---

25 Q. That must be a typo. I believe it was Officer Lui that

CHRISTY WILLIAMSON - CROSS EXAMINATION

154

1 came to your home, the first responding officer, do you
2 remember her?

3 A. Yes.

4 Q. I believe she's sitting in the courtroom, this young
5 lady right here?

6 A. Yes.

7 Q. Do you remember that Officer Lui took you to the Food
8 Lion, do you remember that time?

9 A. Yes.

10 Q. And what was the point of that?

11 A. I had given the officers a description of the guy that
12 was at my home, black male, tall, young guy, jeans,
13 hood, and a white shirt, not white shirt, a white cap
14 on his head. So I guess as they left they saw a guy
15 with the white hat and the jeans and the shirt on so
16 they got him, held him, and came and picked me up and
17 asked me was that him?

18 Q. Okay. And you recall being taken out there?

19 A. Yes.

20 Q. And who was that individual, do you remember?

21 A. I didn't know him but it was not the guy that ---

22 Q. -- It didn't match the description you gave the
23 officers as far as what --

24 A. -- No, sir, it didn't. Because that fellow that they
25 had in the back of their car was a short guy, real dark

1 skin and had hair features. I didn't give that
2 description.

3 **MR. SWILLEY:** Beg the Court's indulgence a moment.

4 Q. Let me go back when Sergeant Valazak and you went down
5 to the police station to look at photos. How many
6 photos would you say you looked at in all?

7 A. Lots. If I had to count it was over four or five
8 hundred, even more than that. You know, exact number I
9 don't know, but I know there was a lot of pictures.

10 Q. How long were you looking at photos?

11 A. It's about thirty minutes or a little more than thirty.

12 Q. You must have been looking at those photos pretty quick
13 if you looked at all of those in thirty minutes?

14 A. Well, yeah.

15 Q. Okay. Let me ask you --- You told Sergeant Valazak you
16 thought this might be the individual that assaulted you
17 once before, do you recall telling her that?

18 A. Yes.

19 Q. You said that you were able to hear your assailant's
20 voice that night, correct?

21 A. Yeah, he was talking to me.

22 Q. Can you describe the way his voice was?

23 A. As he was --- he wasn't talking to me mean. It had a
24 little, you know, base in it, but it wasn't a frightful
25 voice. I mean, you know, I was scared because I walked

CHRISTY WILLIAMSON - CROSS EXAMINATION

156

1 in my house and saw the young man in there.

2 Q. You think it was a little more baritone, a deeper
3 voice, wasn't a high voice like Mike Tyson?

4 A. I don't remember how Mike Tyson talk.

5 Q. Okay. But it was definitely a postversant male voice?

6 A. Yes.

7 Q. Have you ever heard Mr. Henry Ross speak?

8 A. No.

9 Q. So there's no way you can compare Mr. Ross's voice and
10 your assailant's voice, correct?

11 A. Not before that night I've never heard him speak. But
12 that night he was talking to me, so, yes, I heard him
13 talk.

14 Q. You never heard Mr. Ross speak subsequent to the time
15 when you were assaulted, correct?

16 A. No.

17 Q. Okay, thank you. You said your assailant took \$120.00
18 from you, you gave him after it was demanded, correct?

19 A. Yes, that's what I had in my wallet.

20 Q. Was this small bills or large bills?

21 A. They were five twenty dollar bills.

22 Q. Had you been to the bank that day?

23 A. Wednesday because that was my payday.

24 Q. Okay. And you said it was one of your good kitchen
25 knives that was held up against you. Did you ever find

1 that knife?

2 A. He took it with him.

3 Q. Okay, I see. And the next day when Sergeant Valazak
4 came to your house to do a little investigating you
5 said that the screen from your window was on the
6 ground, correct?

7 A. Yes, it was.

8 Q. Somebody would have had to touch that screen with their
9 hand to put it on the ground, correct, to gain entry to
10 your home, have to have their hands on it?

11 A. Yes.

12 Q. Okay. And you mentioned a chair was moved up to the
13 window, correct?

14 A. A chair was up under the window.

15 Q. Took that chair from wherever it was in the yard and
16 put it next to the window, correct?

17 A. That's correct.

18 Q. Would have to physically touch it, pick it up, and put
19 it there, correct?

20 A. That's correct, yes.

21 Q. After the assault did you talk to any of your neighbors
22 and ask them if anybody saw anything suspicious that
23 night, anybody prowling around your house?

24 A. Did I talk to any of my neighbors?

25 Q. Yes.

CHRISTY WILLIAMSON - CROSS EXAMINATION

158

1 A. No.

2 Q. In the days to follow?

3 A. My neighbors, no.

4 Q. And do you know of any of your neighbors --- this was
5 an urban part of Darlington City where the houses are
6 somewhat close together?

7 A. They are.

8 Q. You don't live out in the country, right?

9 A. I don't.

10 Q. So it would have been easy for somebody to
11 theoretically see what was going on? I mean they could
12 look out the window and see what was going on around
13 your house, is that possible?

14 A. Not on that side of the house because the house that is
15 right next to me has a big fig tree that hangs over
16 that would block. No one lives in the house that's
17 next to me on that side, the window that he came in.
18 And in that yard, in that back yard is a great, big,
19 ole fig tree that hangs over in my yard. So the house
20 that's next to that house wouldn't be able to see
21 through that fig tree, so that side of the house is
22 blocked off. If they were coming down the street
23 because of the big air-conditioner unit you wouldn't
24 have seen --- you could see the window but you wouldn't
25 have been able to see maybe that chair there.

CHRISTY WILLIAMSON - CROSS EXAMINATION

159

1 Q. I see. When Ms. Parker was direct examining the
2 physical description of your assailant you said tall.
3 What do you consider to be tall?

4 A. I'm five-eight. Tall as six feet, because my brothers
5 they are tall.

6 Q. You said your assailant looked young. What do you
7 consider young for persons of the description?

8 A. Young, I'll say between twenty and thirty.

9 Q. Twenty and thirty?

10 A. Yes.

11 Q. Is there any reason why you didn't give a more detailed
12 statement --- I mean is there any reason you can think
13 of that you didn't give a more detailed, written
14 statement of your assailant?

15 A. No, sir, not written. But when the officers came I
16 gave them a statement that ---

17 Q. That's okay I was just asking about ---

18 **THE COURT:** She has a right to speak her answer.

19 A. When the officer came I gave them the description of
20 what the assailant looked like, the tall, slender man.
21 Why I didn't put it down there I don't know.

22 **MR. SWILLEY:** Beg the Court's indulgence one moment.

23 **THE COURT:** All right, sir.

24 **(PAUSE.)**

25 Q. Just a couple more questions. Ms. Williamson, you did

CHRISTY WILLIAMSON - CROSS EXAMINATION

160

1 mention that at the point where you saw your
2 assailant's face when Ms. Parker was examining you, you
3 said it was through the window, correct?

4 A. The half-moon window on my door.

5 Q. Your assailant was standing on your porch, right? He
6 had to be standing on your porch for you to see him?

7 A. Yes, he was on the porch.

8 Q. Can you give me a description of the dimensions of the
9 half-moon window, I guess semi-circle.

10 A. Yes.

11 Q. About how big?

12 A. It's pretty big.

13 Q. Your porch light wasn't on that night?

14 A. No, the porch light wasn't on. His face was in my
15 window, I'm looking at him.

16 Q. Your inside light was on too at that time when you were
17 looking at it, correct?

18 A. My light was on, yes, over my dining room.

19 Q. So were you getting a partial reflection off that
20 window since the light was on inside and it was dark
21 outside?

22 A. No, sir.

23 Q. You do acknowledge that when you seen your assailant's
24 face it was while in the dark, correct, outside? You
25 never saw it inside in the light; is that your

1 testimony?

2 A. Right, he was on the porch when I saw his face. The
3 only light was in the dining area.

4 Q. About how many seconds were you able to look at his
5 face would you say?

6 A. I would say a good thirty-five or forty seconds. It
7 was pretty long I saw him.

8 MR. SWILLEY: Thank you, I have no further
9 questions.

10 THE COURT: Redirect, Ms. Parker.

11 MS. PARKER: Yes, Your Honor, briefly.

12 REDIRECT EXAMINATION BY MS. PARKER

13 Q. Let me take you back to the night of the incident. At
14 what point did you first realize the ethnicity of
15 person who assaulted you? At what point did you first
16 realize his ethnicity?

17 A. The style of dress, the way he talked.

18 Q. And when was that, when you first saw him?

19 A. When I first saw him when I opened the door and I was
20 telling him he had to leave and he was telling me to
21 shut up.

22 Q. Right after he left and after you had gotten off the
23 phone with 911 and the incident as far as the part
24 where he was ---

25 MR. SWILLEY: Objection, Your Honor, I think she's

CHRISTY WILLIAMSON - CROSS EXAMINATION

162

1 leading the witness.

2 **THE COURT:** She hasn't finished the question yet.
3 We'll finish the question and then see if she's leading. Go
4 ahead and finish your question.

5 Q. After the incident was over, what would you say the
6 race or ethnicity of the Defendant was?

7 **THE COURT:** You can answer, that was not a leading
8 question.

9 A. Black. Are you asking me the race?

10 **MR. SWILLEY:** I object, Your Honor, I think that's
11 already been covered.

12 **THE COURT:** Overruled..

13 A. You asked me about the race, right?

14 Q. Yes, ma'am. Ms. Williamson, Mr. Swilley a few minutes
15 ago was asking you about a statement you wrote the
16 night in question. What time was that first statement
17 written approximately?

18 A. It stated I believe about 2:20. On the paper it was
19 2:20.

20 Q. Was that A.M. or P.M.?

21 A. A.M.

22 Q. At the time you wrote that statement what emotional
23 condition would you say you were in?

24 A. I was in a --- I was still upset. I was upset because
25 when they came in the officers were trying to access

CHRISTY WILLIAMSON - CROSS EXAMINATION

163

1 what was happening so they were asking questions, you
2 know, like it might have been my boyfriend. I guess
3 just trying to get a general idea of what was going on.
4 So I was upset, so, you know, I was upset.

5 Q. You testified that you know the Ross family when you
6 were testifying for Mr. Swilley just a moment ago. But
7 did you know Henry Ross?

8 A. No.

9 Q. I want to take you back to when the officers with the
10 police department drove you to the Food Lion. Do you
11 remember that?

12 A. Yes.

13 Q. When was that?

14 A. That was shortly after they had left. I guess was
15 driving down and looked over there in the Food Lion
16 parking lot and saw a black male with black shirt on
17 --- jacket on and a white hat. So that's when they
18 called back and asked me would I come and I asked them
19 would they send an officer to come and get me to go and
20 look at him, and they did.

21 Q. And when you looked at him ---

22 A. When I looked at him he was a dark skinned guy with
23 hair all over his face. And that was not what I told
24 them, but he did have the white hat on and the black
25 jacket --- shirt.

CHUM MAE LUI - DIRECT EXAMINATION

164

1 **MS. PARKER:** That will be all, Your Honor.

2 **THE COURT:** Re-cross?

3 **MR. SWILLEY:** There is none, Your Honor.

4 **THE COURT:** All right. Thank you, you may step down.

5 Ms. Parker, you may call your next witness.

6 **MS. PARKER:** Your Honor, at this time the State calls
7 Officer Lui.

8 **WHEREUPON, CHUM MAE LUI**

9 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

10 **OFFICER LUI:** I do.

11 **DIRECT EXAMINATION BY MS. PARKER**

12 Q. Would you please state your full name for the Court's
13 record?

14 A. Chum Lui.

15 Q. And where are you employed?

16 A. Darlington Police Department.

17 Q. What's your position there with the police department?

18 A. I'm assigned to the patrol division.

19 Q. And as a patrol officer what are some of your basic
20 duties, what do you do from day-to-day?

21 A. We patrol neighborhoods and just residences,
22 businesses, and answer calls of service.

23 Q. When you answer calls of service, where do those calls
24 come from?

25 A. It comes from our dispatch to people that call 911 and

CHUM MAE LUI - DIRECT EXAMINATION

165

1 needs our help.

2 Q. Officer Lui, were you working the night of November 26,
3 2009, Thanksgiving night?

4 A. Yes.

5 Q. How does the night shift work? When you work at night
6 just explain to the Court how your shift works at the
7 Darlington Police Department.

8 A. When we are on night shift we work from 7:00 p.m. to
9 7:00 a.m. And throughout the night like I said, we
10 patrol neighborhoods and businesses and check to see if
11 we see anything suspicious we investigate, or we will
12 receive a call from dispatch that there's a 911 call,
13 then we go and speak to the complainant.

14 Q. Officer Lui, did you respond to a call that night?

15 A. Yes, I did.

16 Q. And did you respond to a call at First Street?

17 A. Yes, I did.

18 Q. And what time would you say you received the call to go
19 to that residence?

20 A. It was a little bit before 2:00, probably approximately
21 about 1:55 or 1:56.

22 Q. How long did it take you to get there to the house?

23 A. Anywhere less than a minute to a minute.

24 Q. And what was your understanding to the type of call
25 that you were responding to?

CHUM MAE LUI - DIRECT EXAMINATION

166

1 A. Our understanding was that someone had called 911 in
2 reference to a home invasion. That they returned home
3 and someone was in the residence.

4 Q. And when you first got to the residence at First
5 Street, who did you meet with when you got there?

6 A. When I arrived there I spoke with Ms. Williamson.

7 Q. And what kind of emotional condition was she in when
8 you first got there?

9 A. She was shaking and appeared very frightened. When she
10 was speaking she was having a hard time because she was
11 almost kind of hyperventilating she was so nervous.
12 And we were trying to figure out what was going on and
13 she was speaking to us.

14 Q. Officer Lui, at that time did Ms. Williamson give you a
15 brief description of the suspect?

16 A. Yes, she described the suspect as ---

17 **MR. SWILLEY:** Objection, Your Honor, hearsay.

18 **MS. PARKER:** Your Honor, may I respond to that?

19 **THE COURT:** All right.

20 **MS. PARKER:** Excited utterance. She's testified that
21 Ms. Williamson was under a great deal of stress,
22 hyperventilating and upset.

23 **THE COURT:** Normally this would fall within the hearsay
24 exception --- I mean the hearsay Rule of 801. However,
25 803.2 provides that a statement relating to a startled event

CHUM MAE LUI - DIRECT EXAMINATION

167

1 or condition made while the Declarant was under the stress
2 or excitement caused by the event or condition is an
3 exception to the hearsay rule. The objection is overruled.
4 You may answer the question.

5 A. She described him as a black male approximately
6 six-one, slender, skinny, wearing a dark colored
7 hoodie, blue jeans, and a white hat.

8 Q. And after you were kinda there at the house, what did
9 you do next as part of your duties for this case?

10 A. Well, when we first arrived there I actually as I was
11 speaking with her other officers that were on the scene
12 proceeded to go and search the rest of the house to
13 make sure no one else was in the house. As I was
14 speaking with her the other officers proceeded outside
15 to search around the house to make sure there wasn't
16 anyone hiding outside the house. And as I'm getting
17 information from her like I said, the other officers
18 were searching nearby areas. I gave her a chance to
19 calm down and actually went outside and joined in and
20 searched around the back yard, front yard, and a couple
21 of neighboring yards.

22 Q. Were there any possible suspects located that night?

23 A. There was. There a person that matched the clothing
24 description of what she had described. And that person
25 was located around the Food Lion parking lot. And one

CHUM MAE LUI - CROSS EXAMINATION

168

1 of my fellow officers actually detained him for a short
2 while. And I was asked to pick up Ms. Williamson for her to
3 go and see if she could possibly I.D. this person as the
4 person that was in her house. And she did not recognize
5 this person as the one being in her house.

6 Q. Okay.

7 **MS. PARKER:** Beg the Court's indulgence just a moment?

8 **THE COURT:** All right.

9 **MS. PARKER:** No further questions, Officer Lui.

10 Please answer any questions the Defense may have.

11 **THE COURT:** Cross examination, Mr. Swilley?

12 **MR. SWILLEY:** Thank you, Your Honor.

13 **CROSS EXAMINATION BY MR. SWILLEY**

14 Q. Investigator Lui, is that right?

15 A. Officer.

16 Q. I'm sorry, officer. Officer Lui, you were the one that
17 authored the initial incident report to the Darlington
18 Police Department?

19 A. That's correct.

20 Q. And you mention in your report, this officer, yourself,
21 complainant, C. Williamson, and then went into say,
22 suspect, parenthesis, F. Williamson. Who is that?

23 A. Do you mind if I look on my report?

24 Q. Absolutely.

CHUM MAE LUI - CROSS EXAMINATION

169

1 **MR. SWILLEY:** Permission to approach, Your Honor?

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

3 Q. You say, suspect, and in parenthesis you have an F.
4 Williamson.

5 A. Yes, sir.

6 Q. And who might that gentleman be?

7 A. This would be the person that we detained at the Food
8 Lion parking lot.

9 Q. So he was listed as a suspect at the time of your
10 report?

11 A. At the time because his clothing description matched.
12 We just listed him down as a possible suspect.

13 Q. I see. And in your report you recall taking Ms.
14 Williamson out to the Food Lion to see this suspect and
15 view him in person, correct?

16 A. Yes.

17 Q. Okay. Was there anything suspicious about that
18 encounter?

19 A. No.

20 Q. When Christy Williamson, the prosecuting witness in
21 this case, viewed this suspect did she say that he
22 smiled at her?

23 A. Yes.

24 Q. And did that not seem strange to you?

25 A. No.

CHUM MAE LUI - CROSS EXAMINATION

170

1 Q. Did you say that Ms. Williamson was a bit hesitant
2 answering at the time?

3 A. Yes, she was nervous.

4 Q. I see. Officer Lui, in your report you described ---
5 Ms. Williamson described the suspect was wearing a dark
6 in color hoodie. Can you describe what that is?

7 A. Sweatshirt hoodie, anything I guess with a hood.

8 Q. Okay. Not a jacket?

9 A. It could have been, but that's what was described.

10 Q. She gave you dark in color. She didn't give you a
11 specific color?

12 A. Dark in color, yes, no specific color.

13 Q. Okay. When you investigated directly after the assault
14 did you find any knife lying on the ground anywhere?

15 A. No.

16 Q. No knife. Do you know if any of Mr. Ross's
17 fingerprints were found and lifted off the residence
18 anywhere?

19 A. While I was on the scene we did not process it so, no.

20 Q. Okay. And did you speak with anybody in the
21 neighborhood who saw anybody go into the house?

22 A. I don't recall. It was roughly 2:00 or 3:00 in the
23 morning.

24 **MR. SWILLEY:** Okay. Thank you, officer. No further
25 questions.

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

171

1 **THE COURT:** Redirect?

2 **MS. PARKER:** No, Your Honor.

3 **THE COURT:** Thank you, Officer Lui. You may step down.
4 You may call your next witness, Ms. Parker.

5 **MS. PARKER:** Thank you, Your Honor. At this time the
6 State calls Investigator Maureen Valazak.

7 **THE COURT:** All right, Ms. Valazak.

8 **WHEREUPON, MAUREEN KATHERINE VALAZAK**

9 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

10 **OFFICER VALAZAK:** I do.

11 **DIRECT EXAMINATION BY MS. PARKER**

12 Q. Will you please state your full name for the record?

13 A. Maureen Katherine Valazak.

14 Q. Where are you employed?

15 A. Darlington City Police Department.

16 Q. And what is your position there at the police
17 department?

18 A. I'm a Sergeant in investigations.

19 Q. And how long have you been employed with the police
20 department altogether?

21 A. About eight years.

22 Q. I'm sorry, I couldn't hear you.

23 A. Eight years.

24 Q. And were you working as an investigator in November of
25 2009?

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

172

1 A. I was.

2 Q. Did you have an occasion to work or be involved in the
3 case involving Ms. Williamson and what happened at her
4 residence?

5 A. Yes.

6 Q. And that's First Street, right?

7 A. Correct.

8 Q. Will you tell us the first contact you had with Ms.
9 Williamson?

10 A. I actually received a call the morning of the 27th and
11 was advised that Ms. Williamson had had a break-in at
12 her residence, and she actually confronted the suspect
13 who was in her home. So it probably would have been
14 around 8:00, maybe shortly before 8:00 on the 27th.

15 Q. And what was the first point of contact between you and
16 Ms. Williamson as far as --- did you go to her house,
17 did she come to you?

18 A. I went to her residence at First Street.

19 Q. And what's the first thing that you did when you
20 arrived at her residence?

21 A. The first thing that I did was speak with Ms.
22 Williamson to see how she was and to get what actually
23 happened that evening.

24 Q. And did you observe the property or inspect the house
25 and things like that in the course of your

1 investigation?

2 A. I did. I photographed, I checked for any possible
3 fingerprints. The bedroom window that was entered did
4 have a print on it but it was a smudge and there was a
5 lot of dust on the outside of it, so it wouldn't have
6 been viable to collect any type of fingerprints from
7 that. As far as DNA, there was nothing left by the
8 suspect to actually collect any DNA from. I didn't
9 really have anything viable at that time to try to
10 collect, plus it had been a couple of hours after the
11 actual incident happened. There was also a chair on
12 the outside of the residence outside the window and I
13 photographed all of that. I pretty much photographed
14 everything, the details that Ms. Williamson gave me to
15 try to put together the incident.

16 Q. I want to go back. You mentioned smudge on a window.
17 Which window was that?

18 A. That was the window that was entered where the broken
19 pane was out of it. I believe she called it the third
20 bedroom.

21 Q. Tell us about your general observations of that window,
22 the condition of it, what it looked like.

23 A. When I entered the room --- It was a spare bedroom
24 that Ms. Williamson used for her storage. There were
25 some clothes and other items in the room. Not a lot of

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION 174

1 furniture. I really don't think there was any actually
2 dressers or anything like that. The window when you
3 walk in the bedroom door the window was straight ahead.
4 It was up off the floor of course. It wasn't a huge
5 window, just a regular bedroom window. I could see the
6 blind on the floor. The curtain was lying on the
7 floor. The curtain rod was like hanging from one side.
8 The other side was dangling down. The pane, I noticed
9 the window pane was out of one of the squares. And
10 there was a gift bag that was also lying underneath the
11 window on the floor.

12 Q. Now I want you to talk about the other bedroom in Ms.
13 Williamson's house. Did you have an opportunity to
14 inspect and go into that room?

15 A. I did. That room was also a storage room. It would
16 face the front of the house, the window in that bedroom
17 would face --- there was only one window in that room
18 and it faced the front of the house. It did have a
19 blind. There was a small gap in the blind as if you're
20 peering out of a blind that's closed, you know, it
21 would leave an indentation. I noticed that. I did
22 take that portion to possibly get any type of
23 fingerprints or DNA. There was also a good bit of dust
24 on it. It was a spare bedroom so it wasn't viable to
25 try and get anything off of that. I took it in case I

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

175

1 could use it, but it was a spare bedroom.

2 Q. Ms. Valazak, is it common when you investigate cases
3 and you mentioned taking that blind, is that a common
4 thing you do in your job?

5 A. As far as trying to collect any evidence?

6 Q. Yes, ma'am.

7 A. Yes.

8 Q. What's the purpose for that?

9 A. A lot of times for DNA or fingerprinting to try to
10 match a suspect to an incident.

11 Q. Did you have an opportunity to inspect the front door?

12 A. I did.

13 Q. And tell us about your observations of the front door.

14 A. The front door, there is a screen door and a front
15 door, which is a regular wood door or steel door. I
16 think it was wooden but I'm not exactly positive on
17 that right now. But it had a half-moon on the top of
18 it. The door frame was cracked where it looked like
19 trying to be forced open. Working a lot of burglaries
20 or break-ins I've noticed that's the first thing you
21 notice is where the door frame is cracked near the
22 locks from being forced open. And it was cracked a
23 good ways down.

24 Q. And how did this damage appear? Did it appear to be
25 new damage or old damage?

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

176

1 A. It appeared fresh.

2 Q. How can you tell that?

3 A. Just by the wood and there was no --- the wood looked
4 fairly new, fresh. The wood inside was clean. If it
5 had been there awhile there would have been dirt and
6 dust and stuff like that.

7 **MS. PARKER:** Your Honor, may I approach the witness
8 with a photograph?

9 **THE COURT:** Yes.

10 Q. I'm going to show you what's marked State Exhibit
11 Number 14, already entered into evidence. What does
12 that photograph show?

13 A. That is the front door window on Ms. Williamson's
14 residence, the glass.

15 **MS. PARKER:** Permission to publish to the jury, Your
16 Honor?

17 **THE COURT:** Yes, ma'am.

18 Q. Sergeant Valazak, I'm going to show you State Exhibit
19 15. Tell us what that picture is, describe it for us.

20 A. This picture is the outside of the front of Ms.
21 Williamson's door where the half-moon glass is at the
22 front of the door looking into the glass.

23 Q. Is that you standing there at the door?

24 A. Yes, that's me.

25 Q. Officer Valazak, does Ms. Williamson have a front

1 porch?

2 A. Yes, it is a stoop. You go up a couple of steps and
3 there's concrete porch. It's not real big but there's
4 a porch.

5 Q. And would you tell the Court and jury please how tall
6 are you?

7 A. I've five-six or five-seven, in between.

8 Q. Ms. Valazak, when you were investigating the residence
9 and the scene of the crime, did you have an occasion to
10 inspect the inside of that wood door? By that I mean
11 did you take any measurements?

12 A. I did, yes.

13 Q. Would you kind of explain and tell the jury how tall
14 from point of the floor to up to where that half-moon
15 starts about how many inches, how many inches was that?

16 A. I can tell you it was about five and a half feet from
17 the bottom of the floor to the top of the -- to the top
18 where the half-moon starts to the very edge of the top.
19 Does that make sense? Like from the door to the moon,
20 to the very top of --- not to the whole top of the
21 window, but to the start of the window.

22 Q. Okay. And when you were doing those measurements did
23 you have an occasion to observe the victim in this
24 case, Ms. Williamson?

25 A. I did.

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

178

1 Q. Did you observe her standing in relation to that half
2 -moon window?

3 A. I did. I actually photographed that also to get an
4 idea of how tall she would have been and how tall the
5 suspect would have been on the other side of the door.

6 Q. And were you able to determine if Ms. Williamson would
7 have been able to see out that half-moon window?

8 A. Oh, yes.

9 Q. Ms. Valazak, did you get a written statement from Ms.
10 Williamson?

11 A. I did.

12 Q. And tell me was that the first statement she gave?

13 A. I spoke with her first. I believe she gave a brief,
14 written statement to the officers that first arrived on
15 scene, a written statement. Then, of course, she gave
16 me a verbal statement when I got to the residence. And
17 then I got a written statement of her when we got to
18 the police department later that day.

19 Q. She gave a written statement early that morning, like
20 real early that morning right after the incident. Why
21 did you get an additional written statement down at the
22 police department?

23 A. Because obviously your victim --- she was upset. Ms.
24 Williamson was upset when this happened as any of us
25 would have been. She still had a fear going on. I

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

179

1 just wanted her to get calmed down and try to go back
2 through and try and remember as much as she could and
3 sit her down outside of that house in my office where
4 she probably would feel safe, and just try to go over
5 the details again.

6 Q. Officer Valazak, in your experience as an investigator,
7 do victims of crimes always get every single detail,
8 and every little thing in a statement?

9 **MR. SWILLEY:** Objection, Your Honor.

10 **THE COURT:** Overruled.

11 A. No, ma'am, they don't.

12 Q. After you left the house, you testified you went there
13 to see if there was any evidence to collect, took
14 pictures. What did you do next in the course of your
15 investigation?

16 A. I asked Ms. Christy Williamson if she could come to the
17 police department and possibly look at some photos to
18 see if anything could maybe help us as far as getting a
19 better description of the suspect. I believe her
20 sister was coming to the residence at that time and I
21 said she could bring her up there. So I went to the
22 police department and waited on her, which she was
23 there in a few minutes.

24 **THE COURT:** Counsel, come up just a moment.

25 (Whereupon, a bench conference was held in the

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

180

1 presence of the jury, but out of the hearing of the jury.)

2 **THE COURT:** Ladies and gentlemen, we're going into a
3 different subject matter at this time. And I think it's a
4 good time for us to take a break at this time, so we are
5 going to do that.

6 I'm going to allow you to go to your jury room for
7 about fifteen minutes. We'll be ready to resume in just a
8 few minutes. Do not discuss the case among yourselves. It
9 is still premature for you to begin any discussion about
10 this matter. Just relax. While you're there in the jury
11 room you can talk about anything you want to talk about,
12 sports, weather, children, grandchildren, anything at all,
13 but don't talk about this case until we tell you it is time
14 to do so.

15 We will take about a ten or fifteen minute recess at
16 this time. Thank you. You may go with the bailiff.

17 (Whereupon the jury exits the courtroom for a
18 recess at 10:34 a.m.)

19 **THE COURT:** You may step down. We will be in recess
20 for about ten minutes, counsel. Let's try to start back at
21 ten minutes till eleven.

22 (Whereupon, a recess was taken from 10:35 a.m.
23 until 10:43 a.m..)

24 **THE COURT:** Counsel, we're back on the record with
25 regard to the matter of the State verses Ross. Mr. Ross is

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

181

1 present with his counsel. The State is present and
2 represented by Ms. Parker.

3 Earlier today, counsel, I had the clerk preparing the
4 verdict forms and one of the verdict forms they prepared me
5 was one for threatening the life of a public official.
6 That's not even involved in this case, is it?

7 **MS. PARKER:** No, Your Honor.

8 **CLERK OF COURT:** That must have been left over from
9 yesterday.

10 **THE COURT:** Okay. All right. I didn't even look at
11 it.

12 Anything before we bring the jury in, Ms. Parker?

13 **MS. PARKER:** No, Your Honor.

14 **THE COURT:** Mr. Swilley?

15 **MR. SWILLEY:** There is not, Your Honor.

16 **THE COURT:** Bring the jury in please.

17 (Whereupon the jury enters the courtroom at 10:45
18 a.m.)

19 **THE COURT:** Thank you, ladies and gentlemen. We are
20 now ready to resume with the direct examination of
21 Investigator Valazak. All right, Ms. Parker.

22 **MS. PARKER:** Thank you, Your Honor.

23 Q. Sergeant Valazak, did you have an occasion to speak
24 with Ms. Williams down at the police department?

25 A. Yes.

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

182

1 Q. When was that?

2 A. That was 11:00 that morning of the 27th.

3 Q. And at that point what were you thinking was going to
4 be the next step in your investigation?

5 A. Ms. Williamson had described to me that the suspect
6 that she saw in her house was a ---

7 **MR. SWILLEY:** Objection, Your Honor, hearsay.

8 **THE COURT:** Do you want to be heard, Ms. Parker?

9 **MS. PARKER:** Your Honor, Clarence has already testified
10 to his out-of-court statement.

11 **THE COURT:** That's true. What makes her statement here
12 admissible?

13 **MS. PARKER:** Your Honor, I can just move on and
14 rephrase my question.

15 **THE COURT:** All right.

16 Q. Officer Valazak, what did you do when Ms. Williamson
17 got to the police department?

18 A. I asked her --- well, we were going to have her look at
19 some photos. I knew we weren't looking for a white
20 male. I knew we weren't looking for a white female.
21 There was no sense pulling up pictures of black
22 females. We were looking for a black male, tall,
23 slender, possibly anywhere from twenty to thirty some
24 years old, medium skinned with no facial -- little or
25 no facial hair. That was the description. So I sat at

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

183

1 the computer and punched it in, punched in where it
2 would only bring up black males so we wouldn't waste
3 time going through other pictures. I asked Ms. Christy
4 to sit down at the computer. I showed her how to work
5 it. What it is, is a just a master I.D. file that has
6 thousands of pictures in it. And the only ones I was
7 bringing up at that time were black males. Ms. Christy
8 sat down at the computer. I showed her how to click on
9 the box that would go to another picture so that she
10 could take her time and randomly and go through the
11 pictures to see if anything was familiar, or maybe
12 something in one of the photos would strike her memory
13 of --- or a particular feature might strike her memory.

14 Q. What was the purpose of doing this?

15 A. To try to get an idea of who we might be looking for.

16 Q. Okay. And did Ms. Williamson start going through
17 pictures?

18 A. She did.

19 Q. How many did she go through would you say?

20 A. Hundreds. She sat there going through pictures --- I
21 was sitting at another desk, you know, across from her
22 and she sat there. I told her to take her time. I
23 told her the person may or may not be in any of these
24 photos. That's all I had to go on that time.

25 Q. And tell us what happened after she started going

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

184

1 through those photos.

2 A. Christy probably sat there for at least twenty or
3 twenty-five minutes and then she kind of just sat
4 there. I heard her sigh a little bit and sit back and
5 she paused. And I turned and looked at her and said,
6 Christy, is there something about that picture that
7 looks familiar? And she said -- she just kind of had
8 this look about her. She sat there and she said, I'm
9 not sure but this looks like the guy.

10 Q. And who was in that photograph she paused on?

11 A. When I printed the picture out --- I hit print because
12 it was somebody that she had paused on. So I printed
13 that picture out which printed out in the front office,
14 so she couldn't see a name or anything like that. All
15 Ms. Christy could see on that screen is just a photo,
16 just a picture. There's no information, no names, no
17 nothing, no height, weight, nothing like that. It's
18 just a photo. So I went up to the front and printed
19 that out. I went up to pick it up and it was Henry
20 Ross, Junior.

21 Q. After that encounter there at the police department,
22 this is still the day of the incident, November 27th.
23 Tell us what else you did after that to further your
24 investigation.

25 A. After that --- well, she continued to look through

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

185

1 pictures again but she did come back to that picture.
2 So really at that time the only person of interest that
3 I had or only leading point I had was Henry Ross.

4 Q. Then what did you do having that information?

5 A. On the 30th I did go -- me and another officer went to
6 Henry's house, who lives about two houses down from Ms.
7 Christy's house. He lives at I believe First
8 Street. Went to his residence, his father was there
9 and the father said Henry wasn't there but he would
10 have him --- I just told him I needed to talk to him
11 about an incident that happened in the area. And he
12 said that he would have Henry come to the police
13 department as soon as he could get in touch with him.

14 Q. Okay. At that point, were you there to arrest Henry?

15 A. No.

16 Q. What was the purpose of you going there to the house?

17 A. To talk to him to try to find, you know, to see where
18 he was the evening before --- just a starting point.

19 Q. Okay. And you just testified that Henry was not at the
20 house when y'all stopped by. Did you speak to Henry
21 later that day?

22 A. I did.

23 Q. And tell us about the circumstances surrounding that
24 encounter.

25 A. I was actually at the police department and Henry and a

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

186

1 friend of his came up --- walked to the police
2 department. Well, they got to the police department.

3 Q. Who was the friend, who are you referring to?

4 A. Travis Benjamin.

5 Q. What happened when they got there?

6 A. I spoke with Henry first and, you know, told him I was
7 investigating an incident that happened in the area,
8 investigating a burglary. And Henry immediately said,
9 it wasn't --- I didn't ---

10 **THE COURT:** Just a moment. Ladies and gentlemen, I
11 want to advise you that I have admitted into the record of
12 this case, two statements allegedly made by the Defendant.

13 Before you may consider this statement or any statement
14 as evidence for any purpose you must determine certain
15 things.

16 First of all, you must determine did the Defendant make
17 the statement?

18 Secondly, if the Defendant was in custody at the time
19 of the statement was the Defendant warned of his
20 constitutional rights? There is no requirement to warn a
21 Defendant of constitutional rights if he is not in custody.

22 Third, did the Defendant knowingly and intelligently
23 waive his constitutional rights?

24 Fourth, was the statement given voluntarily?

25 The fact that the Court has admitted a statement into

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

187

1 evidence should not be considered by you as any evidence
2 whatsoever that the Defendant made such a statement or that
3 the required constitutional safeguards were, in fact, if he
4 was in custody, which is a matter for your determination.

5 As I said, constitutional rights are not required if
6 the Defendant is not in custody, and that the statement was
7 voluntarily given. Because these issues are for you, the
8 jury to determine.

9 The State must prove beyond a reasonable doubt each of
10 the requirements that I have stated to you before you may
11 consider the statement was evidence for any purpose.

12 Now, as to the first requirement, did the Defendant
13 make the statement? If you conclude the Defendant did not
14 make the statement then you must completely and totally
15 disregard the statement.

16 If you conclude that the Defendant did not make the
17 statement you cannot and you must not consider the statement
18 as evidence.

19 If you find that the Defendant did make the statement
20 you must then next consider the remaining requirements. Was
21 the Defendant warned of his constitutional rights?

22 When an individual is taken into custody or otherwise
23 deprived of his freedom of action in any significant way by
24 a police or law enforcement officer, he must be warned of
25 his constitutional rights prior to and before any custodial

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION 188

1 interrogation or custodial question.

2 These warnings, which we refer to as Miranda Warnings,
3 are not required if a Defendant is not in custody. But
4 these rights are that he has the right to remain silent.
5 That any statement that he does make can and will be used
6 against him in a court of law. That he has the right to
7 select a lawyer of his choice. But if he does not have the
8 money or resources to employ a lawyer, the Court will
9 appoint and provide a lawyer to represent him without costs
10 or expense to him if he so desires. That he has the right
11 to consult a lawyer before answering any questions or making
12 any statements. And that he has the right to have his
13 lawyer present with him at all times during all interviews
14 and all interrogations.

15 If you determine that the Defendant was in custody and
16 if you determine that these constitutional warnings were not
17 given prior to interrogation and taking of the statement, or
18 that the Defendant was not afforded the opportunity to
19 exercise these rights, you must completely disregard the
20 statement. In that event, you cannot consider the statement
21 as evidence in any manner.

22 Next, did the Defendant knowingly and intelligently
23 waive the constitutional rights? Again, if he was in
24 custody before you can consider the statement as evidence in
25 this case the State must prove beyond a reasonable doubt,

1 after being given his constitutional rights, that he
2 knowingly and intelligently waived these constitutional
3 rights.

4 Next, was the statement given voluntarily? The word
5 voluntarily means that the statement was an expression of
6 the Defendant's own freewill and not educed by any pressure,
7 force, or fear, or any influence of any hope, or promise, or
8 some benefit, or reward, or expected by threats, coercion,
9 or intimidation.

10 A statement is not voluntary and may not be used
11 against a Defendant unless it is a product of an essentially
12 free and unconstrained choice by its maker.

13 If the statement is voluntary, if the Defendant has
14 will to make the statement it may be used against him. If
15 the statement is not voluntary it cannot be used against
16 him.

17 So the ultimate question to be resolved by you with
18 respect to any alleged statement by the Defendant in
19 addition to the question of whether or not the Defendant, in
20 fact, made the statement was first of all was he in custody?
21 If he was not in custody no warnings are required. If he
22 was in custody whether or not his constitutional rights were
23 observed, and he knowingly and intelligently waives those
24 rights. Was the statement the expression of the Defendant's
25 own freewill made without compulsion or inducement, but

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

190

1 representing an essentially free and unconstrained choice by
2 the Defendant, or was it the product of the overbore will of
3 the Defendant?

4 And it is the burden of the State to prove these
5 factors beyond a reasonable doubt. All right, Ms. Parker,
6 you may proceed.

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

8 Q. Sergeant Valazak, we were just talking about November
9 30, 2009. Did you have a chance to speak with the
10 Defendant on that day?

11 A. Yes.

12 Q. And where was that at?

13 A. At the police department.

14 Q. How did the Defendant arrive or get to the police
15 department?

16 A. On his own, he walked or got dropped off. I'm not
17 sure. He was there.

18 Q. Was he alone?

19 A. No.

20 Q. Who was with him?

21 A. Travis Benjamin.

22 Q. And after he arrived at the police department where did
23 you speak to him at?

24 A. In my office.

25 Q. At that time was the Defendant under arrest or in

1 custody?

2 A. No.

3 Q. At that time was the Defendant free to leave if he so
4 chose to do so?

5 A. Yes.

6 Q. Sergeant Valazak, on that day when you spoke to the
7 Defendant, Henry Ross, what did y'all talk about, what
8 did you ask him?

9 **MR. SWILLEY:** Object, Your Honor. Renew my previous
10 objection.

11 **THE COURT:** All right. Not required to preserve the
12 record, but it is noted. You may proceed, Ms. Parker.

13 Q. I'm going to backtrack a little bit actually. Prior to
14 speaking to him did you give him any warnings or
15 notification of rights?

16 A. No.

17 Q. Why not?

18 A. He wasn't under arrest.

19 Q. And tell us about your conversation with Mr. Ross on
20 that date.

21 A. Basically just wanted to find out where he had been the
22 evening of the incident, and get a time-line of where
23 he may have been or what he was wearing.

24 Q. What did he tell you?

25 A. He told me he was at his relative's house in the

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

192

1 country for Thanksgiving, came home around 5:30, went
2 to his girlfriend's house, walked up to his
3 girlfriend's house across town on , and came
4 home I think he said around 11:00 or 11:30, and was
5 home until he went --- his father came in his room
6 around 3:00 or 4:00 in the morning and they went black
7 Friday shopping. He also told me he was wearing a
8 black jacket, a black toboggan and blue jeans that
9 night.

10 Q. On that night did he tell you anything about going into
11 someone's house?

12 A. No, he said he did not break into anybody's house.

13 Q. Now, also on that date did you have an opportunity to
14 speak to Travis Benjamin?

15 A. Yes.

16 Q. After you spoke to Mr. Benjamin what did you do after
17 that?

18 A. I went and told him I wanted to ask him one more
19 question, I needed to talk to him about one more thing.

20 Q. And what was that additional thing you spoke to Mr.
21 Ross about?

22 A. About his clothing that night.

23 Q. And what did he say about his clothes?

24 A. He recanted. He did say the black jacket, the blue
25 jeans, but did recant and say that he did have on a

1 white toboggan.

2 Q. Were there any other discussions about the toboggan
3 that day?

4 A. At first when I talked to him he said he didn't own a
5 white toboggan, that he only had a black toboggan.

6 Q. After he told you about the white toboggan what were
7 y'all planning to do next?

8 A. At that point he was free to go. He left. Actually we
9 gave him a ride home, him and Travis.

10 Q. Who actually gave him a ride home that day?

11 A. Corporal Huggins.

12 Q. Sergeant Valazak, I want to fast-forward to December 2,
13 2009, which would have been two days later. On that
14 date did you have an occasion to speak to the Defendant
15 in this case Henry Ross?

16 A. I did.

17 Q. What were the circumstances surrounding that encounter?

18 A. He was under arrest at that time and I did an interview
19 with him. I was doing an interview with him. He was
20 read his Miranda Warnings before I talked to him
21 because at that time he was under arrest. I did a
22 video interview. So it's a video statement that I did
23 with him in reference to the incident.

24 Q. And what date was this?

25 A. That was on the 2nd.

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

194

1 Q. December 2nd?

2 A. Yes, ma'am.

3 Q. On that date where did this interview occur?

4 A. At the police department.

5 Q. You said he was in custody on that day. How did he get
6 there to the police department?

7 A. He was picked up and brought from the jail to the
8 police department.

9 Q. And was there any additional purpose to him being
10 brought to the department that day?

11 A. He had arraignment that day.

12 Q. What's arraignment?

13 **MR. SWILLEY:** Objection, Your Honor. I don't think
14 that's relevant.

15 **THE COURT:** I don't either, but it's no harm. I'm
16 going to overrule the objection. Move on.

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

18 Q. Where did you speak to Mr. Ross at that day at the
19 police department, specifically which room?

20 A. We have a room set up for an interview room. The
21 reason we have a separate room is because we have a
22 camera --- we actually do a video statement. We get a
23 video statement off of whoever we interview, a victim
24 or a suspect. It's just easier to get it on video than
25 to have them try to sit down and write everything out.

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION 195

1 So we have a specific room. It's just a room probably
2 half this size. It's got a couple of tables --- a
3 table and some chairs in it and the video camera.

4 Q. Are you able to operate that video camera?

5 A. I can't operate the camera from inside that room. We
6 have a computer that is set up. All we have to do is
7 type in the information so it will record as far as the
8 investigator, the case number, and who I'm
9 interviewing, and then I hit start.

10 Q. Was all of the equipment working properly that day?

11 A. Yes.

12 Q. And who was present in the interview room with you?

13 A. Myself, Henry Ross, and Captain Watson.

14 Q. And at that time for the purposes of that interview was
15 the Defendant coerced or threatened in any way?

16 A. No.

17 Q. When you spoke to him this time did you give him
18 warnings, his constitutional Miranda Warnings?

19 A. That was the first thing I did. I actually read them
20 off a statement form, custodial statement form, which
21 lists the Miranda Rights. I had him initial beside
22 each one showing that he understood them. And I also
23 went over --- I always go over the rights with whoever
24 I interview as far as, you understand that you don't
25 have to talk to me, you can have a lawyer here while

MAUREEN KATHERINE VALAZAK - DIRECT EXAMINATION

196

1 I'm asking you these questions, if you don't want to
2 answer you don't have to, and you never waive your
3 rights.

4 Q. Did you promise him any hope or reward in exchange for
5 speaking with you on day?

6 A. No.

7 Q. Sergeant Valazak, was it clear when you were speaking
8 to Mr. Ross on that date what was going to be
9 discussed?

10 A. Yes.

11 Q. And what was that?

12 A. That was the burglary incident that happened at
13 First Street with Ms. Williamson and that incident.

14 **MS. PARKER:** Your Honor, at this time the State would
15 move to have the video entered into evidence. Defense
16 counsel has agreed on what would be played. At this time we
17 would like to publish that to the jury.

18 **WHEREUPON, STATE EXHIBIT**

19 **NUMBER 22 IS MARKED AND**

20 **ADMITTED INTO EVIDENCE WITHOUT**

21 **OBJECTION.**

22 **THE COURT:** All right. Ladies and gentlemen, you will
23 recall that the witness, of course, has testified that this
24 is a video statement. The same instructions I gave you with
25 regard to a statement a few minutes ago applies to a video

1 or a written statement.

2 You are to consider the four things. First of all, did
3 the Defendant make the statement, was the Defendant warned
4 of his constitutional rights, did the Defendant knowingly
5 and intelligently waive his constitutional rights, was the
6 statement given voluntarily? The State must prove these
7 factors beyond a reasonable doubt. And you will be making
8 the ultimate decision as to whether or not the statement
9 meets those requirements.

10 If it does, then you may consider the statement. If it
11 does not meet those requirements you should disregard the
12 statement altogether.

13 All right, Ms. Parker.

14 (Whereupon the video tape was published to the
15 jury.)

16 **THE COURT:** All right, Ms. Parker, you may proceed.

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

18 Q. Sergeant Valazak, after you received that statement
19 from the Defendant I want to talk about one final thing
20 you do in the course of your investigation. Were you
21 able to obtain a 911 recording of the phone call that
22 night?

23 A. I did.

24 **MS. PARKER:** Permission to approach the witness, Your
25 Honor?

MAUREEN KATHERINE VALAZAK - CROSS EXAMINATION

198

1 **THE COURT:** Yes, ma'am.

2 Q. I show you what is marked State Exhibit Number 21. Do
3 you recognize that?

4 A. Yes.

5 Q. What is that?

6 A. This is the original 911 tape that I went and got from
7 dispatch where they downloaded it to a disk for me.

8 Q. What date did you go and get that recording?

9 A. That was on the 4th of December.

10 Q. December 4th.

11 A. Yes.

12 Q. And who did you receive that recording from?

13 A. The supervisor Davis Sessums with 911 dispatch.

14 Q. And that recording, the original that he gave you, have
15 you changed it or altered it in anyway?

16 A. No. I don't believe it's possible with this type of
17 disc to even try to edit it. Not that I would.

18 Q. Please answer any questions that Mr. Swilley may have.

19 **THE COURT:** Cross examination, Mr. Swilley?

20 **MR. SWILLEY:** Thank you, Your Honor.

21 **CROSS EXAMINATION BY MR. SWILLEY**

22 Q. Sergeant Valazak, briefly, when you met Ms. Williamson
23 at her home on the morning of the 27th, which would
24 have been Friday, November 27, 2009, can you relate to
25 me how she described her assailant as far as physical

1 features?

2 A. When I got to the residence after we talked she
3 described the subject as he had a soft voice. He was
4 tall and slender. That he had on a black or a dark
5 colored zipper hoodie. Had something black around his
6 face. He had on a white knit hat. At one point when
7 he was looking in the door she said she could see that
8 he didn't have any real facial hair, there was hardly
9 any facial hair, and he was medium skinned, and he a
10 thin face.

11 Q. Sergeant Valazak, I see in your report that you give a
12 description as given to you of a nineteen to
13 twenty-five-years-old, approximately five-eleven, and
14 weighing approximately a hundred and twenty-five
15 pounds; is that correct?

16 A. Right.

17 Q. And do you know if Mr. Ross is actually listed at
18 five-nine?

19 A. Yes.

20 Q. And he is thirty-three-years-old?

21 A. Yes.

22 Q. And that he weighs a little over a hundred and
23 forty-five pounds?

24 A. I guess.

25 Q. I mean if you don't know you --

MAUREEN KATHERINE VALAZAK - CROSS EXAMINATION

200

1 A. -- I don't know.

2 Q. Let me go back to your initial investigation of the
3 home. You said you searched for fingerprints, correct?

4 A. Correct.

5 Q. And you said you weren't able to lift any prints; is
6 that correct?

7 A. That's correct.

8 Q. And you did examine the glass and you said you did see
9 a smudge print, correct?

10 A. Correct.

11 Q. Was this print all smudged or partially smudged?

12 A. It was the outside of the glass and it was --- there
13 was a film of dirt on the outside of the glass where
14 the prints were and there was smudge.

15 Q. And you felt at the time you weren't going to bother
16 with taking because it ---

17 A. I photographed it.

18 Q. You photographed it?

19 A. Yes.

20 Q. You said you did check for DNA on the blinds where
21 there was a crease in the blinds?

22 A. I didn't check for DNA. I just took that piece of
23 blind.

24 Q. You never swabbed or anything?

25 A. No, there was too much dust on it.

1 Q. Is that how DNA is usually taken from a crime scene
2 with a swab?

3 A. Correct.

4 Q. Can you briefly describe that procedure?

5 A. As far as taking a DNA swab?

6 Q. Yes, if you don't mind.

7 A. You have to have distilled water and there's a swab
8 that comes in a protective wrap that you have to
9 actually open. You wear gloves. You take the swab
10 out. You dip it in distilled water that is not
11 contaminated and you just swab whatever area you want
12 to swab for the DNA. And then it goes into a
13 container, which is a little box that you put the swab
14 in.

15 Q. Okay. Now, as far as prints go what usually in your
16 experience is the best surface to lift prints off of?

17 A. It just depends.

18 Q. Is glass usually a pretty good ---

19 A. Glass is usually good if it's clean.

20 Q. To your knowledge, you can pretty much lift prints off
21 of anything except for water and air easily, correct?

22 A. Most of the time.

23 Q. And did Mr. Ross submit to a DNA sample when you
24 requested one of him?

25 A. We didn't request it. We just asked him and he

MAUREEN KATHERINE VALAZAK - CROSS EXAMINATION

202

1 consented to give us a DNA swab. That would have been
2 on the 30th with his first initial visit to the police
3 department, when he came up to the police department
4 voluntarily.

5 Q. So Mr. Ross did consent to give law enforcement a DNA
6 sample?

7 A. Correct.

8 Q. And he signed the form, correct?

9 A. Correct.

10 Q. In the course of your investigation were you able to
11 interview any neighbors or anyone that may have been
12 witness to viewing someone go into Ms. Williamson's
13 home?

14 A. No, sir, where Christy lives, her house --- one side of
15 her residence is a residence where no one lives. Right
16 in front of her house is a field for the Cain
17 Elementary, so there's no one in the front of her
18 house. It wouldn't be a house or anything there. And
19 on the other side it was a little distance away, so
20 they wouldn't have been able to see anything on that
21 side of the house.

22 Q. And during the course of your investigation were you
23 able to recover a knife that fit the description of the
24 knife that Christy described?

25 A. No, sir.

MAUREEN KATHERINE VALAZAK - CROSS EXAMINATION

203

1 Q. Were you able to find --- did you ever find any of the
2 money that was reported to be stolen?

3 A. No.

4 Q. Okay. In your recollection, when Ms. Williamson was at
5 the police department to view photos, can you give me
6 an estimate of about how many photos she viewed?

7 A. I didn't personally sit there and count how many she
8 looked at, but I would have to say --- I know she had
9 over a thousand to view. In the time that she was
10 there she had to look over, and this is just an
11 estimate, over probably two to five hundred easy.

12 Q. And you said all these men were black males?

13 A. Correct.

14 Q. Were they all from the Darlington or Pee Dee area?

15 A. It could be from anywhere. Most of this area.

16 Q. When you say could be from anywhere, can you give me
17 like what is the range?

18 A. Darlington, Florence, just in this general area.

19 Q. So there's nobody in there from like Sunburst, Montana,
20 or anywhere like that?

21 A. No, sir.

22 Q. And did you bring any other examples of photographs
23 with you today of the ones she was looking through
24 besides the one of Mr. Ross?

25 A. No.

MAUREEN KATHERINE VALAZAK - REDIRECT EXAMINATION 204

1 Q. Okay. Did she show interest in any other photograph or
2 pause on any other photograph?

3 A. No.

4 Q. At what point in this matter did your investigation
5 cease?

6 A. What do you mean? What point are you talking about?

7 Q. What point did you stop conducting your investigation
8 in this case?

9 A. After my interview with Henry.

10 Q. So at that point you felt like you had everything
11 required, correct?

12 A. I felt I had everything I needed before the interview.
13 But that was completed after the interview.

14 Q. I understand. Did Ms. Parker or anyone else give you a
15 list of questions for your testimony here today
16 preceding your testimony here today?

17 A. No.

18 Q. She didn't give you a list of the subjects that might
19 be covered during your testimony at trial?

20 A. No.

21 **MR. SWILLEY:** Thank you. I have nothing further.

22 **THE COURT:** Redirect, Ms. Parker?

23 **MS. PARKER:** Briefly, Your Honor.

24 **REDIRECT EXAMINATION BY MS. PARKER**

25 Q. Sergeant Valazak, you described the procedure to swab

MAUREEN KATHERINE VALAZAK - REDIRECT EXAMINATION 205

1 and take DNA off of a piece of evidence.. You talked
2 about the distilled water and swab and that sort of
3 thing. Did you do any of that in this case?

4 A. As far as swabbing at that point when I went to
5 residence?

6 Q. Yes, ma'am.

7 A. No.

8 Q. Was there any DNA in this case to be tested or was any
9 submitted?

10 A. No.

11 Q. On November 30, 2009, and you testified earlier that
12 was the day that Henry Ross willingly came up to the
13 police department. A minute ago Mr. Swilley asked you
14 about him consenting to give a DNA sample. What's the
15 purpose of that? At this point in the investigation
16 what would have been the purpose?

17 A. At this point to possibly eliminate him. I mean, I had
18 a photo that Ms. Williamson wasn't positive on. I had
19 really nothing else at that point to go on and he
20 consented to give us the DNA. When we asked him if he
21 would consent to a DNA he did.

22 Q. Was the DNA tested, or was DNA needed in this case?

23 A. No.

24 **MS. PARKER:** Thank you.

25 **THE COURT:** Anything further?

JASON HUGGINS - DIRECT EXAMINATION

206

1 **MR. SWILLEY:** Not from this witness, Your Honor.

2 **THE COURT:** Thank you, you may step down.

3 (Whereupon, a bench conference was held in the
4 presence of the jury, but out of the hearing of the jury.)

5 **THE COURT:** All right, Ms. Parker.

6 **MS. PARKER:** Thank you, Your Honor. Your Honor, at
7 this time the State calls Jason Huggins.

8 **THE COURT:** All right. Mr. Huggins, come around
9 please.

10 **WHEREUPON, JASON HUGGINS**

11 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

12 **OFFICER HUGGINS:** I do.

13 **DIRECT EXAMINATION BY MS. PARKER**

14 Q. Please state your full name for the record.

15 A. Jason Huggins.

16 Q. Mr. Huggins, have you ever been employed by the
17 Darlington Police Department?

18 A. Yes, ma'am.

19 Q. And when was that?

20 A. That was during the time of this case.

21 Q. You were employed with the Darlington Police Department
22 back in November and early December of '09?

23 A. Yes, ma'am.

24 Q. Mr. Huggins, do you recall any encounter with the
25 Defendant on this case on November 30, 2009?

JASON HUGGINS - DIRECT EXAMINATION

207

1 A. Yes, ma'am.

2 Q. What did you do?

3 A. That day I was aware of the ongoing investigation,
4 although I wasn't directly involved in it. I knew he
5 was up there at the police department being
6 interviewed. And I was called up there by Captain
7 Watson. I didn't know what it was in reference to
8 until I got there. When I got there Captain Watson was
9 with Defendant and I think Mr. Benjamin. And he asked
10 me to take him home and he said that the Defendant had
11 a white toboggan that he was going to give me.

12 Q. Did you, in fact, take the Defendant home on that day?

13 A. I did.

14 Q. And tell me where does the Defendant live, do you
15 recall?

16 A. I need to refer to my report. He lives on First
17 Street.

18 Q. What happened when you got the Defendant to his house?

19 A. I let him out and he went inside. I didn't go inside
20 with him. He went inside and got the toboggan and
21 brought it right back out to me and handed it to me.

22 Q. I'm going to show you what has been marked as State
23 Exhibit Number 20, do you recognize this item?

24 A. Yes, ma'am.

25 Q. What, in fact, is that?

JASON HUGGINS - DIRECT EXAMINATION

208

1 A. That's the toboggan that he handed me.

2 Q. Who gave you that toboggan?

3 A. The Defendant did.

4 **MS. PARKER:** Your Honor, at this time the State would
5 move to have State's Exhibit 20 admitted into evidence.

6 **THE COURT:** Any objection, Mr. Swilley?

7 **MR. SWILLEY:** I have no objection.

8 **THE COURT:** All right. Admitted into evidence is
9 State's Number 20 without objection.

10 **WHEREUPON, STATE EXHIBIT**

11 **NUMBER 20 IS MARKED AND**

12 **ADMITTED INTO EVIDENCE WITHOUT**

13 **OBJECTION.**

14 **MS. PARKER:** Thank you, Your Honor, I have no further
15 questions of this witness.

16 **THE COURT:** Cross examination?

17 **CROSS EXAMINATION BY MR. SWILLEY**

18 Q. Mr. Huggins, your involvement in this case is just
19 transporting Mr. Ross back to his house after he
20 initially went to the police station; is that correct?

21 A. Yes, sir.

22 Q. And you have no further involvement in this case,
23 correct?

24 A. Actually later on after the interview I transported him
25 to the jail at a later interview when he was arrested.

WILLIAM DAVID SESSUMS - DIRECT EXAMINATION

209

1 Q. Okay. But other than that you had no active
2 participation?

3 A. No, sir.

4 Q. Thank you.

5 **MR. SWILLEY:** Nothing further.

6 **THE COURT:** Anything further of this witness?

7 **MS. PARKER:** No, Your Honor.

8 **THE COURT:** Thank you, Mr. Huggins, you may step down.

9 **MS. PARKER:** We would ask that he be released.

10 **THE COURT:** Any objection to releasing the witness, Mr.
11 Swilley?

12 **MR. SWILLEY:** No objection, Your Honor.

13 **THE COURT:** You are released. Thank you for coming.
14 Alright, Ms. Parker, call your next witness.

15 **MS. PARKER:** Your Honor, at this time I would refer to
16 Assistant Solicitor Holt to call our next witness.

17 **THE COURT:** All right, Mr. Holt.

18 **MR. HOLT:** Call David Sessums to the stand please.

19 **THE COURT:** Mr. Sessums, come around please.

20 **WHEREUPON, WILLIAM DAVID SESSUMS**

21 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

22 **OFFICER SESSUMS:** I do.

23 **DIRECT EXAMINATION BY MR. HOLT**

24 Q. Would you please state your whole name for the jury?

25 A. William David Sessums.

WILLIAM DAVID SESSUMS - DIRECT EXAMINATION

210

1 Q. What's your occupation?

2 A. Presently employed by Darlington County, Director of
3 Darlington County 911 Communications Center.

4 Q. And as Director of the 911 Communications Center, what
5 are your duties?

6 A. I oversee the operations of the communications center,
7 and the keeper of the records for Darlington County.

8 Q. What would you say the operations are?

9 A. In 1992, Darlington County built a 911 communications
10 center. At that time all emergency calls, law
11 enforcement, fire, EMS come into the 911 center, and
12 the ladies and gentlemen dispatch the calls to the
13 proper agency.

14 Q. And you are in charge of all of those ladies and
15 gentlemen?

16 A. Yes, sir.

17 Q. Now, what year did you say they put you in charge of
18 this?

19 A. I've only been there three years. Ms. Libby West ran
20 it from 1992. She retired March 6, 2008. I went over
21 February 5, 2008, and worked with her for a month
22 before she retired.

23 Q. When a 911 call in Darlington County is placed, what
24 information is recorded automatically?

25 A. Darlington County, as other 911 centers use a CAD

WILLIAM DAVID SESSUMS - DIRECT EXAMINATION

211

1 computer system. Everything coming into the center and
2 leaving the center is recorded, the phone calls, and
3 the radio transmissions. A caller calls, the computer
4 --- dispatcher enters what type of call. There are
5 four questions they are charged with asking. Primarily
6 where are you located, where do you need help, what is
7 going on, who is involved, and the fourth question, of
8 course, is when did it happened; is this something that
9 happened previously, a delayed call, or is this an
10 incident in progress?

11 Q. Does the computer stamp for information as well? Does
12 the computer say what time it is and that information?

13 A. Yes, sir, once the dispatcher types it into the system
14 and it's time stamped by the CAD itself.

15 Q. Now, do you record those phone calls, and if so, how
16 does that work, and how long do you keep them?

17 A. Yes, sir, as I stated, everything coming in is
18 recorded. The standard operating procedure for
19 Darlington County 911 Center is we retain the records
20 for sixty days. We reuse the tapes. And, of course,
21 sixty days is our time line.

22 Q. This information, all of that that you just discussed
23 with me is that kept during the normal course of your
24 business?

25 A. Yes, sir.

WILLIAM DAVID SESSUMS - DIRECT EXAMINATION

212

1 Q. Now, do individuals, or agencies, government bodies, do
2 they routinely ask to download copies of this
3 information?

4 A. Yes, sir, as long as it's within that 60 day period if
5 an agency asks for the recordings, whether they be
6 phone or radio traffic, the procedure is they will come
7 to the 911 center. I'm the only one that can do the
8 recording play-backs for recordings. They will listen
9 --- they give me dates and times and locations, I'll
10 pull up a CAD report and once I do that that gives me
11 the time stamp to go back to the recording part of it
12 and prepare the recordings. Let them hear the
13 recording and they tell me what significance, you know,
14 to them.

15 Q. People can't just come up there and get whatever. It's
16 procedure that has to be followed.

17 A. Yes, sir, procedure has to be followed.

18 Q. Do you recall looking up a 911 phone call for Officer
19 Valazak sometime in early December of 2009?

20 A. Yes, sir.

21 Q. And do you recall pulling it up for her and copying it
22 for her?

23 A. Yes, sir.

24 Q. Mr. Sessums, I want to show you what has previously
25 been marked as Exhibit 21. Without telling the jury

1 what that is, would you explain to the jury if you know
2 what it is?

3 A. Yes, sir.

4 Q. Do you recognize it?

5 A. Yes, sir, I do.

6 Q. And have you seen it before?

7 A. Yes, sir.

8 Q. Since the last time you've seen it has it changed or
9 been disrupted in anyway?

10 A. No, sir, it doesn't appear to be.

11 **MR. HOLT:** Your Honor, at this time the State would
12 move State Exhibit Number 21 into evidence.

13 **MR. SWILLEY:** Your Honor, I object to that under Rule
14 403.

15 **THE COURT:** So you're objecting on the basis of
16 relevance?

17 **MR. SWILLEY:** Well, Your Honor, under Rule 403.

18 **THE COURT:** I understand. All right, ladies and
19 gentlemen of the jury, I'm going to have to rule on this
20 objection. And before I can rule on the objection I'm going
21 to have to hear from the lawyers further.

22 I'm going to ask you to go to your jury room. Please
23 do not discuss the case among yourselves. And let me deal
24 with this objection. I'll have you come back in just a few
25 minutes. Thank you very much.

WILLIAM DAVID SESSUMS - DIRECT EXAMINATION

214

1 **BAILIFF:** Come this way, please.

2 (Whereupon the jury exits the courtroom at 11:52
3 a.m.)

4 **THE COURT:** All right. It looks like to me the only
5 way I would be able to determine whether or not the
6 probative value is substantially outweighed by the danger of
7 unfair prejudice, confusion of the issues, or misleading to
8 the jury would be to hear the 911 tape. So if you would
9 play it for me please.

10 (Whereupon the 911 tape is played for the Court)

11 **THE COURT:** All right. Ms. Parker, give me the reasons
12 the State wishes to introduce that and what the probative
13 value is, and then I'll hear from Mr. Swilley as to why he
14 thinks it's prejudicial value substantially outweighs it.

15 **MS. PARKER:** Thank you, Your Honor. If you will recall
16 at the very beginning part of that 911 recording she is
17 screaming there at the door, telling someone to go away, go,
18 go, leave. It's like she's addressing the Defendant, Your
19 Honor.

20 **THE COURT:** Or addressing someone. She doesn't
21 identify anybody.

22 **MS. PARKER:** Yes, Your Honor, or someone, Your
23 Honor. And that would go to directly show to back up her
24 story. The Defendant gave a statement putting himself in
25 the house. But in his statement he claims that he just ran

1 back out the front door.

2 Now, Ms. Williamson's testimony, her statement has
3 always been that the Defendant appeared back in the window
4 there at that front door and was trying to get back in on
5 her, and it was at that time that she called 911. And we
6 also have the damage to the doorframe, Your Honor.

7 That recording helps to further corroborate her
8 testimony that there was someone there that had returned
9 there to that door.

10 **THE COURT:** All right. Mr. Swilley, I'll hear from you
11 with regard to the reasons that you think the probative
12 value is substantially outweighed by the danger of unfair
13 prejudice.

14 **MR. SWILLEY:** Your Honor, the probative value of the
15 situation could only be the fact that Ms. Williamson was
16 assaulted and burglarized, which has already been
17 established by the State through her testimony.

18 **THE COURT:** Can't they prove that by more than one
19 source?

20 **MR. SWILLEY:** I agree with that, Your Honor. But the
21 communication on that tape, other than the fact she informs
22 the dispatcher that she's been burglarized there's not a
23 whole lot of other communication going on except for yelling
24 screaming. I think that her screaming bloody murder on that
25 tape would cause potential prejudice and inflame the jury,

WILLIAM DAVID SESSUMS - DIRECT EXAMINATION

216

1 and would substantially outweigh the limited amount of
2 probative value on that tape for this case.

3 **THE COURT:** So you think that the conveyance on that
4 tape by her of being upset with this situation outweighs the
5 probative value of showing that the Defendant was still
6 there.

7 **MR. SWILLEY:** Your Honor, being a recording I don't
8 think it really shows the Defendant is on there, it shows
9 that somebody was still there.

10 **THE COURT:** Okay, I misstated it. Not the Defendant
11 but that someone was still there.

12 **MR. SWILLEY:** Your Honor, I would argue to the Court
13 that the tone of voice, the heavy breathing, just a
14 horrified attitude of the Defendant --- of the prosecuting
15 witness on that tape would substantially outweigh whatever
16 probative value it would have as far as substantiating that
17 there was someone still in the area of her home.

18 **THE COURT:** Thank you, Mr. Swilley. I appreciate your
19 argument, but I disagree. I think the evidence is relevant.
20 And I think that under 403 the relevance of showing the
21 probative value is to show two-fold. Number one, that the
22 witness when she testified, testified that someone was
23 trying to come back into the home. That he was at the door.
24 And it also has probative value to disprove the statement
25 made by the Defendant that he did not come back up to the

1 house. And I think that those two points outweigh the ---
2 the probative value is not substantially outweighed by the
3 danger of unfair prejudice. I do not see any unfair
4 prejudice in this case.

5 So the danger of unfair prejudice does not
6 substantially outweigh the probative value. The objection
7 is overruled. The tape will be admitted.

8 **MS. PARKER:** Thank you, Your Honor.

9 **THE COURT:** All right. Bring the jury back please.

10 **BAILIFF:** All right, sir.

11 (Whereupon the jury enters the courtroom at 12:01
12 p.m.)

13 **THE COURT:** Thank you very much, ladies and gentlemen.
14 We are now ready to resume. I have had an opportunity to
15 rule upon the objection of the Defense, and have overruled
16 that objection. And the evidence of the 911 tape can be
17 presented.

18 All right, Mr. Holt.

19 **MR. HOLT:** Thank you very much, Your Honor.

20 Q. Mr. Sessums, are you able to tell looking back at your
21 records the date and time this call was made?

22 A. May I refer to this?

23 Q. Yes, sir.

24 A. I have here a copy of the CAD report. The call was
25 received at 11/27/2009, at 1:56:15. It records the

WILLIAM DAVID SESSUMS - CROSS EXAMINATION

218

1 hour, minute, and second. It was received over a 911
2 line. Address of the incident was First Street,
3 Darlington. The caller's name is Christina Williamson,
4 and we list her phone number that the call came from.
5 Dispatcher takes it, dispatches Darlington police at
6 1:57:43. Every time there is a transmission either
7 over the phone or the radio and you type it in it is
8 time stamped.

9 Q. Thank you very much.

10 **MR. HOLT:** Your Honor, at this time the State would
11 request permission to publish the 911 call.

12 **THE COURT:** Permission granted.

13 (Whereupon the 911 tape, State Exhibit Number 21
14 was published to the jury.)

15 **MR. HOLT:** No further questions of this witness.

16 **THE COURT:** Cross examination, Mr. Swilley?

17 **MR. SWILLEY:** Briefly, Your Honor.

18 **CROSS EXAMINATION BY MR. SWILLEY**

19 Q. Mr. Sessums, this call was the extent of the
20 interaction you had with this case?

21 A. Yes, sir.

22 Q. You know nothing else about the case other than what
23 you just testified with Mr. Holt about the 911 tape?

24 A. The only knowledge I have is how the thing was recorded
25 and this is the tape, yes, sir.

1 Q. Thank you, sir, nothing further.

2 THE COURT: All right. Thank you sir, you may step
3 down. All right, Ms. Parker.

4 MS. PARKER: Your Honor, that would conclude the
5 witnesses the State has at this time. Before we rest I want
6 to make sure we have all the Exhibits in evidence.

7 THE COURT: I'll allow you to check the Exhibits and
8 make sure that is done. But for purposes of testimony the
9 State has rested.

10 Ladies and gentlemen of the jury, you've heard the
11 Solicitor announce that the State has presented their
12 testimony to you. There's generally a number of matters of
13 law which I now need to take up at this time.

14 There are also some other things that I need to do in
15 connection with this matter. And in addition to that, I
16 have another matter that I need to attend to, and I'm going
17 to take care of that.

18 So we're going to go ahead and break for lunch at this
19 time so that I can take care of these matters of law with
20 this case, and do the other matter that I've got to attend
21 to, and then be ready to start promptly after lunch.

22 So it's going to be a little bit of a long lunch hour.
23 It's about ten minutes after 12:00. I'm going to ask you to
24 be back in your jury room at 2:00. This will give me time
25 to deal with the matters that I've got to deal with and

THE STATE V HENRY JAMES ROSS, JR.

220

1 still be ready to proceed at 2:00.

2 Over the lunch recess, do not discuss the case among
3 yourselves. When you're re-gathering in the jury room do
4 not talk with anybody about it. When you see your family or
5 friends you can tell them you're serving on the jury, but
6 you can't tell them anything about the case, because you've
7 got to decide the case based upon what you hear in this
8 courtroom, and not on the basis of what anyone else might
9 say. And do not let anyone talk to you about the case. If
10 anyone does try to talk to you about it, get their name or
11 their description and report it to me, and I will take care
12 of that.

13 So with those admonishments I'm going to excuse you
14 now, allow you to go and get your lunch, and ask you to be
15 back at 2:00. Jury is excused. Jury only. All right, you
16 may go.

17 **BAILIFF:** Right this way, please.

18 (Whereupon the jury exits the courtroom at 12:10
19 p.m.)

20 **THE COURT:** All right. Ms. Parker the exhibits that
21 I show in evidence are 1 through 18 of the photographs, 19
22 the diagram, 20 the toboggan, and 21 the 911 tape, and
23 exhibit 22 the video statement.

24 **MS. PARKER:** Yes, Your Honor. That was a redacted
25 portion.

THE STATE V HENRY JAMES ROSS, JR.

221

1 **THE COURT:** Yes. And I understand your objection,
2 Mr. Swilley to number 22 on the basis of voluntariness, but
3 I don't believe you have any objection to content. I mean
4 that wasn't the problem. There was nothing in there that
5 --- the edited statement was agreed upon.

6 **MR. SWILLEY:** Yes, Your Honor. I didn't have an
7 objection as to the non-discloseable things, it was just a
8 prior record and other that I did before.

9 **THE COURT:** All right. So that will be admitted into
10 evidence as well. So, 19, 20, 21, and 22 in addition to the
11 eighteen photographs.

12 **MS. PARKER:** Yes, Your Honor. That will cover
13 everything.

14 **THE COURT:** All right. Mr. Swilley, I will be glad
15 to hear from you by way of motions.

16 **MOTIONS**

17 **MR. SWILLEY:** Thank you, Your Honor. Your Honor, I
18 would make a motion for directed verdict as to all
19 Indictments as to burglary as stated by prosecuting witness
20 that she was unable to see the assailants face inside of the
21 home where there was lighting, and was only able to view a
22 face from outside in the dark.

23 Also, there was no tangible physical evidence against
24 the defendant in this case, Your Honor, therefore I would
25 make a motion for a directed verdict in light of that.

THE STATE V HENRY JAMES ROSS, JR.

222

1 There is no competent evidence that has been submitted
2 against the defendant.

3 THE COURT: And that is on the burglary charge?

4 MR. SWILLEY: Your Honor, that would be on all
5 charges, all Indictments.

6 THE COURT: All right. Rule 19 of the Rules of
7 Criminal Procedure provides that on motion of the defendant,
8 the Court shall direct a verdict in the defendant's favor on
9 any offense charged in the Indictment after the evidence on
10 either side is closed if there is a failure of competent
11 evidence tending to prove the charge in the Indictment. The
12 use of the word competent in that rule is unfortunate,
13 because it implies a weighing or a determination of the
14 weight to be given to the evidence. That is not the way the
15 rule reads or means at all. Competent means evidence in the
16 record. As I have said before on the task force that I
17 chaired on the revision of the criminal rules, we have
18 recommended a change in that rule so that it will not use
19 the word competent.

20 The rule goes on to say in ruling on this motion the
21 trial judge should consider only the evidence or non-
22 existence of the evidence, and not its weight. There is
23 definitely evidence in the record in this case, in my view,
24 that the defendant, who was identified in the photo lineup
25 by the prosecuting witness, and by his own admissions that

1 he did go in the house. That is sufficient in and of itself
2 for the burglary.

3 There is also evidence in the record by the prosecuting
4 witness to the effect that he pulled a knife and robbed her
5 of money. Therefore, there is evidence in the record of an
6 armed robbery.

7 That would similarly be true of the possession of a
8 weapon during the commission of a violent crime, an armed
9 robbery and a burglary being a violent crime.

10 And finally, there is evidence in the record by her
11 testimony of his touching her, of the assault and battery of
12 a high and aggravated nature.

13 So, I would respectfully deny the motions for directed
14 verdict.

15 FIFTH AMENDMENT RIGHTS

16 **THE COURT:** Mr. Ross, let me ask you to stand for a
17 moment for me please.

18 Mr. Ross, you may be called as a witness to testify in
19 your own behalf. I now advise you that you have a right to
20 invoke the protections given to you by the Fifth Amendment
21 to the Constitution of the United States and a similar
22 counterpart provision of the Constitution of The State of
23 South Carolina. The Fifth Amendment to the Constitution of
24 the United States provides in part that no person should be
25 compelled in any criminal case to be a witness against

THE STATE V HENRY JAMES ROSS, JR.

224

1 himself. This provision of constitutional law means that
2 you cannot be compelled or required to testify in this case.
3 This is a right and a privilege which the law extends to
4 you. It is a personal privilege and no one can waive this
5 right except you. You have a right not to testify, but you
6 also have a right to testify. The Court will grant you the
7 right to consult with your lawyer before you make a
8 decision. If you elect not to testify, your failure to
9 testify cannot be considered by the jury in its
10 deliberations, and I will so instruct them. If you elect to
11 testify, and waive the privileges extended to you by the
12 United States and South Carolina Constitutions, I advise you
13 that you would assume the role of a witness in this case,
14 and you would waive or give up your constitutional privilege
15 against self-incrimination. That means that if you
16 voluntarily take the witness stand and testify you will then
17 subject yourself to the same rules that govern other
18 witnesses, and you may be examined and cross examined on any
19 relevant issues in this case. And you may be impeached to
20 the same extent as any other witness, all of which are
21 subject to the rules of law and the rules of evidence.

22 I further advise you that if you elect to take the
23 witness stand and testify, that this decision on your part
24 must be made freely, voluntarily, intelligently, and with
25 knowledge of the protections given to you by the

1 Constitution, and with knowledge of the consequences of your
2 election to testify.

3 Now, I will give you an opportunity to consult with
4 your lawyer over the lunch recess to determine whether you
5 do or do not wish to testify in this case.

6 But my question to you now is do you understand what I
7 have explained to you about your Fifth Amendment Rights?

8 **MR. ROSS:** Yes, sir.

9 **THE COURT:** And do you have any questions about what
10 I have explained to you about your Fifth Amendment Rights?

11 **MR. ROSS:** No, sir.

12 **THE COURT:** All right. I will then --- You may be
13 seated. I will then give you the opportunity to confer with
14 your lawyer over the lunch recess and be prepared to advise
15 me after lunch if you wish to testify in this case.

16 Ms. Parker, under the belief that one of the matters
17 which the defendant needs to consider, or has a right to
18 consider in determining whether to testify or not testify in
19 this case, is what the state would contend would be
20 impeachable under 609?

21 **PRESENTATION OF PRIOR RECORD**

22 **MS. PARKER:** Your Honor, a burglary second conviction
23 when he was sentenced on 12/8/2004.

24 **THE COURT:** 12/8/2004 was a burglary second
25 conviction?

THE STATE V HENRY JAMES ROSS, JR.

226

1 **MS. PARKER:** Yes, Your Honor.

2 **THE COURT:** Okay.

3 **MS. PARKER:** Also an additional burglary second that
4 same sentence date, 12/8/04, I believe there are three
5 counts.

6 **THE COURT:** So with three counts, okay.

7 **MS. PARKER:** Yes, Your Honor. He has different
8 incident dates, but he was sentenced in court all on the
9 same. And involuntary manslaughter that he pled guilty to
10 and that was on July 23, 2003.

11 **THE COURT:** July 23, 2003.

12 **MS. PARKER:** Your Honor, and out of Charleston
13 County, breaking into auto tanks, two counts. And that was
14 on November 12, 2008.

15 **THE COURT:** B and E auto, two counts, 2008.

16 **MS. PARKER:** Yes, sir.

17 **THE COURT:** Okay. Anything else?

18 **MS. PARKER:** I believe that is all, Your Honor.

19 **THE COURT:** All right. Mr. Swilley, do you concur
20 that those would be matters that would fall within 609?

21 **MR. SWILLEY:** I concur, Your Honor. And I can
22 answer your question right now. Mr. Ross has elected not to
23 testify and invoke his Fifth Amendment Right not to do so.

24 **THE COURT:** All right. Mr. Ross, then that being the
25 case, let me ask you to stand again please.

THE STATE V HENRY JAMES ROSS, JR.

227

1 You have heard your lawyer tell me that you have
2 elected not to testify in this case. Have you had a chance
3 to talk with him about the same constitutional rights that I
4 advised you about?

5 **MR. ROSS:** Yes, sir.

6 **THE COURT:** And did you understand your discussions
7 with him?

8 **MR. ROSS:** Yes, sir.

9 **THE COURT:** And do you have any questions that you
10 want to ask either your lawyer or me regarding your Fifth
11 Amendment Rights?

12 **MR. ROSS:** No, sir.

13 **THE COURT:** And have you made a free, voluntary,
14 knowing and intelligent decision as to whether you do or do
15 not wish to testify in this case?

16 **MR. ROSS:** Yes, sir.

17 **THE COURT:** And what is that decision?

18 **MR. ROSS:** Not to testify.

19 **THE COURT:** You do not wish to testify. And is that
20 decision on your part freely and voluntarily made?

21 **MR. ROSS:** Yes, sir.

22 **THE COURT:** All right. Thank you. Then the Court
23 will find then that the defendant has made a free,
24 voluntarily, intelligent and knowing decision to exercise
25 his rights under the Fifth Amendment and not testify in this

THE STATE V HENRY JAMES ROSS, JR.

228

1 case. After having been advised of those rights by both his
2 counsel and by the Court, the Court will honor that
3 decision.

4 Mr. Swilley, do you anticipate any other testimony in
5 connection to this matter?

6 **MR. SWILLEY:** I have some witnesses, Your Honor.

7 **THE COURT:** Sir?

8 **MR. SWILLEY:** I do have some witnesses to present,
9 Your Honor.

10 **THE COURT:** All right. Then we will take care of
11 those after lunch then. We will go forward at 2:00 with
12 this case. We are going to take a recess, and I am going to
13 meet with the lawyers on a guilty plea for a few minutes in
14 my office, and then we will go into that Guilty Plea before
15 lunch. So, don't get out of pocket. But we are in recess
16 on this matter, and we will take a recess until 2:00 in this
17 matter.

18 (Whereupon, the Court takes a lunch recess from
19 12:20 p.m. until 2:27 p.m..)

20 **THE COURT:** All right. We are back on the record
21 with regard to the matter of The State versus Henry James
22 Ross. We are running about thirty minutes late on this
23 matter, but we had a very important matter that we had to
24 attend to, and that has been taken care of. We are ready to
25 go forward. Mr. Ross is present with his counsel, Mr.

THE STATE V HENRY JAMES ROSS, JR.

229

1 Swilley of the defense. The State is present and
2 represented by Ms. Parker.

3 Anything before we bring the jury in?

4 **MS. PARKER:** No, Your Honor, not from the state.

5 **THE COURT:** Mr. Swilley?

6 **MR. SWILLEY:** Your Honor, not at this time. Not at
7 this time.

8 **THE COURT:** All right. How many witnesses do you
9 anticipate?

10 **MR. SWILLEY:** Your Honor, I have five witnesses.

11 **THE COURT:** All right. Bring the jury in.

12 **BAILIFF:** All right, sir.

13 (Whereupon, the jury enters the courtroom at 2:30
14 p.m..)

15 **THE COURT:** All right. Thank you ladies and
16 gentlemen and thank you for your promptness in being back
17 here. I apologize to you for keeping you waiting in the
18 jury room. We were involved in a very serious matter that
19 we had to get taken care of, and it took a little longer
20 than I had expected it to. But we have concluded that, and
21 we are now ready to go forward with this matter.

22 You have heard the state announce that they have rested
23 their case. That means that you have heard all the
24 testimony you will hear from the state at this time. And
25 now the defense has the right to present any testimony,

MARY LEE ROSS - DIRECT EXAMINATION

230

1 evidence to you that they wish to present.

2 Mr. Swilley, you may call your first witness.

3 **MR. SWILLEY:** Thank you, Your Honor. Your Honor,
4 the defense calls Mary Lee Ross to the stand.

5 **CLERK OF COURT:** Would you come forward and be sworn
6 please?

7 **WHEREUPON, MARY LEE ROSS**

8 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

9 **MS. ROSS:** I do.

10 **DIRECT EXAMINATION BY MR. SWILLEY**

11 Q. Thank you. Please state your name for the record.

12 A. Mary Lee Ross.

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

14 A. First Street.

15 Q. Okay. And Ms. Ross, what is your familial relation to
16 Henry Ross?

17 A. He is my oldest son.

18 Q. He is your oldest son. Ms. Ross, does Henry live with
19 you?

20 A. Yes.

21 Q. Yes, okay. Ms. Ross, let me take you back to November
22 26th, Thanksgiving of 2009. Do you recall that day?

23 A. Yes.

24 Q. Okay. And where did y'all go that day for
25 Thanksgiving dinner?

MARY LEE ROSS - DIRECT EXAMINATION

231

1 A. We went to my niece's house out in I guess you call it
2 the Pineville section of Darlington.

3 Q. Yes, ma'am.

4 A. Uh-huh.

5 Q. And how long were y'all there for?

6 A. Oh, we were there all afternoon practically till about
7 maybe 10:00 that night.

8 Q. Ten o'clock that night? And then did everyone ride
9 home together?

10 A. Well different ones --- we had different cars, but
11 everyone who lives in my house rode you know in the
12 same car.

13 Q. And who at the time was living in your house with your
14 family?

15 A. Myself, my husband, my youngest daughter Kimberly, her
16 two children, Bryan my youngest son.

17 Q. And Henry also?

18 A. And Henry.

19 Q. Okay. Thank you. Ms. Ross, when you got back to your
20 home that night, everybody who lives at your hose was
21 there; correct?

22 A. Right.

23 Q. And Ms. Ross, how big is your house?

24 A. It's three bedrooms, one bathroom, living room,
25 kitchen.

MARY LEE ROSS - DIRECT EXAMINATION

232

1 Q. So it is a one story home?

2 A. It is a one story, uh-huh.

3 Q. So it is not very big?

4 A. Not very.

5 Q. So it is easy to see and know what is going on most of
6 the time. You would know who is there --

7 **MS. PARKER:** Objection, Your Honor, leading.

8 **THE COURT:** Sustained. Your witness, Mr. Swilley.

9 **MR. SWILLEY:** I apologize.

10 Q. Ms. Ross, do you know who is there most of the time?

11 A. Most of the time, yes. Uh-huh.

12 Q. Okay. Is there a front door and a back door?

13 A. Yes.

14 Q. Okay. Can you usually hear --- Can you hear people
15 coming in and out of those doors?

16 A. Well mostly you know if I heard the voices I know who
17 is there. You know, most of the time I am in my room
18 looking at television you know, because they're looking
19 at something that I don't want to look at.

20 Q. Ms. Ross, that night who was at your home who was not
21 your immediate family?

22 A. Okay, well I call him Iron, but it is Terry Commander,
23 my son at the times girlfriend, Bryan's girlfriend
24 Shakeetha.

25 Q. Okay.

MARY LEE ROSS - DIRECT EXAMINATION

233

1 A. And Travis Benjamin.

2 Q. Okay. What were they doing?

3 A. Well, they were in the front room playing cards and I
4 think they were looking at the wrestling.

5 Q. Wrestling?

6 A. Wrestling.

7 Q. Professional wrestling?

8 A. Uh-huh.

9 Q. Okay. Now what time did you go to bed that night?

10 A. Well, I went in my room about I guess about 9:00,
11 because I didn't want to look at them playing wrestling
12 or whatever. So I laid down and look at television for
13 a while. So I say I was getting up early because I
14 knew I was going to black Friday. So I laid down and
15 looked at television until about 11:00 I guess, 12:00.
16 And then I turned my lights out.

17 Q. Okay.

18 A. But I could still hear the voices around there because
19 they were making a lot of noise.

20 Q. I understand. Ms. Ross, what time did you wake up to
21 go shopping the next morning?

22 A. Three o'clock.

23 Q. Three o'clock a.m.?

24 A. Uh-huh.

25 Q. And where did you go?

MARY LEE ROSS - DIRECT EXAMINATION

234

1 A. When I got up or just when I left home?

2 Q. To what city did you go?

3 A. Oh, I went to Florence. I went to Wal-Mart, Old Navy
4 and K-Mart.

5 Q. And that is Florence, the City of Florence?

6 A. Uh-huh.

7 Q. And who accompanied you on that shopping trip?

8 A. My husband, Henry, and Kimberly. Because when I got up
9 I knocked on Henry's door.

10 Q. Henry Ross Jr., go with you?

11 A. Henry Ross, Jr., uh-huh and Henry.

12 Q. And Ms. Ross, did Henry have any money with him?

13 A. No, I didn't see any.

14 Q. And okay. So you didn't see five twenty dollar bills
15 in his possession?

16 A. No.

17 Q. Ms. Ross, let me go back to the 26th of November of
18 '09. Can you identify that item?

19 A. That is the shirt Henry was wearing, Henry, Jr.

20 Q. And that is the shirt Henry was wearing?

21 A. The whole day. When we went to Thanksgiving dinner,
22 and the same thing he had on when we came home and when
23 we went shopping, because he didn't --- he didn't
24 undress. He didn't pull his clothes off.

25 Q. And the last time you saw him was Henry wearing this

MARY LEE ROSS - CROSS EXAMINATION

235

1 shirt the last time you saw him?

2 A. Yes.

3 Q. Okay.

4 MR. SWILLEY: Your Honor, at this time I would move
5 to have this item moved into evidence as Defense Exhibit 1.

6 THE COURT: Any objection, Ms. Parker?

7 MS. PARKER: No objection, Your Honor.

8 THE COURT: All right. Admitted into evidence as
9 Defense Exhibit Number 1.

10 WHEREUPON, DEFENSE EXHIBIT

11 NUMBER 1 IS MARKED AND

12 ADMITTED INTO EVIDENCE WITHOUT

13 OBJECTION.

14 MR. SWILLEY: Thank you, Ms. Ross. I have no
15 further questions. Please answer any questions Mr. Holt or
16 Ms. Parker may have.

17 THE COURT: Cross examination.

18 MS. PARKER: Briefly, Your Honor.

19 CROSS EXAMINATION BY MS. PARKER

20 Q. Ms. Ross, wouldn't it be correct to say that you love
21 your son Henry very much?

22 A. Yes, I do.

23 Q. And wouldn't you say you raised him from a baby into
24 the young man or man he is today and watched him grow
25 up?

MARY LEE ROSS - CROSS EXAMINATION

236

1 A. Uh-huh, yes.

2 Q. And Ms. Ross, y'all lived at First Street your
3 whole life?

4 A. Right. Well, since my husband and I was married.

5 Q. Okay. And Henry I guess even into his thirties was
6 still living at the home with you and your husband and
7 your other children; is that correct?

8 A. Yes, he was.

9 Q. Now, on the night of November 26th, is it your
10 testimony that you went into your bedroom at
11 approximately 9:00 p.m., you say you watched t.v. in
12 your bedroom before you go to sleep?

13 A. Yes.

14 Q. Is that correct?

15 A. Uh-huh.

16 Q. So you went into your bedroom around 9:00 p.m., and you
17 testified just a few minutes ago that you probably
18 dozed off and went to sleep somewhere around 11:00 or
19 midnight?

20 A. I didn't say I went to sleep, that's when I turned my
21 lights out. I turned my light out. Uh-huh.

22 Q. Ms. Ross, did you go to sleep at any point that night?

23 A. Well, I guess off and on dozing. I didn't want to be
24 late.

25 Q. Ms. Ross, based on your testimony wouldn't it be

MARY LEE ROSS - CROSS EXAMINATION

237

1 correct to say that the last time you laid eyes on
2 Henry that night was prior to 9:00 p.m. before you went
3 into your bedroom and shut the door; is that correct?

4 A. Yes.

5 Q. And after 9:00 p.m. you can't exactly speak as to his
6 whereabouts were between 9:00 p.m. and you getting up
7 at 3:00 a.m. to go black Friday shopping; is that
8 correct?

9 A. Well, during the time if I went to sleep now I did hear
10 voices, his voice. Because like I said, they was
11 making noises.

12 Q. Yes, ma'am. But during that time you were in and out
13 of sleep; is that correct --- up until 3:00 a.m.?

14 A. Probably yes.

15 Q. You testified that there was some other people at the
16 house, are those friends of his, Terry Commander,
17 Travis Benjamin, that's correct?

18 A. Uh-huh.

19 Q. They are Henry's friends?

20 A. Uh-huh.

21 **MS. PARKER:** Court's indulgence.

22 **THE COURT:** All right.

23 **(PAUSE.)**

24 Q. Ms. Ross, just a few minutes ago this shirt,
25 Defendant's Exhibit was moved into evidence. Does

MARY LEE ROSS - CROSS EXAMINATION

238

1 Henry own any black clothing?

2 A. I don't understand you.

3 Q. Does Henry own any black clothing, any black shirts?

4 A. No.

5 Q. He doesn't own anything black?

6 A. Not that I can recall.

7 Q. That he would wear on his upper body like a shirt, or
8 any type of jacket?

9 A. No.

10 Q. Ms. Ross, you have been present through the first part
11 of this trial; is that correct?

12 A. Right.

13 Q. Would you agree that this white toboggan is your sons?

14 A. Yes.

15 Q. And this is State's Exhibit 20.

16 A. He came to the house to get and give to the officer.

17 Q. That is your son's toboggan?

18 A. Uh-huh.

19 Q. Ms. Ross, were you present in the courtroom when we
20 watched the video earlier?

21 A. Yes.

22 Q. Did you observe like all the rest of us that in that
23 video of your son wearing a black jacket in that video;
24 did you see that?

25 A. No, I couldn't from back there no. I have cataracts

1 that I have to have removed, and I just can't see some
2 things.

3 Q. Yes, ma'am.

4 MS. PARKER: I have no further questions.

5 THE COURT: Redirect?

6 MR. SWILLEY: Briefly, Your Honor.

7 REDIRECT EXAMINATION BY MR. SWILLEY

8 Q. Ms. Ross, you said that that night you heard voices.
9 Did you hear Henry's voice?

10 A. Yes.

11 Q. And you know what Henry's voice sounds like, right?

12 A. Yes, I do.

13 MR. SWILLEY: Nothing further.

14 THE COURT: Re-cross?

15 MS. PARKER: No, Your Honor.

16 THE COURT: All right. Thank you, ma'am. You may
17 step down.

18 All right. Mr. Swilley, call your next witness.

19 MR. SWILLEY: The defense calls Henry Ross, Sr.

20 THE COURT: All right. Mr. Ross, come around please.

21 WHEREUPON, HENRY ROSS, SR.

22 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

23 MR. ROSS, SR.: I do.

24 DIRECT EXAMINATION BY MR. SWILLEY

25 Q. Please state your name for the record, sir.

HENRY JAMES ROSS, SR. - DIRECT EXAMINATION

240

1 A. Henry James Ross, Senior.

2 Q. Mr. Ross, what is your address?

3 A.

4 Q. And what is your relationship to the Defendant, Henry
5 James Ross, Junior?

6 A. I'm his father.

7 Q. Mr. Ross, were you living at that address on November
8 26th, 2009?

9 A. Yes.

10 Q. Mr. Ross, did you accompany the family to Thanksgiving
11 dinner that day?

12 A. Yes, we did.

13 Q. And did you return with the family back to your
14 address?

15 A. Yes.

16 Q. Mr. Ross, was Henry with you?

17 A. Yes.

18 Q. Mr. Ross, what time did you go to bed that night?

19 A. I didn't.

20 Q. You stayed up all night?

21 A. Yes.

22 Q. What were you doing?

23 A. We was playing a card game you call dirty hearts.

24 Q. Who was playing that card game with?

25 A. It was me, Henry, Iron, I call him Iron, and Travis,

1 and my youngest son.

2 Q. Is that Bryan?

3 A. Bryan.

4 Q. Okay. Do you remember who was winning?

5 A. Once in a while, you know, I win a hand --- I mean,
6 everybody wins a hand.

7 Q. You do recall that night; is that correct?

8 A. Oh, yeah.

9 Q. Are you more of a night owl, would you say?

10 A. Yes.

11 Q. Mr. Ross, did you wake Henry up that morning to go
12 shopping?

13 A. I wake him up at 3:00.

14 Q. You recall that clearly?

15 A. Oh, yeah.

16 Q. Do you love Henry?

17 A. You bet I do.

18 Q. If he was in the wrong would you show up here and lie
19 for him?

20 A. Oh, no, no.

21 Q. Mr. Ross, do you recall the clothes Henry was wearing
22 that day?

23 A. Yes.

24 Q. Is this item, this shirt right here what he was
25 wearing?

HENRY JAMES ROSS, SR. - CROSS EXAMINATION

242

1 A. Surely is.

2 Q. Is that the item of clothing you saw him wearing that
3 night when you woke him up?

4 A. Yes.

5 Q. Mr. Ross, at any time did you ever see Henry with any
6 twenty dollar bills?

7 A. No.

8 Q. Did he have a lot of cash on him?

9 A. No.

10 Q. Okay. Thank you, Mr. Ross. Please answer any
11 questions the Solicitor may have.

12 CROSS EXAMINATION BY MS. PARKER

13 Q. Mr. Ross, wouldn't you agree with me that you can't
14 control everything your son does, can you?

15 A. I think I can.

16 Q. He's no longer a child, isn't that correct?

17 A. No, he's not.

18 Q. As a matter of fact how old is Henry?

19 A. He's thirty-three.

20 Q. How old would he have been in November of 2009?

21 A. Thirty-two or thirty-one.

22 Q. Isn't it correct that he still lived at home at that
23 time, correct?

24 A. Yes.

25 Q. Now, you testified just a few minutes ago for Mr.

HENRY JAMES ROSS, SR. - CROSS EXAMINATION

243

1 Swilley that you stayed up all night that Thanksgiving
2 night going into the early morning of Black Friday,
3 November 27th, is that correct?

4 A. Yes.

5 Q. And that's your testimony here today that you stayed up
6 all night?

7 A. Yes.

8 Q. And you said that you were playing cards with Travis,
9 Henry, and you named one other individual. I apologize
10 I don't have that name. But there was one other
11 person, isn't that right?

12 A. Yes, I call him Travis.

13 Q. What kind of card game were y'all playing?

14 A. We were playing a game called dirty hearts.

15 Q. Dirty hearts?

16 A. Yes.

17 Q. Is that a game where you have like have books, and then
18 you keep up with points, kind of like spades? I'm not
19 familiar with hearts.

20 A. It is about like spades.

21 Q. It's about like spades?

22 A. Uh-huh

23 Q. How long would you say y'all playing cards that night?

24 A. Well, we played cards until about 1:30 or 2:00.

25 Q. You said the game ended about 1:30 or 2:00?

HENRY JAMES ROSS, SR. - CROSS EXAMINATION

244

1 A. Yes.

2 Q. I thought a few minutes ago you testified y'all were
3 playing cards all night?

4 A. I said I was up all night.

5 Q. You were up all night. So it's your testimony that you
6 didn't go to sleep after you finished playing cards.

7 A. No.

8 Q. At what point that night did Henry go to sleep?

9 A. He said he was going to lay down and take him a nap.
10 It was maybe 2:00 or 2:05.

11 Q. It's your testimony that you woke him up? I apologize.
12 Did you wake him up or did your wife wake him up?

13 A. I did.

14 Q. You did. Mr. Ross, do you recall speaking to Captain
15 Watson with the police department on November 30, 2009,
16 the day he came out to the house and was initially
17 looking for Henry?

18 A. Yes.

19 Q. Do you remember speaking with him?

20 A. Yes.

21 Q. Mr. Ross, did y'all have a conversation on that day
22 about what was going on that night and what time you
23 went to bed and where Henry was and so forth? Isn't it
24 true that y'all had a conversation that day?

25 A. Yes, we did.

1 Q. Do you recall telling Mr. Watson --

2 MR. SWILLEY: Objection, Your Honor, hearsay.

3 THE COURT: Will be glad to hear from you.

4 MS. PARKER: Your Honor, I would say a prior consistent
5 statement would not be.

6 THE COURT: Rule 613, objection is overruled. I think
7 this is impeachment purposes and she can ask him about
8 whether he has made a prior statement under 613, and can
9 follow the rule depending on his answer. Objection
10 overruled.

11 MS. PARKER: Thank you, Your Honor.

12 Q. Mr. Ross, you state that you do recall speaking to Mr.
13 Watson on that date on November 30th, 2009, when he
14 came out to the house and was looking for Henry; is
15 that correct?

16 A. Yes, I did.

17 Q. And you also admit that you recall talking about the
18 timeline and events of that night and kind of what
19 was going on around the household that night; isn't
20 that true?

21 A. Yes.

22 Q. And do you recall telling Mr. Watson that you yourself
23 went to bed at about 1:00 a.m., and at that time Henry
24 was home. But then you woke up and y'all got ready to
25 go Black Friday shopping about 3:30 a.m. Do you recall

HENRY JAMES ROSS, SR. - CROSS EXAMINATION

246

1 telling Mr. Watson that you did go to sleep that night?

2 A. No.

3 Q. But you do recall speaking with him that day?

4 A. Yes, I do.

5 Q. Mr. Ross, does Henry own any black shirts or jackets?

6 A. I don't think so.

7 Q. Were you also present in the courtroom earlier when the
8 video tape was being shown this morning?

9 A. Yes.

10 Q. Did you observe what your son was wearing when he was
11 talking to the police officers on that date?

12 A. Yes, I saw it.

13 Q. Did it look like he was wearing a black jacket, or
14 black hoodie type sweatshirt?

15 A. That's what it looked like.

16 Q. I have no further questions.

17 **THE COURT:** Redirect?

18 **REDIRECT EXAMINATION BY MR. SWILLEY**

19 Q. Mr. Ross, you never gave -- did you ever give a written
20 statement about this matter?

21 A. No.

22 Q. There was never a formal statement that you gave?

23 A. No.

24 **MR. SWILLEY:** Thank you, sir. Nothing further.

25 **THE COURT:** Re-cross, Ms. Parker?

BRYAN ROSS - DIRECT EXAMINATION

247

1 MS. PARKER: None, Your Honor.

2 THE COURT: All right. You may step down. You may
3 call your next witness.

4 MR. SWILLEY: Your Honor, Defense calls Bryan Ross.

5 WHEREUPON, BRYAN ROSS

6 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

7 MR. BRYAN ROSS: I do.

8 DIRECT EXAMINATION BY MR. SWILLEY

9 Q. State your name for the record, sir.

10 A. Bryan Ross.

11 Q. Bryan, where do you live?

12 A.

13 Q. And what is your relation to Henry Ross?

14 A. My brother.

15 Q. Are you his younger brother?

16 A. Yes, sir.

17 Q. At the time of November 26th, 2009, were you living at
18 that same address with Henry?

19 A. Yes, sir.

20 Q. Bryan, you went to Thanksgiving dinner with the family
21 that day?

22 A. Yes, sir.

23 Q. What time did y'all get back, do you think?

24 A. About 9:00.

25 Q. That evening?

BRYAN ROSS - DIRECT EXAMINATION

248

1 A. Yes, sir.

2 Q. When y'all got back what were you doing?

3 A. Started playing cards.

4 Q. What's the card game?

5 A. Dirty hearts.

6 Q. What else did you do that night?

7 A. Playing cards, sitting around talking and laughing,
8 watching tv.

9 Q. Bryan, do you remember what type of shirt Henry was
10 wearing that day?

11 A. Shirt.

12 Q. Was this the shirt he was wearing?

13 A. Correct.

14 Q. Do you remember that clearly?

15 A. Correct.

16 Q. Bryan, let me ask you another question. You and Henry
17 are about the same size, are you not?

18 A. Yeah.

19 Q. Do you ever share clothes with him?

20 A. Yeah.

21 Q. And that video statement --- were you here for that
22 video statement?

23 A. No.

24 Q. Okay. Bryan, do you have a black jacket?

25 A. No.

1 Q. Do you own any black clothes?

2 A. A couple of black T-shirts.

3 Q. And would Henry sometimes borrow your clothing?

4 A. He would ask first.

5 Q. Bryan, can you remember Henry being at the house around
6 1:45, 2:00?

7 A. Correct.

8 Q. Do you remember that?

9 A. Yes.

10 Q. Do you remember that clearly?

11 MS. PARKER: Objection, Your Honor, he's leading the
12 witness.

13 THE COURT: Sustained. Don't lead him, Mr. Swilley.

14 And I'll ask the jury to disregard the question and the
15 answer. Ask him the open-ended question as you must in
16 examining him on direct.

17 Q. Bryan, what time did you go to bed that night?

18 A. About 4:30 or 5:00 that morning.

19 Q. Did you go shopping that day with the family?

20 A. No, I stayed back and watched the kids.

21 Q. Were you drinking that day?

22 A. No.

23 Q. So you had a clear head?

24 A. Correct.

25 MR. SWILLEY: Thank you, sir. Please answer any

BRYAN ROSS - CROSS EXAMINATION

250

1 questions the Solicitor may have.

2 **THE COURT:** Cross examination?

3 **MS. PARKER:** Briefly, Your Honor.

4 **CROSS EXAMINATION BY MS. PARKER**

5 Q. Bryan, you are Henry's younger brother; is that right?

6 A. Yes, ma'am.

7 Q. How much older than you?

8 A. I would say about ten years.

9 Q. It is your testimony that y'all share clothes you and
10 your brother; is that right?

11 A. Yeah.

12 Q. Now, and you say you don't own a black jacket either;
13 is that true?

14 A. No, I don't.

15 Q. Now, it's your testimony that y'all were playing cards.
16 Was Henry there the whole time that night?

17 A. Whole time.

18 Q. He never went to see his girlfriend that night?

19 A. No, he didn't.

20 Q. Were any video games played that night?

21 A. Yes, we did. We played for like about an hour or two.

22 Q. And video game froze up; isn't that right?

23 A. Yeah, playing on the X-box 360.

24 Q. And then it's your testimony that y'all started playing
25 cards?

TRAVIS BENJAMIN - DIRECT EXAMINATION

251

1 A. Yeah.

2 Q. Now, what time did your daddy go to bed that night?

3 A. I say he laid down between 1:00 and 2:00.

4 Q. Okay. So he did go to sleep that night?

5 A. I said he laid down. I didn't say he go to sleep.

6 Q. But he laid down, is that your testimony?

7 A. Yeah.

8 MS. PARKER: No further questions.

9 THE COURT: Redirect?

10 MR. SWILLEY: No, Your Honor.

11 THE COURT: Thank you. You may step down. Call your
12 next witness.

13 MR. SWILLEY: Your Honor, the defense calls Travis
14 Benjamin.

15 WHEREUPON, TRAVIS BENJAMIN

16 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

17 MR. BENJAMIN: I do.

18 DIRECT EXAMINATION BY MR. SWILLEY

19 Q. State your name for the record please.

20 A. Travis Benjamin.

21 Q. Travis, where are you from?

22 A. Baltimore.

23 Q. Baltimore, is that what you said?

24 A. My home town.

25 Q. Okay. Where do you live now?

TRAVIS BENJAMIN - DIRECT EXAMINATION

252

1 A. Darlington.

2 Q. What's your street address?

3 A. .

4 Q. All right. I need you to slow down a little bit and
5 talk into the mic. Say that again one more time.

6 A. .

7 Q. . And is that in the same neighborhood
8 as the Ross family?

9 A. Right next door.

10 Q. Next door. Are you familiar with that area?

11 A. Yes, sir.

12 Q. Travis, did you go over to the Ross' house Thanksgiving
13 night?

14 A. When they came back home.

15 Q. Do you remember about what time that was?

16 A. No, sir.

17 Q. Do you recall if it was night time?

18 A. It was night.

19 Q. And were you playing cards with people at their house?

20 A. Yes, sir.

21 Q. Do you remember Henry being there?

22 A. Yes, sir.

23 MS. PARKER: Objection, Your Honor. He's leading the
24 witness.

25 THE COURT: Sustained.

TERRY BURGESS - DIRECT EXAMINATION

253

1 Q. Travis, do you remember the shirt Henry was wearing
2 that day?

3 A. No, sir, not really.

4 Q. Do you have a clear recollection of that night?

5 A. A little bit.

6 MR. SWILLEY: Nothing further from this witness.

7 THE COURT: Ms. Parker?

8 MS. PARKER: I beg the Court's indulgence just a
9 moment.

10 THE COURT: All right.

11 MS. PARKER: I have no questions of this witness, Your
12 Honor.

13 THE COURT: Thank you. You may step down. Mr.
14 Swilley, you may call your next witness.

15 MR. SWILLEY: Your Honor, the Defense calls Mr. Terry
16 Burgess.

17 WHEREUPON, TERRY BURGESS

18 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

19 MR. BURGESS: I do.

20 DIRECT EXAMINATION BY MR. SWILLEY

21 Q. State your name for the record, sir.

22 A. Terry Burgess.

23 Q. Terry, how old are you?

24 A. Twenty-two.

25 Q. Where are you from?

TERRY BURGESS - DIRECT EXAMINATION

254

1 A. Darlington, South Carolina.

2 Q. Have you lived there your whole life?

3 A. Yes, sir.

4 Q. What's your address?

5 A. .

6 Q. Where is that in relation to the Ross house that's been
7 mentioned?

8 A. It's close. It's like right up the same road.

9 Q. Can you walk there?

10 A. Yes and I always do.

11 Q. Terry, how do you know Henry Ross?

12 A. He's my cousin.

13 Q. First cousin?

14 A. Yes.

15 Q. Known him all your life?

16 A. Yes.

17 Q. Did you eat Thanksgiving with him that day?

18 A. Yes, sir.

19 Q. And what did you guys do after dinner?

20 A. Went back to the house.

21 Q. Your house?

22 A. No, their house.

23 Q. Were you playing cards with them?

24 A. Yes.

25 Q. Do you remember that clearly?

TERRY BURGESS - DIRECT EXAMINATION

255

1 A. Yes, sir.

2 Q. How long were you over at the Ross house?

3 A. I stayed over until like 5 o'clock in the morning.

4 Q. Who do you hang around with more Bryan or Henry?

5 A. Bryan.

6 Q. And why is that?

7 A. He's my age, younger.

8 Q. I understand. And do you recall seeing Henry at around
9 2:00 in the morning?

10 A. Yes, sir.

11 MS. PARKER: Objection, Your Honor. He's leading his
12 witness.

13 MR. SWILLEY: Your Honor, it is just a yes or no
14 question.

15 MS. PARKER: It is still leading.

16 THE COURT: All right. Don't suggest the answer.
17 Just ask him --- the question is all right. There's nothing
18 wrong with the question. Objection overruled.

19 Q. Do you remember the shirt Henry was wearing?

20 A. Yes, sir.

21 Q. Is this the shirt he was wearing?

22 A. That's it.

23 Q. Terry, do you know of anybody else --- first let me ask
24 you this question. Are you familiar with --- have you
25 heard about this intrusion in Ms. Williamson's home?

TERRY BURGESS - DIRECT EXAMINATION

256

1 A. No, sir.

2 Q. Okay. So you don't have any knowledge of it? I mean --

3 A. (Affirmative response.)

4 THE COURT: Answer out. You have to give a verbal
5 response. Answer out. You can't shake your head.

6 A. Yes, sir.

7 Q. Okay. Have you heard anybody else in the community
8 brag about doing this?

9 A. Yes, sir.

10 MS. PARKER: Objection, Your Honor.

11 THE COURT: Wait a minute. Wait a minute. Wait a
12 minute. What's the objection?

13 MS. PARKER: Hearsay.

14 THE COURT: Sustained.

15 MR. SWILLEY: Your Honor, would that be a statement
16 against interest of someone else if declared unavailable?

17 THE COURT: You have to show me he is unavailable.
18 The objection is sustained.

19 MR. SWILLEY: Nothing further. Please answer any
20 questions the Solicitor may have.

21 MS. PARKER: No questions of this witness, Your Honor.

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

23 MR. SWILLEY: Defense rests, Your Honor.

24 THE COURT: Anything in reply?

25 MS. PARKER: Yes, Your Honor. The state would like to

DANNY WATSON - REPLY EXAMINATION BY THE STATE

257

1 briefly offer Captain Danny Watson to testify in reply.

2 **THE COURT:** All right. He just stepped out.

3 **(PAUSE.)**

4 **MS. PARKER:** Your Honor, at this time the state would
5 like to call Sergeant Valazak and Captain Danny Watson, but
6 I can call --- well, there he is, Captain Watson.

7 **THE COURT:** All right. Come around, Mr. Watson.
8 Testify reply now.

9 **WHEREUPON, DANNY WATSON**

10 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

11 **CAPTAIN WATSON:** I do.

12 **REPLY EXAMINATION BY MS. PARKER**

13 Q. Mr. Watson, where are you employed?

14 A. At the Darlington City Police Department.

15 Q. What's your position there?

16 A. I'm a captain.

17 Q. Specifically your involvement in this case, did you
18 have an occasion to go speak to Mr. Henry Ross, Senior
19 on November 30th of 2009?

20 A. Yes, ma'am, I did.

21 Q. And would you tell us about that when you went to go
22 speak to him? First of all, what were you doing at his
23 residence?

24 A. I know the family very well. I've had occasion to
25 visit with them on ---

DANNY WATSON - REPLY EXAMINATION BY THE STATE

258

1 **MR. SWILLEY:** Objection.

2 **THE COURT:** What's the objection?

3 **MR. SWILLEY:** I think that might be something outside
4 the scope of the question, Your Honor.

5 **THE COURT:** I assume that Ms. Parker knows what she's
6 doing and what she's getting into and knows the pitfalls.
7 Go ahead, Ms. Parker.

8 Q. Captain Watson, I want to talk about the reason you
9 went just on November 30th, 2009, that you went to the
10 Ross residence on First Street, why did you go?

11 A. I felt comfortable talking to him so I went and talked
12 to him about this incident.

13 Q. Who did you talk to?

14 A. I talked to Mr. Henry Ross, Senior.

15 Q. And did Mr. Henry Ross, Senior tell you anything about
16 the night or the --- the night of Thanksgiving and the
17 early morning of Friday, November 27th about who was in
18 his household?

19 A. Yes, ma'am, he did.

20 **MR. SWILLEY:** Objection, hearsay.

21 **THE COURT:** Who were you talk -- rephrase the question.
22 Ask the question again and let me hear it.

23 Q. What did Mr. Henry Ross, Senior tell you, if anything,
24 about --

25 **THE COURT:** All right, that objection is overruled,

DANNY WATSON - REPLY EXAMINATION BY THE DEFENSE 259

1 because she asked Mr. Ross, Senior the question regarding
2 what he told Mr. Watson and she has a right to prove it by
3 extrinsic evidence if it's different from what Mr. Ross,
4 Senior's question was under 613.

5 The objection is overruled. You may ask the question.

6 Q. Please tell the Court what Mr. Henry Ross, Senior told
7 you on that occasion when you spoke with him.

8 A. He told me that between 1:00 a.m., which was about when
9 he went to bed and 3:30 that he did not know where
10 Henry Ross, Junior was. He said that when he went to
11 bed at about 1:00 he was there and that when he woke up
12 at 3:30 he was there. Between those two and a half
13 hours between 1:00 and 3:30 he did not know.

14 Q. Okay. Thank you, Captain Watson.

15 A. Yes, ma'am.

16 **MS. PARKER:** I have no further questions.

17 **THE COURT:** Mr. Swilley?

18 **REPLY EXAMINATION BY MR. SWILLEY**

19 Q. Captain Watson, you did not get a recorded statement
20 from Mr. Henry Ross, Sr., did you?

21 A. No, sir.

22 Q. He didn't give a written statement?

23 A. No, sir.

24 Q. Just what he told you?

25 A. Yes, sir. It was what he told me.

THE STATE V JAMES HENRY ROSS, JR.

260

1 **MR. SWILLEY:** Nothing further.

2 **THE COURT:** Redirect?

3 **MS. PARKER:** No, Your Honor.

4 **THE COURT:** Thank you, Mr. Watson.

5 **CAPTAIN WATSON:** Thank you, sir.

6 **MS. PARKER:** Your Honor, I'm not going to call Sergeant
7 Valazak. That will be all.

8 **THE COURT:** All right. So that's all the testimony in
9 reply on behalf of the State? Counsel, come up.

10 (Whereupon, a bench conference was held in the
11 presence of the jury, but out of the hearing of the jury.)

12 **THE COURT:** Ladies and gentlemen of the jury panel,
13 you have now heard all of the evidence in this case. And
14 there's certain legal matters that I now need to take up,
15 and I'm going to do that. And that will take me awhile.
16 And then after I conclude those normally we would go into
17 the matters of arguments of counsel and the instructions on
18 the law by the Court.

19 That will run us late in the afternoon and it would be
20 after 4:00 or later before you got this case or your
21 consideration. And I want you to feel that you have as much
22 time to make a decision in this matter as you feel you need
23 and do not want you to be under the constraints of late in
24 the afternoon aside from the fact that I've got to do some
25 things before I can let you begin your deliberations. So

THE STATE V JAMES HENRY ROSS, JR.

261

1 I'm going to go ahead and recess for the afternoon and allow
2 you to come back in the morning at 9:30 at which time we
3 will do arguments and charge and be ready to go forward.

4 Again, over the evening recess do not discuss the case
5 among yourselves. Do not when you are reassembling in the
6 jury room, do not talk with anyone about it. Do not talk
7 with your family or your friends. And do not allow anyone
8 to discuss it with you. And do not read any news stories
9 about this case. But get a good night's sleep, come back
10 tomorrow morning at 9:30 and we'll conclude this case
11 tomorrow.

12 Thank you. You are free to go.

13 **BAILIFF:** Come this way, please.

14 **THE COURT:** Everyone else remain where they are
15 please.

16 (Whereupon the jury exits the courtroom at 3:10
17 p.m.)

18 **MOTIONS**

19 **THE COURT:** All right. Counsel, motions on behalf of
20 the defendant, Mr. Swilley.

21 **MR. SWILLEY:** Your Honor, I renew our motion for a
22 directed verdict on the grounds of there is no competent
23 evidence to indicate the guilt of the defendant on all
24 Indictments.

25 **THE COURT:** All right. Again, under Rule 19, the

THE STATE V JAMES HENRY ROSS, JR.

262

1 test is whether or not there is evidence in the record, not
2 whether or not the evidence is believable, that is the
3 jury's providence. And if I were to grant a directed
4 verdict, I would be making a judgment on the facts. There
5 is evidence in the record to prove the elements of all of
6 the offenses alleged in the four Indictments.

7 And therefore, I would respectfully deny the motion.

8 All right. We will do arguments and charge in the
9 morning. Ms. Parker, are you going to waive opening?

10 **MS. PARKER:** Yes, Your Honor.

11 **THE COURT:** All right. Since the defense presented
12 evidence, you do have a right to argue last.

13 Mr. Swilley, how long do you need for closing
14 arguments?

15 **MR. SWILLEY:** Your Honor, I can't see me going
16 beyond twenty minutes.

17 **THE COURT:** Ms. Parker?

18 **MS. PARKER:** Twenty for me.

19 **THE COURT:** All right. About twenty minutes apiece,
20 and then we will charge in the morning.

21 All right. Counsel, my intention will be to charge my
22 general felony charge which includes, presumption of
23 innocence, burden of proof, reasonable doubt, and
24 credibility. Also, to charge direct and circumstantial
25 evidence. And also the four offenses of burglary under

1 --and I will use Judge Anderson's charge for armed robbery.
2 I will also use Judge Anderson's charge for possession of a
3 weapon during the commission of a violent crime, the same
4 thing. The assault and battery first though I believe
5 counsel, you tell me, but it seems like to me that the
6 correct charge in that case would be the amendments to--
7 let me find it. Section 16-3-600, specifically the correct
8 charge would be §16-3-600(c)(1) which is the offense of
9 assault and battery in the first degree. That appears that
10 would be the correct charge for the assault and battery
11 charge. Do you agree with that, Ms. Parker?

12 **MS. PARKER:** Yes, Your Honor.

13 **THE COURT:** Assault and battery in the first degree,
14 and do you agree with that Mr. Swilley?

15 **MR. SWILLEY:** I do, Your Honor.

16 **THE COURT:** And then I will also charge the
17 voluntariness of the confession, the burden of proof on the
18 state to prove beyond a reasonable doubt, the defendant not
19 testifying, and alibi. Are there any other issues that the
20 state would request for charge on, Ms. Parker?

21 **MS. PARKER:** No, Your Honor, not at this time.

22 **THE COURT:** All right. Mr. Swilley.

23 **MR. SWILLEY:** There is not, Your Honor.

24 **THE COURT:** All right. Counsel, step up here just a
25 minute and let me look at the verdict form. I know one that

THE STATE V JAMES HENRY ROSS, JR.

264

1 we are going to have to get Ms. Carter to amend.

2 (Whereupon, a bench conference was held.)

3 **THE COURT:** Mr. Holt, we are going to take a recess
4 here in just a minute, and if you will tell Ms. Baugh that
5 we will be ready to go forward with Guilty Pleas at 3:30.

6 **MR. HOLT:** I will, judge.

7 **THE COURT:** All right. We will be in recess on this
8 matter then until 9:30 tomorrow morning.

9 (Whereupon, day three of trial was concluded at
10 3:17 p.m. on Thursday, February 3, 2011.)

11 **-- END OF DAY THREE OF TRIAL --**

12

THE STATE V JAMES HENRY ROSS, JR.

265

1 (Whereupon, Court reconvenes this trial at 9:30
2 a.m. on Friday, February 4, 2011.)

-- DAY FOUR OF TRIAL --

4 **THE COURT:** We are back on the record with The State
5 versus Henry James Ross, Jr. Mr. Ross is present in the
6 courtroom with his counsel, Mr. Swilley. The state is
7 present and represented by Ms. Parker.

8 I have been advised that all of the jurors are here,
9 and we are ready to resume.

10 Having completed all of the testimony yesterday, the
11 only two things remaining to be done are the arguments of
12 counsel, and the instructions on the law by the Court.

13 Since the defendant did present evidence, the defendant
14 will argue first, and then the state will have the right to
15 make the closing argument.

16 Anything before we bring the jury in Ms. Parker?

17 **MS. PARKER:** No, Your Honor.

18 **THE COURT:** Mr. Swilley?

19 **MR. SWILLEY:** There is not, Your Honor.

20 **THE COURT:** All right. Bring the jury in please.

21 (Whereupon, the jury enters the courtroom at 9:32
22 a.m. on Friday, February 4, 2011.)

23 **THE COURT:** All right. Good morning, ladies and
24 gentlemen, and thank you for your promptness in returning
25 and being here this morning.

THE STATE V JAMES HENRY ROSS, JR.

266

1 As I told you yesterday, we have completed all the
2 testimony in this case and there are only two things that
3 remain to be done. Those are the arguments of counsel and
4 the instructions on the law by the Court.

5 However, before we get into those, I need to ask you a
6 couple of questions. First of all, if anyone tried to talk
7 to you or approach you about this case in any manner
8 whatsoever over the evening recess, I will need to know
9 about it now. Negative response and that is good.

10 If anyone read any news stories, or seen anything in
11 the news media at all about this case over the evening, I
12 would also need to about that. Again, negative response,
13 and that is good.

14 Now, the only two things that remain to be done are for
15 the lawyers to make their closing arguments or summations to
16 you.

17 I will tell you now as I did at the first of this case
18 that the arguments of counsel are not evidence in this case.
19 They are simply the lawyers' views of what they think the
20 evidence shows. You will decide this case based upon the
21 evidence that you have heard from the witnesses who have
22 testified in this case as well as any exhibits that have
23 been introduced into evidence.

24 But the lawyers do have the duty, and the right and the
25 duty at this time to address you, and give you their views

CLOSING ARGUMENTS BY MR. SWILLEY

267

1 of what they think the evidence shows. When they have
2 concluded that, I will then instruct you on the law of South
3 Carolina, as it pertains to the facts of this case as you
4 may find those facts to be, and then you will be allowed to
5 go to your jury room to deliberate your verdict.

6 You will hear first from Mr. Swilley on behalf of the
7 defendant, and then from Ms. Parker on behalf of the state.

8 Mr. Swilley.

9 **MR. SWILLEY:** Thank you, Your Honor.

10 **CLOSING ARGUMENTS BY MR. SWILLEY**

11 **MR. SWILLEY:** Thank you, Your Honor. Good morning,
12 ladies and gentlemen. I know this is probably the last
13 place you want to be on a Friday morning but I appreciate
14 you being here. I appreciate your attention.

15 Now, back about the time that Ms. Lee originally left
16 Darlington and went to college, and about the time that I
17 was being born, the fast food chain Wendy's had a commercial
18 out, and you know I don't remember it, but I have seen
19 clips. And it is a clip of an older lady and she seems to
20 be examining some sort of hamburger from a competitor
21 saying, where's the beef, and that is supposed to be the big
22 joke. And I think some of you might even remember the
23 presidential campaign. But that is applicable in this case,
24 and I think I am going to make that my underlying theme.
25 Where's the beef, okay?

CLOSING ARGUMENTS BY MR. SWILLEY

268

1 Now, this case metaphorically speaking has no beef. And
2 the majority of what you have heard throughout the course of
3 this trial is talk. It is he said she said. There has been
4 testimony however there has not been a whole lot of tangible
5 evidence.

6 Now, the question that you have got to ask yourself and
7 Judge King throughout your charge and he releases you, you
8 have got to ask several questions.

9 First of all the main question is, is this enough? Is
10 this enough? Have I heard enough? Have I seen enough to
11 send this man to prison? That is the question that you have
12 got to ask yourself. Is this enough? If he were guilty, if
13 it was really Henry Ross that entered that house, wouldn't
14 there be more evidence than just what I have heard and seen?
15 Wouldn't they have found something else? You have got to
16 ask yourself is this the Darlington County, is this South
17 Carolina, and is this the United States of America that you
18 want to live in where the government will send a man to
19 prison off of what you have just heard and seen? I submit
20 to you that it is not. It is not enough. No beef. It is
21 just a hamburger bun with no patty. That is what this case
22 is.

23 Now, first you heard from Ms. Williamson. She got up
24 and gave her testimony. However, when she was first
25 interviewed directly after the incident, when she was all

CLOSING ARGUMENTS BY MR. SWILLEY

269

1 upset, and then later on that day when she was calm and had
2 time to collect her thoughts, in either of those statements
3 not one time did she mention that she ever saw her
4 assailant's face. I think that is probably pretty
5 important. I would submit to you that that is probably the
6 most important thing to put in there. I saw his face in the
7 half moon window, it was a slender face, and I saw it for
8 thirty-five or forty seconds. Do you not think that
9 assumption should be in there? That is extremely
10 important.

11 Now you also heard me question Ms. Williamson. She
12 testified that there was a chair moved. Somebody had taken
13 the chair and threw it through into the window. Put their
14 hands on the window panes, opened the windows where it was
15 cracked, where the one pane was broken, with their hand on
16 the window seal, climbed on in, put their hands all over the
17 house, and leave fingerprints everywhere, and not one print
18 was found or connected to Henry James Ross, Jr., not one.

19 Also, upon the investigation of the scene there was no
20 DNA evidence that was collected against Mr. Ross, none.
21 Even though as you heard, he voluntarily gave a sample of
22 his DNA to be analyzed at whatever might or would be found
23 at the scene of the crime. You all have got to remember Ms.
24 Williamson's testimony that when she went down to the
25 Darlington Police Department, she clicks through a bunch of

CLOSING ARGUMENTS BY MR. SWILLEY

270

1 pictures that is a bunch of pictures that we can't see and
2 compare for ourselves. She said I thought there might be
3 somebody, but I am not sure of it. That is the thing about
4 this. What other reason could she have picked him out of
5 that group of pictures, bearing in mind that she stated that
6 they had lived in this location their whole life, on the
7 same street? Now, I know Ms. Williamson left home in '83,
8 said she came back in '01, but she came home so frequently,
9 so sporadically, and Darlington she always called her home
10 even though she might be living in another city. She was
11 here often. But she had really lived in Darlington her
12 whole life.

13 Now, what are the odds -- what are the odds that you
14 live on the same street with somebody for over thirty years,
15 and you never see their face? Think about it. She was
16 looking through those pictures, and only when she came up on
17 and said it might be --- she might have recognized --- if
18 somebody is living on her street his entire life what are
19 the odds that she had never seen that face before some other
20 time while walking down the street, on a bicycle growing up,
21 selling candy bars from door to door? I mean what are the
22 odds that you had never seen that face before? The reason
23 she picked out the face of Henry Ross is because it is the
24 only face she is familiar with and he is the only person
25 that lives on her street four houses down. That is how she

CLOSING ARGUMENTS BY MR. SWILLEY

271

1 recognized him.

2 I would also like to call your attention to the
3 investigators with the Darlington Police Department that
4 they did a thorough, thorough investigation. If there was
5 any other evidence against Henry Ross, they would have found
6 it. The City of Darlington Police investigators are the
7 best in the four counties that I work, and that is a fact.
8 I am not saying that they are the most sophisticated, most
9 intelligent, most diligent, and most thorough. If there was
10 any other evidence against Henry Ross they would have found
11 it. They would have found it and showed it to you. If they
12 had found that knife it would have been up here. If they
13 had found fingerprints in that house, there would have been
14 testimony about it. There would have been testimony from an
15 expert. If they had found DNA you bet you would have seen
16 it. Any evidence, neighbors, anybody else saw Henry Ross go
17 in that house, you would have heard it. You would have
18 heard from them. If there had been anything else, they
19 would have found it and they would have showed it to you.
20 Because of that -- I am not just saying that.

21 Now, there is an elephant in the room. Okay? I know
22 what you are thinking. I know what you are thinking. How
23 are you going to explain this kid? All right, let's think
24 about this. Sergeant Valazak had probable cause to arrest
25 Henry, and the case to this point is flimsy. A picture she

CLOSING ARGUMENTS BY MR. SWILLEY

272

1 identified she is not sure. She brings him down to the
2 station, after his bond hearing. Okay? The case at this
3 point it is not very strong. How bad do you think that they
4 wanted Henry Ross? How bad did they need that interview?
5 How bad did they need him to say something to incriminate
6 himself? How bad did they need him, pretty bad. How bad
7 did they need to solve a crime of this magnitude, a crime
8 that doesn't happen that much in Darlington? Comparatively
9 the city of Darlington does not have bad crime. I've been
10 around that long. You don't hardly hear about stuff like
11 this going down in Darlington. How bad did they need to
12 solve a crime of this magnitude? Bad. Bad. They were
13 going to find the guy who did it. They were under a lot of
14 pressure. They had to get something else. I would also
15 like to call your attention -- and you have to remember now,
16 like Judge King said, the state has to prove beyond a
17 reasonable doubt that that statement was given voluntary
18 now. To give a statement they have to prove beyond a
19 reasonable doubt you are not to consider that. You are not
20 to consider it at all if it hasn't been proven to you.
21 Don't consider that at all if it hasn't been proven.

22 Now, nobody knows, what's going through Henry's head at
23 this time, nobody knows. But I will tell you this, nobody
24 knows but it is likely Henry at this time is panicking.
25 Maybe -- maybe if I give them what they want to hear, maybe

CLOSING ARGUMENTS BY MR. SWILLEY

273

1 if I tell them what they want, it will help them. They are
2 the police, they are here to protect and serve. Maybe they
3 will help me by telling them what they want to hear. Maybe
4 it will be alright, if I just do what they want. Maybe it
5 will be okay if I tell them what they want to hear, maybe it
6 will be okay after that. Henry is not an educated man. He
7 only went as far as the tenth grade. Does not have a lot of
8 formal education. Maybe --- maybe they will help. Wrong.

9 Now, if you recall, that Henry's made up version didn't
10 coincide -- it didn't corroborate with Ms. Williamson's
11 account of what happened to her. That is because he wasn't
12 there. He couldn't give a story to corroborate with her,
13 because he doesn't know. He wasn't there. He just told
14 them what he thought they wanted to hear. If Henry was
15 really there it would have been tit for tat. Everything he
16 said would have been everything she said. It didn't
17 coincide, they didn't corroborate each other. You heard
18 Henry, the question he was asked, and he just made something
19 up, and just said something. How much money did you get
20 from her? How much money did you get from her? I didn't
21 get any money. You heard a pause to each question and he
22 would say something. It just doesn't add up. It doesn't
23 corroborate.

24 And ladies and gentlemen, after you saw Henry's plan
25 fall through about what he was doing and thought it would

CLOSING ARGUMENTS BY MR. SWILLEY

274

1 help him, he got hysterical. He flipped out, he freaked
2 out, oh, my God, what have I done? And that is a reasonable
3 response. He thought in desperation if I give them what
4 they want to hear it will just be okay, and he was dead
5 wrong. And those two things, ladies and gentlemen are The
6 State of South Carolina versus Henry James Ross. Just those
7 two -- those two things.

8 Now you heard a lot of filler, you heard the 911 tape
9 of Ms. Williamson. Yeah, it showed that someone broke into
10 her house, but it doesn't point to any assailant, let alone
11 to any human being, let alone Henry James Ross. We know
12 somebody was there. We knew someone went in her house. It
13 is just not fair. It is not fair. It's not fair, and like
14 I told you before one tragedy should not beget another
15 tragedy, and that would be to put Henry Ross in jail for
16 something that he did not do.

17 Now, also, you heard from his family, his mom, his dad,
18 his brother, his cousin, they all remember that day. They
19 all remember Henry. And I know the stories didn't
20 corroborate and were exactly right, but one thing did and
21 that was that Henry Ross was at home at the time this
22 occurred. He was at his house, at the time this was going
23 on, he was at his house hanging out with his family. But no
24 one ever saw him, and the \$120, the six twenty dollar bills,
25 not five. Now that is the reason I went to law school. No

CLOSING ARGUMENTS BY MR. SWILLEY

275

1 one ever saw him with that money. No one ever saw him with
2 a knife. No knife was ever recovered from his house. No
3 evidence was ever recovered from this home. And be mindful
4 of that. If it was it would be up here, and you would have
5 seen it, but it wasn't.

6 Now, Ms. Parker or Mr. Holt will get up here, and I
7 think Ms. Parker will get up here and talk about all that is
8 trivial, all that is important. They will tell you that the
9 defense muddied the waters, don't let them poke holes in the
10 state's case. I didn't poke any holes or muddy any waters.
11 All I'm doing is acting like a flashlight, that someone who
12 is acting guilty or are not. I'm just a flashlight. I am
13 not poking any holes in anything. I am not muddying any
14 waters. I'm not creating any smoke screens. They are going
15 to try to point all of that in your mind that it is
16 reasonable doubt. They have to push it. They have to push
17 all the reasonable doubt and you should not pay attention to
18 it. You should ignore it when they are standing there right
19 in front of you. They can walk over, they can point at
20 Henry. They can say he confessed, he confessed, he
21 confessed, but that doesn't change anything. It doesn't
22 change anything about reasonable doubt. Now I wouldn't be
23 here unless he was innocent. That is reasonable doubt, and
24 there is plenty in this case.

25 Now, like I said during my opening, and I promise this

CLOSING ARGUMENTS BY MR. SWILLEY

276

1 is almost over. There are three bedrock principles in
2 criminal law that you have got to remember.

3 Number one, the defendant is innocent until proven
4 guilty. You all know that one. It doesn't need to be said.

5 The state has the burden of proof. We don't have to
6 prove anything. Nothing the defense does has to be proven.
7 Nothing that I say has to be proven. The state always has
8 the burden of proof.

9 And number three and most importantly, the state has to
10 prove beyond a reasonable doubt -- it has to be reasonable
11 doubt to win, for you to convict, and they have not done
12 that. There is still reasonable doubt in this case, plain
13 and simple.

14 Now I don't need a PowerPoint presentation or a bunch
15 of pictures to tell you that. You can see for yourselves.
16 I don't need to try to show you anything that you haven't
17 already seen. You can see it for yourself.

18 And the last thing and I'm just going to go ahead and
19 say, if there is anything that I've done throughout these
20 couple of days, throughout the course of this trial that has
21 offended you, or angered you, or irritated you, or if I have
22 come across as obnoxious at any time, let me apologize now.
23 I am sorry if that has happened. Please don't hold that
24 against my client, this is too important. If there is
25 something that I have said that has irritated you, it is on

CLOSING ARGUMENTS BY MS. PARKER

277

1 me. I'm to blame on that. Don't take that out on Henry, it
2 is too important.

3 Like I said earlier, this is the most power you will
4 have unless you become an elected official. But right now
5 this is the most power you can have, and that is the power
6 to take away someone's freedom, and send them to prison,
7 plain and simple. That is a lot of power to have. So I
8 want you to be mindful of that when you go back into the
9 jury room and deliberate.

10 I am going to go ahead and sit down now. I want to
11 thank you again for being here. I have noticed that you
12 have all paid attention this week, done a good job, and that
13 is all I can ask of you. But I just ask that you do the
14 best you can do and get back there and render a true
15 verdict.

16 Thank you.

17 **THE COURT:** Ms. Parker.

18 **MS. PARKER:** Thank you, Your Honor, may it please the
19 Court?

20 **THE COURT:** Yes, ma'am.

21 **MS. PARKER:** Mr. Swilley.

22 **CLOSING ARGUMENTS BY MS. PARKER**

23 **MS. PARKER:** Ladies and gentlemen of the jury, good
24 morning. Mr. Swilley was just before you, and he spoke on
25 Wednesday and this morning about three bedrock principles

CLOSING ARGUMENTS BY MS. PARKER

278

1 that we have here in America, and those three bedrock
2 principles are.

3 One, the defendant is presumed innocent throughout
4 these entire proceedings. His presumption of innocence
5 remains with him. Just because he is arrested, just because
6 he is indicted, just because he sits there in that chair
7 does not necessarily mean he is guilty. And that
8 presumption of innocence by law goes with him. And you are
9 the only ones who can take that presumption of innocence
10 away. And the judge will charge you on that in a few
11 minutes about the presumption of innocence, and how that is
12 important.

13 But, ladies and gentlemen, Mr. Swilley also talked
14 about bedrock number two. That principle is that the state
15 carries the burden to prove the case. Well, ladies and
16 gentlemen I believe we have done that in this case. We
17 showed you the evidence that we have. You have heard the
18 victim testify. You heard the 911 tape, and most
19 importantly, you heard the defendant's video statement, his
20 own confession. His own mother has him being in that house
21 that night.

22 And bedrock principle number three is that we must
23 prove it beyond a reasonable doubt. And I am proud to live
24 in a country where we have those three principles. And the
25 government cannot run all over the citizens and all over its

CLOSING ARGUMENTS BY MS. PARKER

279

1 people that those constitutional rights are there to
2 protect. Ladies and gentlemen, I believe that throughout
3 the trial of this case, and when you go back there and
4 render a verdict, his presumption of innocence will be
5 removed, because the state has met their burden. We have
6 shown you what we have here in this case, and I don't
7 believe that it leaves any reasonable doubt as to who was in
8 that house, as to who intruded on Ms. Williamson that night.
9 Who held that knife to her neck, who was waiting for her in
10 that bedroom behind that cracked door.

11 Now what is reasonable doubt. Reasonable doubt is not
12 an imaginary or fanciful doubt, but a weak doubt. It is a
13 substantial doubt. It is a doubt in which the words imply.
14 A doubt for which you can assign a reason based on the
15 testimony and evidence in this case. A reasonable doubt is
16 not any sort of doubt, and you and I know from everyday life
17 experiences that you may have doubt about any doubt that
18 arises, no matter how trivial or serious it may be. Ladies
19 and gentlemen, that is a definition of a reasonable doubt.
20 In a little while the judge is going to charge you on what
21 reasonable doubt is. He is probably going to tell you
22 something that is real close or resembles that. It is not
23 just any doubt. It has to be a doubt for which you can
24 assign a reason, a reasonable doubt.

25 Ladies and gentlemen, I want to speak to you a little

CLOSING ARGUMENTS BY MS. PARKER

280

1 bit about the law and what Mr. Ross is charged with in this
2 case. Now, I want to make it clear before I start that the
3 judge, he is the judge of the law. And what he tells you is
4 the law. And what he tells you from that bench is what you
5 have to take as the law when you go back there and
6 deliberate. But I do understand how the process works, and
7 y'all are sitting there in the jury box. And in a little
8 while he is going to charge you, and you are going to hear
9 it, and he is going to read you the law, and then you will
10 hear it and go back there and hopefully remember what he says
11 so that there is not any confusion about what the law is,
12 and what Henry Ross is charged with. And I kind of want to
13 go over a little bit about the charge and what the law says
14 we have to prove to show that he is guilty. He is charged
15 with burglary first degree that is Indictment 0774. The
16 defendant must enter a dwelling without consent and with the
17 intent to commit a crime inside. Within that statement, you
18 have three stages.

19 One, you have to enter a dwelling. A dwelling is a
20 house where you live.

21 Number two, you have to go in without consent. That
22 means you have to enter that house without permission,
23 without that owner's permission.

24 Three, you must enter that dwelling or that house with
25 intent to commit a crime inside. Those three things must be

CLOSING ARGUMENTS BY MS. PARKER

281

1 present for there to be a burglary. In South Carolina we
2 have three degrees of burglary, 'so after you have made that
3 determination that the burglary has occurred, then in order
4 to be guilty of burglary first degree you have to find
5 aggravated circumstance, and you have to look at the
6 circumstances surrounding the burglary. And the law on what
7 aggravated circumstances that will make it first degree is
8 this. Once inside the defendant has to cause physical
9 injury, actual injury. And I don't think we had that in
10 this case. Or, uses or threatens to use a danger
11 instrument. We've got that. Or, displays what appears to
12 be knife, a pistol, a revolver, a weapon and so forth. Or,
13 enters and remains and enters and goes into the house and
14 that is at night. So notice that under all these
15 circumstances in front of each phrase is or. To cause
16 physical injury; or, use of a dangerous instrument, or has a
17 weapon, or has a knife. That is not and, you don't have to
18 have all four of those circumstances, you just have to have
19 one.

20 And by the defendant's own statement he admits to being
21 in her house at night. It was around 2:00 a.m. By his own
22 statement that you heard in this courtroom yesterday, he
23 admitted to being in her house at night. So, even if you
24 choose to believe he did not have a knife, even if you chose
25 to believe that he had no exchange of words, he did not

CLOSING ARGUMENTS BY MS. PARKER

282

1 threaten Ms. Williamson whatsoever, if you believe what he
2 told the Darlington police officers that at the station that
3 day on that video statement you saw, he admitted to being in
4 the house at night, that is burglary in first degree. To
5 enter without consent with intent to commit the crime inside
6 and that occurs at night that is burglary first.

7 He is also charged with assault and battery of a high
8 and aggravated nature. Now the judge is going to charge you
9 on what is called assault and battery first degree, because
10 we have had a little bit of change in the law. This
11 happened in 2009. We had a change in the law this past
12 summer. He is actually going to charge you on the language
13 of assault and battery first degree. And to be guilty of
14 assault and battery first degree, a person has to commit the
15 offense of assault and battery, has to unlawfully injure
16 another person, and that includes nonconsensual touching of
17 private parts, or it could be something that occurs during
18 the commission of robbery, burglary, kidnaping, or theft, or
19 a person offers or attempts to injure another person with
20 the present ability to do so, and act is accomplished by
21 means likely to produce death or great bodily injury, or
22 occurs during the commission of a robbery, burglary, or
23 kidnaping, or theft. In this case assault and battery in
24 the first degree, the defendant was in the house, and he
25 also offered or attempted to injure Ms. Williamson with the

CLOSING ARGUMENTS BY MS. PARKER

283

1 present ability to do so, and that occurred during the
2 commission of a burglary. So under those circumstances that
3 is assault and battery of the first degree, because it
4 occurred during the commission of a burglary. He was in her
5 house, and you heard testimony that he had that knife.

6 Ladies and gentlemen, the defendant is also charged
7 with armed robbery. And to be convicted of armed robbery in
8 South Carolina, we must prove the defendant one, committed a
9 robbery. You know robbery is when you take something from
10 somebody. And two, while that robbery occurred the
11 defendant was armed with some type of pistol, dirk,
12 slingshot, metal knuckles, razor, or other deadly weapon,
13 and it is up to the jury you know, if it is not in the
14 actual language of what the judge is going to charge you
15 with, those specific things were mentioned. I take the
16 position today that a knife certainly is a dangerous weapon.
17 That law will also provide that if the victim had a
18 reasonable belief that the defendant was going to harm her,
19 or he threatened her or something that she thought was going
20 to harm her it could be armed robbery. So, under those
21 circumstances, ladies and gentlemen, it would be armed
22 robbery even if the defendant had a toy gun. But she
23 thought it was real, and she thought she was going to be
24 harmed, and if that was used to intimidate her, and make her
25 give him her money, that is armed robbery. In this case,

CLOSING ARGUMENTS BY MS. PARKER

284

1 he had a knife. And I just went into a little bit about
2 what a deadly weapon is. That is a matter for you to
3 decide. And a deadly weapon is any article, an instrument,
4 or substance which is likely to cause death or great bodily
5 harm.

6 What is important here in making a determination if
7 armed robbery occurred is that the defendant was armed, is
8 was the victim --- was it reasonable for the victim to feel
9 that threat of harm? What is important is that a threat of
10 harm was reasonable and apparent to the victim. And I
11 believe it is reasonable that a victim would be threatened
12 with a knife to her throat.

13 And in the final Indictment he is charged with is
14 possession of a weapon. And during this crime, ladies and
15 gentlemen, it is the state's case that he did have a knife,
16 and that he put that knife to her throat, and that he had
17 that knife when she opened that door in that room, and that
18 was during the commission of a violent crime, and during the
19 commission of a burglary and the armed robbery.

20 So, ladies and gentlemen, just to talk to you a little
21 bit about what happened that night, I just want to backtrack
22 a little bit, not too much detail. Remember, Ms. Williamson
23 testified that she went out that night. She left kind of
24 late, about 10:00 or 10:15, came back home between 1:30 and
25 1:45. Walked in her front door, and as soon as she got

CLOSING ARGUMENTS BY MS. PARKER

285

1 inside she dropped her things, she went to the bathroom, she
2 stripped down. She went to the bedroom and put on her
3 pajamas, and that is when she realized that that door was
4 cracked, and she opened that door and there she finds a man
5 standing there holding a knife, and he said give me your
6 money. Then he robs her, and then she is able to get away
7 and runs out the front door, and she sees the defendant go
8 around the other side of the house. This is when she said
9 she thought it was safe for her to try to get back into the
10 house, and she went back in the front door, and tries to
11 shut it, and at that time grabbed a cell phone, and trying
12 to get the door locked, and she is calling 911.

13 So what evidence do we have in this case? Mr. Swilley
14 mentioned a few minutes ago, where is the beef? Where is
15 the beef in this matter? I assert to you today ladies and
16 gentlemen, I believe we have beef. I believe we have the
17 bun, the patty, the lettuce, tomato, and onion, the
18 mayonnaise, mustard, and the ketchup in this case. We had
19 the testimony of the victim. You heard from her. You also
20 --- I want you to think about what backs up her version of
21 the events that happened that night. Ladies and gentlemen,
22 there is no explanation --- excuse me while I am trying to
23 find my exhibits. There is no explanation for the damage to
24 her door other than somebody was trying to get back inside
25 that door, and she was trying to hold it from the other side

CLOSING ARGUMENTS BY MS. PARKER

286

1 while he beat and banged and tried to get back in on her by
2 force. That backs up her story. And here is an additional
3 picture of the door that shows that damage.

4 Ladies and gentlemen, the 911 call when she was first
5 on the phone with that operator, as soon as the computer
6 clicks and that call is made, and that call gets recorded,
7 you hear her hollering. She is telling somebody, leave,
8 leave, go away, and she is yelling at somebody to leave her
9 house. You can hear that when you listen to that 911
10 recording. And then she --- I don't believe that at any
11 point in that phone call she calmed down, but at some point
12 she you know she wasn't telling anybody to leave, so I
13 believe the defendant fled. But when that call initially
14 started she was begging somebody to leave, telling them
15 leave, she even says police, police. She is trying to let
16 them know that she called the police. So, ladies and
17 gentlemen, at that point the defendant leaves.

18 And I want to talk about this. Now Mr. Swilley talked
19 about how she picked his face out of the pictures. Now, I
20 will remind you of the testimony of Sergeant Valazak's
21 testimony as well as the victim's testimony that they both
22 testified that she was looking on that computer screen at
23 pictures. There was no other information around those
24 pictures. There was no other identifying information or
25 anything like that. She was just looking at faces. She

CLOSING ARGUMENTS BY MS. PARKER

287

1 testified that she looked at hundreds of faces. And out of
2 all the faces she saw, she picked his face out. Now, I
3 believe that corroborate her story that she saw him through
4 that half-moon of her window in her front door. She got a
5 look at his face. What are the odds that she would have
6 picked his face out, and then the police talked with him,
7 and he confessed to being at her house? What are the odds
8 to that? If she would have got it wrong, do you think there
9 would have been a video up here yesterday for you to listen
10 to of a man who confessed and said he was in her house and
11 she got it wrong? So, Mr. Swilley did bring up an
12 interesting point. Mr. Ross lives right down the street,
13 maybe she had seen his face in passing over the years. That
14 was a family home that belonged to the Williamson family.
15 Mr. Ross lived right down the street. Maybe she did see his
16 face at some point in time over the course of her life and
17 his life. But the odds that she would pick that face out,
18 not based on the address, just based on the picture. And
19 then after this defendant is arrested, and the police talked
20 to him, he admits being in that house.

21 Ladies and gentlemen, Ms. Williamson has identified
22 this white toboggan as looking like the one that the
23 defendant had on his head. And ladies and gentlemen, I
24 think the biggest beef in the case, and Mr. Swilley is
25 right, we do hang our case on the words of his own words, on

CLOSING ARGUMENTS BY MS. PARKER

288

1 his own confession; what was in that statement. I want you
2 to think about what is reasonable, and is it reasonable to
3 think that his will was overcome to such a point that he was
4 just going to agree and say what the police wanted him to
5 say. Let's think about that for a minute. Is that what he
6 did? Did he just say what he thought the police wanted him
7 to say to get off of his back and everything will be okay?
8 This will be okay if I just say what they want me to say,
9 and then maybe everything will be okay.

10 Well, let's think about what he said in the video
11 statement. Henry admits in the video statement that he was
12 alone in the house. And he agreed with Sergeant Valazak
13 that he went in through a window. But in that video
14 statement you hear him say, but I didn't break it. I didn't
15 break it. You see, that is because he knew the window was
16 already broken. He didn't testify that she had a missing
17 pane, one of those old panes where you have the grid, the
18 squares, and you have panes. She testified that she had a
19 missing pane out of her window. Now, how did the defendant
20 know that if he wasn't there? He said I didn't break it, I
21 didn't break the window. He was clear in that video pulling
22 that out. He didn't break the window. And then he tried
23 --- the bedroom is kind of like a storage room. This is a
24 quote from the video. He said there was stuff everywhere.
25 And he goes on to say, I was going through some bags trying

CLOSING ARGUMENTS BY MS. PARKER

289

1 to find some money. Ladies and gentlemen, that right there
2 is intent to commit the crime therein. He is looking for
3 something to steal. Henry said no one was at home, and he
4 admits that she found him in the house. And these are his
5 own words of his own volition. These are things that he
6 had independent knowledge of. Sergeant Valazak wasn't
7 leading him through that video statement telling him the
8 answers to the questions. He knew them. And then he said
9 the room I was in, she came in the room. And how did he
10 know details about the crime if he wasn't there? He was
11 just telling them what they wanted to hear. How did he know
12 that? How do you know that the victim came home and caught
13 the suspect in the room? How did he know that room was a
14 storage room? How did he know the window was broken? But
15 he didn't break it, it was previously broken. And then he
16 states --- Sergeant Valazak asked him how much money did you
17 get from her Henry, and there was a pause, there was silence
18 there for a few seconds. How much money --- then he repeats
19 the question back. How much money did I get from her? She
20 didn't give me no money. Ladies and gentlemen, I would
21 assert to you today that that pause was so he could try to
22 think up a lie. A lot of times people will do that. When
23 you ask them a question, if they repeat that question back
24 to you, what I have found in my experience is they are
25 trying to buy a little time to think of a lie. How much

CLOSING ARGUMENTS BY MS. PARKER

290

1 money did I get from her? I didn't get no money from her.

2 And here are some more quotes from that video
3 statement. She said I opened the door that I was in, and I
4 took off out the front door. And at one point I shouldn't
5 have did it. And at another point he says he is talking
6 about the front door to the house. He said, the door was
7 already open, I just ran out the front door. The door was
8 already open. It was already opened. And he repeats
9 himself over and over again, he just ran out that front
10 door. He didn't touch her. He didn't have a knife, and he
11 didn't get any money. He just ran out that front door.

12 Well, ladies and gentlemen, that last statement that he
13 made about door being already open, think about that, is
14 that reasonable? Because Ms. Williamson had testified that
15 she came home, and that she shut and closed and locked the
16 door behind her, because she was in for the night. Do you
17 think a single woman would come home at close to 2:00 and
18 leave the front door open? And she is in the bathroom
19 taking her clothes off, and getting dressed and getting
20 ready to go to bed. She closed that door behind her. You
21 know it can't be so.

22 There are four things that he kept saying throughout
23 the course that he adamantly denies. He didn't get no money
24 from her. He didn't have no knife. He didn't threaten her.
25 And there was no exchange of words, and he didn't touch her.

CLOSING ARGUMENTS BY MS. PARKER

291

1 Ladies and gentlemen, the reason for that is, he was
2 admitting to half of it. It was half true. If he admits to
3 a little bit of it but not all of it --- there is still too
4 much in the information there that he knew about the crime
5 for Mr. Swilley to be able to assert that his will was
6 overcome by a mean police officer, and he just told them
7 what they wanted to hear. He knew too much. Yet he still
8 denied these things. What evidence do we have for that to
9 back up Ms. Williamson's story that somebody was trying to
10 get back in her own front door, to damage the door? The 911
11 tape, that backs up her story. And what reason would you
12 have to lie? How could you fabricate that 911 tape? If
13 there was nobody there at the door, why was she hollering
14 for somebody to leave?

15 Ladies and gentlemen, I am going to talk about at first
16 when the defendant was interviewed on November 30, 2009.
17 This is not a taped interview. This was like the first time
18 he talked to the police about the incident. And I want to
19 talk a little about how his story changed. And I want to
20 talk a little bit about how the story he gave that day
21 doesn't back up the story his family testified to. That day
22 he told Sergeant Valazak that he went to Thanksgiving in the
23 country. That they had a meal. That they all came home
24 around 5:30. He told Sergeant Valazak that morning that he
25 went to his girlfriend's house, and he came back home around

CLOSING ARGUMENTS BY MS. PARKER

292

1 11:00 or 11:30 that night, and played video games. And his
2 dad woke him up to go to black Friday shopping. And he said
3 he didn't break into nobody's house. And said he was
4 wearing a black toboggan. He said that night he had on a
5 brown shirt, a black jacket, and a black toboggan. Well the
6 defendant admitted in that first statement that he went to
7 his girlfriend's house, but to hear his family testify
8 yesterday his friends, he went straight home after
9 Thanksgiving. He was there all night. He doesn't own
10 anything black. He doesn't have a black shirt, not any
11 black jacket, not any black articles of colored clothing
12 that he wears on his upper body. But yet he said to
13 Sergeant Valazak on that day he had a black jacket. He also
14 said that he had a black toboggan. Well, you see that
15 changes a little bit, because after the police talked to
16 Travis Benjamin, he hints about the white toboggan, and he
17 said, oh yeah, oh yeah I have a white toboggan. It is not
18 black, it is white. So you see how his story kind of
19 gradually changes and shifts? And then after the arrest you
20 have the videotape, and that interview was videotaped. And
21 that videotape he changed it again. At that time he
22 admitted to being in her house.

23 Here is another version, his family's version. He was
24 home, as soon as he got back from Thanksgiving, he didn't go
25 anywhere at all. They testified about playing cards. They

CLOSING ARGUMENTS BY MS. PARKER

293

1 didn't say anything about playing video games, not the daddy
2 or the mamma, Mr. and Mrs. Ross. And no one at that house
3 wanted to admit to sleeping at all that night. Mr. Ross
4 didn't go to sleep at all. Mrs. Ross, she laid down, she
5 didn't go to sleep. She could hear all the voices. And no
6 one wanted to admit that Henry owned a black jacket up here
7 yesterday. Ladies and gentlemen, that is because their
8 story was tailored, and they were trying to be consistent.
9 But I believe when I cross examined the brother, what time
10 did your daddy go to bed last night? Oh, he went to bed
11 about 1:00 or 1:30. Then he corrected him and said he just
12 laid down, but he didn't go to sleep. That is because they
13 can't account for where he was after the hours of 1:00
14 between 1:00 and 3:00. They cannot account for where he
15 was.

16 Ladies and gentlemen, Mr. Swilley was correct when he
17 said that you have to determine that the statement that
18 Henry Ross gave at the Police Department, the one that was
19 videotaped, you have to determine if it was voluntary. If
20 you determine that it wasn't voluntary, you are not to
21 consider it. So, what I did was I went back and listened to
22 the tape, and I got some quotes on here from Sergeant
23 Valazak that they are there in the beginning of the
24 interview. She is going over the form, what you call the
25 Miranda Warning. And Mr. Ross is entitled to every Miranda

CLOSING ARGUMENTS BY MS. PARKER

294

1 Warning provided to him under the constitution, because he
2 was in custody at that time. He had been arrested. So he
3 was afforded those warnings. You are supposed to give those
4 warnings. You have a right to remain silent. You have a
5 right to a jury trial. You have a right to an attorney.
6 The right not to say anything that will be incriminating ---
7 if you say anything it will be admissible in a court of law
8 later. But those rights were there, and Sergeant Valazak
9 read him those rights. And there is a form that she is
10 getting him to initial beside each one of those rights on
11 that form. And then she is not reading from the form, she
12 is just looking at it and just actually telling him, and
13 these are the quotes. She says, you can talk to us or you
14 don't have to talk to us. At one point she says you don't
15 have to answer any questions. At one point she said now if
16 you don't want to talk you don't have to talk. She said
17 that twice. He did give a statement that day. He did
18 continue to answer questions, and he talked about being in
19 Ms. Williamson's house. That statement was voluntary.
20 There is no evidence in the record that it wasn't.

21 Is there any doubt here that the police messed up, and
22 didn't get it right? Is there any doubt in your mind that
23 the defendant Henry Ross intruded, entered her house? What
24 are the odds of picking his face out of hundreds? And then
25 the face that she picked was right down the street, so his

CLOSING ARGUMENTS BY MS. PARKER

295

1 address is in a close proximity to the scene of the crime.
2 And then you hear the defendant tell you out of his own
3 mouth that he was in her house that night. What are the
4 odds that all three of those things lining up? What are the
5 odds that she could pick a face, and then when the police
6 talked to him, he was just making all of this stuff up and
7 it just magically just happens to match up? Astronomical
8 odds, is what it would be.

9 And I am going to leave you with some final thoughts
10 now. What really was the defendant's frame of mind that
11 night? Keep in mind the victim testified that her car was
12 parked out front. She rode with a friend to go out. So
13 when he entered through that window, did he know whether or
14 not she was at home? After midnight with a car parked in
15 the front yard, a reasonable person would assume she was at
16 home, unless he had watched her leave. So he did one of two
17 things, either he knew she wasn't there, or either he knew
18 she was there, and he had it planned. You already know that
19 that window was previously broken. So either he found that
20 window that night before he broke into their house, and said
21 this will be a good point of entry, a good way to get in.
22 Or he had been snooping around prior. But either way he
23 knew that window was broken. And he had opportunity to
24 flee. Even after Ms. Williamson came home, she stated that
25 the first place that she went was to the bathroom. Now, if

CLOSING ARGUMENTS BY MS. PARKER

296

1 he hadn't heard her walk in the door, there would have been
2 some rummaging around with noises in that room, because he
3 said he was looking through bags looking for money. So he
4 had to have heard her, because she did not testify that she
5 heard any noise coming from that room, it was quiet, because
6 someone was hiding in there. It was quiet. So she goes to
7 the bathroom, and at that opportunity --- that was
8 opportunity one, he could have run out the door. She was in
9 the bathroom, she was on the toilet, flush. I'm out of
10 here. I don't want her to see me. I messed up. She has
11 walked in on me. My plan is messed up, and he could have
12 left.

13 Two, she leaves out of her bathroom, and goes into her
14 bedroom and puts on her pajamas. There is an opportunity
15 number two. He could have left and ran out the door.

16 And number three, she testified that she went into that
17 additional spare room, and was looking at the blinds and
18 everything that was on the floor. So at that point, he
19 could run. You know he could have got out. He could have
20 left.

21 And then the biggest question and opportunity that he
22 had was why did he come back to that front door? There is
23 evidence in the record about the frame being all busted up.
24 When she ran out of the house and then he ran out of the
25 house, why didn't he just go on back around of her house and

CLOSING ARGUMENTS BY MS. PARKER

297

1 on home? Why did he come back to that front door? He has
2 already got her money. But I think the most chilling thing
3 to think about in all of this is the statement he made to
4 her when he had her pushed up against that door, and he put
5 that knife to her throat, and he asked her are you ready to
6 die, and then he touched her breast.

7 So I just want to leave that with you as a little bit
8 of food for thought. And I want you to also think about the
9 victim in this case, and will she ever be able to get out of
10 her car at night without hurrying to get her keys and get in
11 that front door. She had someone stay in her house with
12 her. Every noise that she hears, she lays in her bed, and
13 her heart skips a beat. I want you to think about that.
14 And I believe that on Wednesday when you were here and you
15 took the oath to duly try this case and render a verdict
16 true. I believe ladies and gentlemen, that after you
17 consider all of the evidence in this case you will find the
18 defendant guilty of burglary in the first degree, armed
19 robbery, assault and battery in the first degree, and
20 possession of a weapon during the commission of those
21 crimes.

22 It is with no joy or happiness that I stand here before
23 you today. This is not about who wins or who loses. Do you
24 want to know why, because nobody wins in this scenario?
25 Nobody wins. A young man sits over there with a good bit of

CHARGE ON THE LAW

298

1 his life ahead of him. Nobody wins. But it is about right
2 and it is about wrong. We have laws in this state that we
3 live in that govern our communities. And that is when you
4 go back there and you deliberate and consider the evidence.
5 And I thank you for your time and attention. Not only for
6 this morning, and I believe talked a little more than I
7 intended to, but for your attention throughout this whole
8 process. Thank you.

CHARGE ON THE LAW

9
10 **THE COURT:** All right, Madame Forelady, and ladies
11 and gentlemen of the jury, if you would give me your
12 attention. You have followed very patiently, and listened
13 very attentively to the presentation of the evidence in this
14 case, and also to the able arguments made by the Assistant
15 Solicitor, Ms. Parker on behalf of the state, and to Mr.
16 Swilley on behalf of the defendant, and I thank you for
17 that.

18 It now becomes the duty of the trial judge under the
19 Constitution of this state to charge and instruct you in the
20 law applicable to this case. And as jurors, it is your
21 exclusive duty to decide all of the issues of fact in this
22 case, and for that purpose to determine the effect, the
23 value, the weight, and the truth of the evidence. Both the
24 state and the defendant have the right to expect that you
25 will consciously consider and evaluate the evidence, and

CHARGE ON THE LAW

299

1 apply the law of the case thereto to the end that both the
2 state of South Carolina and the defendant will receive and
3 obtain a fair and impartial trial.

4 Now when I use the word defendant, I refer of course to
5 Mr. Henry James Ross, Jr. The state of South Carolina by
6 the bills of Indictment in this case, and there are four of
7 them, charged the defendant with four separate offenses, and
8 you will consider each one of them separately.

9 Indictment 10-774, charges the defendant with burglary,
10 and charges that he did on or about November 27, 09 enter
11 the dwelling of Christy Williamson located at First
12 Street, Darlington, South Carolina, without consent and with
13 the intent to commit a crime, and did so in the night time,
14 and armed with a deadly, specifically a knife. And that is
15 the charge of burglary first.

16 Indictment Number 2010-775, charges that at that same
17 time, November 27, 2009 that while armed with a deadly
18 weapon, specifically a knife, he did take and carry away the
19 property of Christy Williamson by force or intimidation.
20 And that is a charge of armed robbery.

21 The third indictment is Indictment number 2010-776, and
22 it charges that the defendant did on that same day and time
23 use a deadly weapon to attack the defendant Christy
24 Williamson, specifically that he did place a knife to the
25 defendant's throat, and touched her breast in violation of

CHARGE ON THE LAW

300

1 the crime of assault and battery. And he is charged with
2 assault and battery in the first degree.

3 And finally, he is also charged with possession of a
4 weapon during the commission of a violent crime,
5 specifically possessing a knife during the commission of an
6 armed robbery and/or a burglary, both of which are
7 classified as violent crimes in our state.

8 Now to these charges and to these Indictments the
9 defendant has entered a plea of not guilty. This plea of
10 not guilty by the defendant places the burden of proof on
11 the state to prove by evidence the guilt of the defendant
12 beyond a reasonable doubt before you the jury can find him
13 guilty. The defendant, Mr. Ross is presumed in the law
14 innocent of the charges contained in each of these
15 Indictments. It is a cardinal and fundamental rule of the
16 law of evidence that a defendant, irrespectively of the
17 enormity of the charges against him will always be presumed
18 innocent of the crime for which he is indicted unless and
19 until the guilt of the defendant has been proven by evidence
20 which satisfies you the jury of his guilt beyond a
21 reasonable doubt.

22 The presumption of innocence is not just a mere legal
23 theory. It is not just a legal phrase. The presumption of
24 innocence is a substantial right to which every defendant,
25 including this defendant is entitled. Our Supreme Court as

CHARGE ON THE LAW

301

1 declared that the presumption of innocence is like a robe of
2 righteousness placed about the shoulders of a defendant, and
3 it assigns to him that class, the innocent until that
4 presumptive robe of righteousness has been stripped from his
5 person by evidence satisfying you the jury of his guilt
6 beyond a reasonable doubt. The presumption of innocence
7 accompanies the defendant from the time of his arraignment
8 and appearance in court and continues with the defendant
9 until you retire to the jury room to deliberate your
10 verdict. The presumption of innocence remains and continues
11 in existence to the benefit of the defendant until you the
12 jury reach the conclusion that the state has proven the
13 guilt of the defendant beyond a reasonable doubt.

14 Now, the state is not required to prove the guilt of
15 the defendant beyond all doubt, or beyond every doubt, but
16 beyond a reasonable doubt. What is a reasonable doubt? It
17 is not an imaginary or fanciful doubt or a weak doubt. It
18 is a substantial doubt. It is a doubt for which the words
19 imply. A doubt for which you can give or assign a reason,
20 based on the testimony and the evidence in the case. A
21 reasonable doubt is not any sort of a doubt. You and I know
22 from everyday life experiences that you may have sort of a
23 doubt about any matter that arises, no matter how trivial it
24 may be, or how serious it may be. A reasonable doubt is the
25 kind of doubt which makes an honest, sincere, conscious

CHARGE ON THE LAW

302

1 juror in search of the truth hesitate to act. Proof beyond
2 a reasonable doubt is proof that leaves you firmly convinced
3 of the defendant's guilt. If you have a doubt for which you
4 can give or assign a reason as to the guilt of the
5 defendant, then he is entitled to a verdict of not guilty.
6 On the other hand, if the state has proven guilt beyond a
7 reasonable doubt then it would be your duty to return a
8 verdict of guilty.

9 Reasonable doubt may arise from evidence that is in the
10 case, or from the lack of evidence in the case. You the
11 jury must make the determination of whether reasonable doubt
12 exists as to the guilt of this defendant.

13 The very fact however that the jury engages in a full
14 and free discussion on the issues of guilt or non-guilt in
15 this case, with the normal conversational ebb and flow on
16 these issues, does not automatically mean that reasonable
17 doubt exist in this case, or in any other case.

18 I charge you that the defendant is entitled to every
19 reasonable doubt arising in the whole case, or arising in
20 any defenses asserted by the defendant. If, upon issue of
21 fact essential to conviction, and a verdict of guilty you
22 have a reasonable doubt as to how that issue should be
23 resolved, it would be your duty to resolve that doubt in
24 favor of the defendant.

25 A defendant, ladies and gentlemen, is not required to

CHARGE ON THE LAW

303

1 prove his innocence. But the state is required by law to
2 prove every essential element of the offense charged against
3 the defendant by evidence which satisfies you the jury of
4 the guilt of the defendant, beyond a reasonable doubt before
5 you can convict him and find him guilty. If then, upon the
6 whole case you have a reasonable doubt as to the guilt or
7 innocence of the defendant he is entitled to that reasonable
8 doubt, and would be entitled to an acquittal and a verdict
9 of not guilty.

10 But on the other hand, if upon the whole case you find
11 that the state has proven by evidence which satisfies you
12 the jury of the guilt of the defendant beyond a reasonable
13 doubt then in such circumstances it would equally be your
14 duty to convict the defendant and find him guilty.

15 Now, I instruct you that the Indictments in this case,
16 which I hold in my hand is not evidence. And you must not
17 treat them as evidence in this case. The Indictments are
18 simply the formal written instruments which contain the
19 charges against the defendant and they serve as the formal
20 documents by which this matter is brought to trial.

21 Now, during this trial each of us ladies and gentlemen,
22 you and I have a certain duties to perform. As the trial
23 judge, it is my responsibility to preside over the trial of
24 this case, and I also have the duty to rule upon, or pass
25 upon the admissibility of evidence offered during the

CHARGE ON THE LAW

304

1 progress of the trial. You are to consider only the
2 competent evidence admitted into the record. And you are to
3 disregard and disabuse from your mind any testimony ordered
4 stricken from the record of this case during the progress of
5 the trial if there be any. And you are to consider only the
6 testimony which has been presented from the witness stand
7 together with any exhibits admitted into the record in this
8 case, and any stipulations of counsel made into the record
9 if there be any.

10 I have the additional duty to charge you the applicable
11 law in this case. As the presiding judge, I am the sole
12 judge of the law. And it is your duty to accept and apply
13 the law as I now state it to you. If you have a
14 preconceived idea as to what the law is, or what the law
15 ought to be, and it does not agree with what I tell you what
16 the law is, you are obligated under your oath to abandon
17 this preconception on your part, because you are sworn to
18 accept the law precisely as I state it to you.

19 Now, in every case tried in this court before the jury,
20 the jury becomes the sole and exclusive judge of the facts.
21 You the jury are the judges of the facts in this case. The
22 Court is the judge of the law. The constitution of this
23 state has declared that the trial judge shall not intimate,
24 state, comment upon, or make any statement to a trial jury
25 about the facts of a case. Since you are the sole judge of

CHARGE ON THE LAW

305

1 the facts, you are not to infer from anything that I have
2 said during the progress of this trial in ruling upon the
3 admissibility of evidence or otherwise, or anything that I
4 say now during the course of this charge to you that I have
5 any opinion about the facts of this case. I do not. The
6 law does not permit me to have an opinion about the facts.
7 This is a matter solely for the jury to determine.

8 It is your duty to determine, as I have said the
9 effect, the value, the weight and the truth of the evidence
10 presented during the course of this trial. Necessarily then
11 you must assess the credibility of the witnesses who have
12 testified. Credibility is simply a legalistic term meaning
13 believability. It becomes your duty to analyze and evaluate
14 the evidence and to determine that evidence which convinces
15 you of its truth. I charge you that in determining the
16 question of credibility or believability of the witnesses,
17 you may believe one witness as against several witness, or
18 several witnesses as against one witness. You may believe a
19 part of the testimony of a witness, and reject the remaining
20 part of the testimony of that same witness. You may believe
21 the testimony of a witness in its entirety, or you may
22 reject the testimony of a witness in its entirety. You may
23 consider whether any witness has exhibited any interest, any
24 bias, or any prejudice in the case. And you may consider
25 the demeanor of the witness. That is the appearance of a

CHARGE ON THE LAW

306

1 witness from the witness stand. You may consider the
2 opportunity for knowledge concerning those things about
3 which the witness testified. These considerations you do
4 not exercise arbitrarily, but if in your good judgment there
5 is sound reason in the record for so doing. Because your
6 objective, ladies and gentlemen, is to find the truth,
7 whether it comes from a witness or a witnesses for the state
8 of South Carolina, or witness or witnesses for the
9 defendant, and in doing so, in exercising your mental
10 processes, and in determining what you consider to be true
11 the law simply requires that you exercise your good
12 judgment, your common sense, your sense of logic and reason,
13 and your experiences in life. You then take and apply these
14 attributes to the evidence and determine what you consider
15 to be the truthful evidence. And to these true statements
16 of facts as determined by you the jury, you now take and
17 apply the law as the Court will give it to you, and arrive
18 at a true verdict in this case.

19 Now, as I said the defendant is charged with four
20 different offenses, and I am going to define those offenses
21 for you.

22 Indictment Number 774 charges the defendant with
23 burglary. And actually charges him with first degree
24 burglary, Section 16-11-311(a) of the South Carolina Code
25 provides as follows. A person is guilty of burglary in the

1 first degree if the person enters a dwelling without
2 consent, and with intent to commit a crime in the dwelling
3 and either; one, while in the dwelling or in immediate
4 flight he or another participant in the crime is, A, is
5 armed with a deadly weapon or explosive., causes physical
6 injury to a person who is not a participant in the crime.
7 Uses or threatens to use a dangerous instrument. Or,
8 displays what is or appears to be a knife, pistol, revolver,
9 rifle, shotgun, machine gun, or other firearm. Or, the
10 entering and remaining occurs in the nighttime. Now under
11 this statute, the state must prove the following four
12 elements in order to establish burglary in the first degree.
13 The state must prove each of these elements beyond a
14 reasonable doubt. If the state fails to prove any single
15 element, you cannot find the defendant guilty of first
16 degree burglary. First there must be an entry into a
17 dwelling. The state must show that there was an entering,
18 that is the defendant actually went inside the dwelling or
19 some part of the dwelling. The place entered must be a
20 dwelling.

21 With respect to burglary, Section 16-11-10 of the Code
22 of Laws of South Carolina, defines dwelling house as any
23 house, outhouse, apartment, building, erection, shed, or box
24 in which there sleeps a proprietor, tenant, watchman, clerk,
25 laborer, or person who lodges there with a view to the

CHARGE ON THE LAW

308

1 protection of the property.

2 In addition, South Carolina Code Section 16-11-310(2)
3 states that dwelling means the living quarters of a person
4 which is used or normally used for sleeping, living, or
5 lodging by the person. An occupied dwelling is the
6 residence if the occupant left with the purpose of
7 returning.

8 The second element is without consent. The entry must
9 have been without consent. The person enters a dwelling
10 without consent means to enter without the consent of the
11 person in lawful possession. In addition to the normal
12 meaning of entry without consent, the phrase also includes
13 entering by using deception, artifice, trick, or
14 misrepresentation to gain consent to enter from the person
15 in lawful possession.

16 The third element is with the intent to commit a crime
17 therein. There must have been the intent to commit a crime,
18 a felony or a misdemeanor whether or not that crime was
19 actually committed. The mere entry into a dwelling without
20 consent is not sufficient to commit first degree burglary.
21 There must have been an intent to commit a crime once
22 inside.

23 Further, it is not sufficient that the intent to commit
24 a crime was formulated after entry. To convict the
25 defendant of first degree burglary, you must find that the

1 time he entered the dwelling the defendant intended to
2 commit a crime once therein. The defendant's actions after
3 he entered the dwelling can be evidence used to determine if
4 he had the intent to commit a crime at the time of entry.
5 Proof of intent necessarily rests on inference from conduct.
6 It does not matter that the intended crime was not
7 completed. When the intent exists at the time of the
8 entering, it is no defense that the attempt was abandoned
9 after entry because the entering with the intent to commit a
10 crime completes the offense of burglary.

11 What does criminal intent mean in the law? Criminal
12 intent is a state of mind which operates jointly with an act
13 or commission of a crime. Criminal intent is a mental state
14 of conscious wrongdoing. Criminal intent includes those
15 consequences which represent the very purpose for which an
16 act is done, or are known to be substantially certain to
17 result regardless of one's desire. Intent may be shown by
18 acts and conduct of the defendant and other circumstances
19 from which you may naturally and reasonably infer intent.

20 And the fourth element is the presence of aggravating
21 circumstances. If you find the defendant entered the
22 dwelling without consent, and with the intent to commit a
23 crime therein, you must then find the presence of at least
24 one of the following aggravated circumstances in order to
25 convict of first degree burglary. Only one of these

CHARGE ON THE LAW

310

1 circumstances need to be present. The aggravating
2 circumstances are, when entering or while in the dwelling or
3 fleeing the scene the defendant or a co-participant either
4 one, armed with a deadly weapon. A deadly weapon is
5 generally defined as any article, instrument, or substance
6 which is likely to produce death or great bodily harm. The
7 question of whether an instrument has been utilized as a
8 deadly weapon depends on the facts and circumstances of a
9 case. If the defendant is not armed with a deadly weapon
10 upon entering the dwelling, but takes from the dwelling a
11 deadly weapon, he becomes armed with a deadly weapon for
12 purposes of first degree burglary.

13 Or, another aggravating circumstance would be that he
14 causes physical injury to any person who is not a
15 participant in the crime. Or uses or threatens to use a
16 dangerous instrument. Or, displays what appears to be a
17 knife, pistol, revolver, rifle, shotgun, machine gun, or
18 other firearm. Or, and finally, an aggravating circumstance
19 is that the entering or remaining occurs in the nighttime.
20 Nighttime for purposes of burglary means that period between
21 sunset and sunrise during which there is not daylight enough
22 to discern a person's face except by artificial light or
23 moonlight. Now that is the crime of burglary in the first
24 degree.

25 The second charge against the defendant is one for

CHARGE ON THE LAW

311

1 armed robbery. Section 16-11-30 of The South Carolina Code
2 provides that armed robbery is defined as a robbery
3 committed while armed with a pistol, dirk, slingshot, metal
4 knuckles, razor, or other deadly weapon, or while alleging
5 either by actions or words that he was armed with or armed
6 while representing while using a representation of a deadly
7 weapon or other object which a person present during the
8 commission of the robbery reasonably believed to be a deadly
9 weapon.

10 So to convict the defendant of armed robbery the state
11 must prove again three elements. First that he committed a
12 robbery. Second, while armed with a pistol, dirk, knife,
13 slingshot, metal knuckles, razor, or other deadly weapon.
14 And third while alleging either by action or words that he
15 was armed with using --- representation of a deadly weapon.

16 Now, what is a robbery? Robbery is a larceny from the
17 person or immediate presence of another by violence,
18 intimidation, or by putting that person in fear. A thing
19 that is in the presence of a person in respect to a robbery,
20 which is so within his reach, inspection, observation, or
21 control that he could, if not overcome by violence or
22 prevention of fear retain the possession. Robbery is
23 basically larceny compounded by aggravation or intimidation
24 or force used in taking the property from the person or in
25 the presence of another.

CHARGE ON THE LAW

312

1 Now larceny is the felonious taking and carrying away
2 of the goods of another against the owner's will, or without
3 the consent of the owner.

4 So in addition to larceny, the crime of robbery
5 requires two additional elements. These are that the
6 property must be taken from the person or immediate presence
7 of another; and, the taking must be accompanied by violence,
8 intimidation, or by putting that person in fear.

9 And finally to constitute armed robbery, the state must
10 show the additional element that the robbery was committed
11 while armed with a pistol, knife, dirk, slingshot, metal
12 knuckles, or other deadly weapon during the commission of
13 the crime.

14 Now what is a deadly weapon? This is a fact of matter
15 for the jury to determine, and you must decide that based on
16 the evidence in this case. A deadly weapon is any article,
17 instrument, or substance which is likely to cause death or
18 great bodily harm.

19 Now the third charge against the defendant is assault
20 and battery in the first degree, and has been alluded to ---
21 there has been a change in our law in the last six months,
22 and I am going to define for you exactly what assault and
23 battery in the first degree is under the current law.

24 A person commits the offense of assault and battery in
25 the first degree when the person unlawfully; A, injuries

CHARGE ON THE LAW

313

1 another person, and the act involves non-consensual touching
2 of the private parts of an adult, either under or above
3 clothing with lewd or lascivious intent. Or, occurred
4 during the commission of a robbery, burglary, kidnaping, or
5 theft. Or, offers or attempts to injure another person with
6 the present ability to do so, and the act is accomplished by
7 means likely to produce death or great bodily injury. Or,
8 occurred during the commission of a robbery, burglary,
9 kidnaping, or theft.

10 And finally, the defendant is charged with the offense
11 of possession of a weapon during the commission of a violent
12 crime. And the thing that I want to remind you on this is
13 that you have first got to find the defendant guilty of a
14 violent crime, before you can even consider whether he is
15 guilty of the separate offense of possession of a weapon
16 during the commission of a violent crime. And I will tell
17 you for this purpose the violent crime --- what are
18 classified violent crimes in our state are both burglary and
19 armed robbery are classified as violent crimes.

20 But the law provides that a defendant is guilty of
21 possession of a firearm during the commission of a violent
22 crime if the person is in possession of a firearm, or knife,
23 or visibly displays what appears to be a firearm or knife,
24 during the commission of a violent crime then he is guilty
25 of the separate offense. The statute specifically says, if

CHARGE ON THE LAW

314

1 a person is in possession of a firearm, or visibly displays
2 what appears to be a firearm, or visibly displays a knife
3 during the commission of a violent crime, and is convicted
4 of committing the violent crime, then he is guilty of the
5 separate crime of possession of a weapon during the
6 commission of a violent crime. And as I said, South Carolina
7 provides --- South Carolina law provides that burglary and
8 armed robbery are violent crimes. So for you to find the
9 defendant guilty of the separate offense of possession of a
10 weapon during the commission of a violent crime, you must
11 first find the defendant guilty of either committing either
12 one of those violent crimes that I have listed. If you find
13 the defendant guilty of either burglary or armed robbery,
14 you would then determine whether the state has proven beyond
15 a reasonable doubt that the defendant was in possession of a
16 weapon during the commission of that violent crime.

17 Now, ladies and gentlemen, there are generally two
18 types of evidence that is presented during the course of a
19 trial.

20 Now there are two types of evidence that are presented
21 during the course of a trial, direct and circumstantial
22 evidence. And I want to give you just a brief definition of
23 the difference between direct and circumstantial evidence.

24 Direct evidence is the testimony of a person who
25 asserts or claims to have knowledge of a fact such as an eye

CHARGE ON THE LAW

315

1 witness. Circumstantial evidence is a proof of a chain of
2 facts and circumstances indicating the existence of a fact.
3 The law makes absolutely no distinction between the weight
4 or value to be given to either direct or circumstantial
5 evidence, nor is there a greater degree of certainty
6 required of circumstantial evidence than is required of
7 direct evidence. You should weigh all of the evidence in
8 this case. And after weighing all of the evidence if you
9 are not convinced of the guilt of the defendant beyond a
10 reasonable doubt, you will find him not guilty. But on the
11 other hand, after weighing all of the evidence, if you find
12 that he is guilty --- if you find that the state has proven
13 his guilt beyond a reasonable doubt, you would find him
14 guilty.

15 Now I also want to tell you that there has been
16 admitted into the evidence in this case a statement
17 allegedly made by the defendant. Now while the Court
18 determined the admissibility of the evidence, you the jury
19 must determine the existence of voluntariness and weight of
20 any statement made by the defendant. You must make the
21 ultimate determination of whether or not the defendant in
22 fact made the alleged statement. If you determine that the
23 defendant made the statement, you must then determine
24 whether the statement was made voluntarily. Finally, you
25 will decide what weight of any shall be given to the alleged

CHARGE ON THE LAW

316

1 statement.

2 You must determine whether the alleged statement was a
3 product of an essentially free and unconstrained choice by
4 its maker. The state must prove the voluntariness of the
5 statement beyond a reasonable doubt. If you determine
6 beyond a reasonable doubt the statement was given freely and
7 voluntarily, then you may give the statement such further
8 consideration as you deem proper. If you determine that the
9 alleged statement was not the free voluntary willed
10 expression of the defendant then you should not consider the
11 statement as evidence.

12 In determining whether the defendant's will was
13 overcome in obtaining the statement the law requires you to
14 consider what is known as the totality of the circumstances.
15 You should consider both the characteristics of the
16 defendant, and the circumstances surrounding any question or
17 interrogation.

18 In determining the voluntariness of any alleged
19 statement, you should consider whether the defendant was
20 advised of and understood his constitution rights. The law
21 requires that before any interrogation, or questioning of a
22 person in custody may begin, law enforcement must advise the
23 accused of his Miranda Rights. That means that the
24 authorities must advise the accused that the accused has the
25 right to remain silent. That any statement could be used

CHARGE ON THE LAW

317

1 against the accused in a court of law. That the accused has
2 a right to have a lawyer present. That if the accused
3 cannot afford a lawyer then one would be appointed for him
4 without cost. And that he could stop making a statement at
5 any time.

6 You must carefully scrutinize all of the surrounding
7 circumstances before you give any weight to an alleged
8 statement. You must be satisfied beyond a reasonable doubt
9 that the statement was made by the defendant uninfluenced by
10 promise of reward or threat of harm.

11 Now, ladies and gentlemen, the defendant in this case
12 has raised the defense of alibi. That means the defendant
13 was not at the scene of the crime at the time it was
14 committed, but was elsewhere and had nothing to do with it.
15 The word alibi means elsewhere. There is no burden upon the
16 defendant to prove that he was at the scene, or that he was
17 not at the scene. Let me say that again. There is no
18 burden upon the defendant to prove that he was not at the
19 scene of the crime. There is no burden upon the defendant
20 to prove his alibi. The defendant need not prove that he
21 was somewhere else. The burden is on the state of South
22 Carolina to prove beyond a reasonable doubt that the
23 defendant was present at the scene of the crime, actually
24 participated in the crime, and was not somewhere else.
25 Thus, the state has the burden of proving beyond a

CHARGE ON THE LAW

318

1 reasonable doubt that the defendant was present and
2 committed the crime. The state has the burden of disproving
3 the defendant's alibi defense.

4 Now finally, ladies and gentlemen, I want to advise you
5 and to charge you and to tell you that you know of course
6 that the defendant in this case has not testified. This is
7 his constitutional right. It is not a circumstance you can
8 take into consideration, or even allow to enter into your
9 discussions in the jury room. Under the constitution of
10 South Carolina and the United States, it is the defendant's
11 constitutional right not to testify. The burden is on the
12 state of South Carolina to establish the guilt by competent
13 evidence beyond a reasonable doubt. The fact that the
14 defendant did not take the witness stand and testify in his
15 own behalf does not create any inference against him. You
16 the jury must not permit this fact to weigh in the slightest
17 degree against the defendant, nor should this fact enter
18 into the discussions in your jury room in any manner
19 whatsoever.

20 Now ladies and gentlemen, I have just about finished my
21 instructions to you, but I will tell you that you are not
22 partisans or advocates for the state of South Carolina or
23 for this defendant. You do not serve on the jury to reward
24 your friends or punish your enemies. Obviously such a
25 perverted system of justice would be intolerable. You have

CHARGE ON THE LAW

319

1 been selected by the state of South Carolina as fair and
2 impartial jurors. It is your duty then by your joint
3 deliberations to determine the truth in this case, giving to
4 the defendant the benefit of each and every reasonable doubt
5 on each and every issue, and then to the facts which you
6 determine to be true you then take and apply the law which
7 has been given to you by this court, and thus arrive at a
8 verdict which does speak the truth. Because the word
9 verdict, ladies and gentlemen, comes from the Latin verb
10 veredicto, meaning to speak the truth. And when you have
11 accomplished these responsibilities you would have satisfied
12 your oath as jurors, and you would have discharged your duty
13 to this court.

14 Now, ladies and gentlemen, I want to instruct you on
15 your forms of verdict in this case. You will consider each
16 Indictment separately, and if the state has failed to prove
17 the guilt of the defendant beyond a reasonable doubt, your
18 verdict would be two words, not guilty. If the state has
19 proved the guilt of the defendant beyond a reasonable doubt,
20 your verdict would be one word, guilty. The verdict that
21 you render in this case must be the verdict of each and
22 every juror. It must be your unanimous verdict. All twelve
23 jurors must agree on the verdict which you authorize the
24 foreman to write.

25 Now, Madame Forelady, I have prepared some verdict

CHARGE ON THE LAW

320

1 forms for your use. And I have prepared a separate verdict
2 form for each of the charges in this case, and I will tell
3 you that the order or sequence that I have put the possible
4 verdicts on this verdict form has absolutely no significance
5 whatsoever. You should not assume or infer that from the
6 order in which I have put the forms of verdict on this sheet
7 that I have any opinion as to what your verdict should be.
8 I do not. The law does not allow me to have an opinion.
9 That is a matter solely up to you. But obviously in putting
10 something down on paper I had to put something first and
11 something second. But the first of these verdict forms, and
12 of course across the top here we simply have the state and
13 the county and the Court and the case number, The State of
14 South Carolina versus Henry James Ross, Jr., verdict form.

15 The first one is we the jury by unanimous consent, find
16 the defendant Henry James Ross Jr., guilty or not guilty of
17 burglary in the first degree. And depending on your verdict
18 you would either check or put an "X" mark in one of those,
19 sign your name, date it, and that would conclude your
20 consideration of that charge.

21 This is the verdict form for armed robbery. Same thing,
22 same formalities up here. We the jury by unanimous
23 agreement, find the defendant Henry James Ross, guilty of
24 armed robbery or not guilty. And again, sign your name,
25 check or "X" whichever one is the verdict of all twelve of

CHARGE ON THE LAW

321

1 you. Sign your name, date it, and return it to --- you
2 would have completed your consideration of that charge.

3 The next charge is one of assault and battery first
4 degree. Again, the same formality. We the jury by
5 unanimous agreement, find the defendant Henry James Ross
6 guilty of assault and battery in the first degree or not
7 guilty. Sign your name, date it, and you will have
8 completed that charge.

9 Now on this last one, this is the possession of a
10 weapon during the commission of a violent crime. You will
11 not consider this one at all unless you find the defendant
12 guilty of either the burglary or the armed robbery. Those
13 are the two charges that are defined as violent crimes under
14 our law. So you must first find him guilty of either one of
15 those. Either burglary or armed robbery before you would
16 consider whether he was in possession of a weapon during the
17 commission of a violent crime. And again you would make an
18 "X" on one or the other, or check mark on either one, sign
19 your name and return it to the courtroom. And we will
20 return you to the courtroom.

21 Now, ladies and gentlemen I am going to send you to
22 your jury room. I am going to ask that you not begin your
23 deliberations just yet. The law does require that I take up
24 certain matters of law with the attorneys that are involved
25 in this case. And if it is necessary for me to return you

THE STATE V JAMES HENRY ROSS, JR.

322

1 to the courtroom for additional instructions I will do so.
2 If it is not necessary, the bailiff will bring you the
3 exhibits, will also bring you these verdict forms, and tell
4 you to begin your deliberations. And when you have reached
5 a verdict if you will knock on the door and advise the
6 bailiff we will return you to the courtroom as soon as
7 possible.

8 So, if you would go to your jury room, but please do
9 not begin your deliberations just yet. Thank you.

10 (Whereupon, the jury exits the courtroom at 11:00
11 a.m..)

12 **THE COURT:** Additions or exceptions on behalf of the
13 state, Ms. Parker?

14 **MS. PARKER:** No, Your Honor.

15 **THE COURT:** On behalf of defense?

16 **MR. SWILLEY:** No, none, Your Honor.

17 **THE COURT:** All right. Check the exhibits, and make
18 sure they are correct. And here are the verdict forms. And
19 Mr. Clerk you can tell the jury to begin their
20 deliberations.

21 We are going to take a ten minute recess, and we will
22 be ready to go forward with guilty pleas.

23 (Whereupon, the jury begins deliberations at 11:03
24 a.m..)

25 (Whereupon, the Court is in recess awaiting the

1 call of the jury at 11:04 a.m..)

2 (Whereupon, the jury announced a verdict at 11:54
3 a.m..)

4 (Whereupon, court comes back to order at 11:55
5 a.m..)

6 **THE COURT:** All right. Get Mr. Swilley and his
7 client in the courtroom, please.

8 All right. We are back on the record with regards to
9 the matter of The State versus Henry James Ross, Jr., in
10 Indictment Number 2010-GS-16-775, 774, 776, and 777. Mr.
11 Ross is present in the courtroom with his counsel, Mr.
12 Swilley. The state is present and represented by Ms.
13 Parker.

14 I have been advised that the jury has reached a verdict
15 in this case. But before I bring the jury in and publish
16 the verdict, I want to say to everyone present both from the
17 defendant's standpoint and from the state and the victim's
18 standpoint, that I know that this is an important case to
19 everyone. I do not of course know what the verdict of the
20 jury is going to be in this case. But I am going to have to
21 require that order and decorum be maintained in the
22 courtroom when the verdict is published. If there is anyone
23 who thinks that they cannot sit quietly when the verdict is
24 published, then they will have to leave now. I will not
25 tolerate any displays of emotions, or clapping, or any other

THE STATE V JAMES HENRY ROSS, JR.

324

1 displays of emotions or outburst of any sort whatsoever.
2 So, if there is anyone in the courtroom who thinks that they
3 cannot sit quietly while the verdict of the jury is
4 published I would ask that you leave now.

5 All right. Thank you. Bring the jury in please.

6 (Whereupon, the jury enters the courtroom at 11:56
7 a.m..)

8 **THE COURT:** All right, Madame Forelady, I have been
9 advised that the jury has reached a verdict. Is that
10 correct?

11 **MADAME FORELADY:** Yes.

12 **THE COURT:** Would you hand it up to the clerk please?

13 All right. From the standpoint of the form, the
14 verdict appears to be correct. Mr. Clerk, you may publish
15 the verdict.

16 **PUBLICATION OF THE VERDICT**

17 **CLERK OF COURT:** Yes, sir, Your Honor. This is case
18 number 2010-GS-16-774, The State of South Carolina versus
19 Henry James Ross, Jr. We the jury by unanimous agreement,
20 find the defendant Henry James Ross, Jr., offense of
21 burglary first degree guilty. Signed Foreperson, Francis
22 Daniels, February 4, 2011. If this is your verdict, would
23 you so signify by raising your right hand please?

24 All twelve raised their hand.

25 **THE COURT:** All right.

THE STATE V JAMES HENRY ROSS, JR.

325

1 **CLERK OF COURT:** Your Honor, this is case number
2 2010-GS-16-775, The State of South Carolina versus Henry
3 James Ross, Jr. We the jury by unanimous agreement, find
4 the defendant Henry James Ross, Jr. the offense of armed
5 robbery not guilty. Signed Foreperson, Frances Daniels,
6 February 4, 2011. If this is your verdict, would you so
7 signify by raising your right hand please?

8 Your Honor, this is case number 2010-GS-16-776, The
9 State of South Carolina versus Henry James Ross, Jr. We
10 the jury by unanimous agreement, find the defendant Henry
11 James Ross, Jr. the offense of assault and battery first
12 degree not guilty. Signed Foreperson Frances Daniels.
13 February 4, 2011. If this is your verdict would you so
14 signify by raising your right hand please? All twelve have
15 done so.

16 Your Honor, this is case number 2010-GS-16-777, The
17 State of South Carolina versus Henry James Ross, Jr. We
18 the jury by unanimous agreement, find the defendant Henry
19 James Ross, Jr., the offense of possession of a weapon
20 during violent crime, not guilty. Signed Foreperson Frances
21 Daniels, February 5, 2011. If this is your verdict would
22 you so signify by raising your right hand please? All
23 twelve raised their hand.

24 **THE COURT:** All right. Thank you. Anything before
25 the jury is discharged, Ms. Parker?

THE STATE V JAMES HENRY ROSS, JR.

326

1 MS. PARKER: No, Your Honor.

2 THE COURT: Mr. Swilley?

3 MR. SWILLEY: May I request a poll of the jury?

4 THE COURT: All right. Go ahead Mr. Clerk. Pole the
5 jury, please.

6 Counsel, come up. The only one that would be necessary
7 would be on the one charge, is that correct Mr. Swilley?

8 MR. SWILLEY: That's correct, Your Honor.

9 THE COURT: Okay.

10 POLLING OF THE JURY

11 CLERK OF COURT: Ladies and gentlemen of the jury,
12 Ms. Foreperson, the verdict that I just published was the
13 verdict that you reached in the jury room. When I call your
14 name if you would please stand and respond to two questions.
15 The first question will be was it your verdict then and is
16 it your verdict now?

17 THE COURT: And this is on the burglary first charge.

18 CLERK OF COURT: Yes, sir.

19 THE COURT: Only one. Okay.

20 CLERK OF COURT: Foreperson, Ms. Frances Daniels, if
21 you would stand please. Was it your verdict then?

22 MS. DANIELS: Yes.

23 CLERK OF COURT: And is it your verdict now?

24 MS. DANIELS: Yes.

25 CLERK OF COURT: Okay. Thank you. Betty Addison.

1 Was it your verdict then?

2 MS. ADDISON: Yes.

3 CLERK OF COURT: And is it your verdict now?

4 MS. ADDISON: Yes.

5 THE COURT: Okay. Thank you. Patricia Byrd. Was it
6 your verdict then?

7 MS. BYRD: Yes, sir.

8 CLERK OF COURT: And is it your verdict now?

9 MS. BYRD: Yes, sir.

10 CLERK OF COURT: Thank you. Richard Caddell, was it
11 your verdict then?

12 MR. CADDELL: Yes.

13 CLERK OF COURT: And is it your verdict now.

14 MR. CADDELL: Yes.

15 CLERK OF COURT: Okay. Thank you. Eric Chittum,
16 was it your verdict then?

17 MR. CHITTUM: Yes, sir.

18 CLERK OF COURT: And is it your verdict now?

19 MR. CHITTUM: Yes, sir.

20 CLERK OF COURT: Julia Courtney. Was it your
21 verdict then?

22 MS. COURTNEY: Yes.

23 CLERK OF COURT: And is it your verdict now?

24 MS. COURTNEY: Yes.

25 CLERK OF COURT: Okay. Thank you. James Grace, was

THE STATE V JAMES HENRY ROSS, JR.

328

1 it your verdict then?

2 MR. GRACE: Yes.

3 CLERK OF COURT: And is it your verdict now?

4 MR. GRACE: Yes.

5 CLERK OF COURT: John Griggs, Jr., was it your
6 verdict then?

7 MR. GRIGGS: Yes.

8 CLERK OF COURT: Is it your verdict now?

9 MR. GRIGGS: Yes.

10 CLERK OF COURT: Thank you. Charles Hayes, was it
11 your verdict then?

12 MR. HAYES: Yes, sir.

13 CLERK OF COURT: Is it your verdict now?

14 MR. HAYES: Yes, sir.

15 CLERK OF COURT: Thank you. Joel Jones, was it your
16 verdict then?

17 MR. JONES: Yes, sir.

18 CLERK OF COURT: And is it your verdict now?

19 MR. JONES: Yes, sir.

20 CLERK OF COURT: Thank you. Brent Phillips, was it
21 your verdict then?

22 MR. PHILLIPS: Yes, sir.

23 CLERK OF COURT: Is it your verdict now?

24 MR. PHILLIPS: Yes, sir.

25 CLERK OF COURT: Thank you. Regan Rogers, was it

1 your verdict then?

2 MS. ROGERS: Yes.

3 CLERK OF COURT: And is it your verdict now?

4 MS. ROGERS: Yes.

5 CLERK OF COURT: By my count that is all twelve
6 jurors. Is there any juror's name who was not called?
7 Thank you.

8 THE COURT: All right. The polling of the jury seems
9 to have --- is complete, and the jury has affirmed its
10 verdict. Anything further before the jury is discharged Mr.
11 Swilley?

12 MR. SWILLEY: There is not, Your Honor.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, I am going to discharge you from any further service
15 on this case, and I thank you for your service in this
16 matter.

17 In my view the jury's role and the fact finding process
18 is so important that the trial judge should not comment on
19 the verdict of the jury even after the jury has reached a
20 verdict. And I make it a practice never to comment on the
21 verdict of the jury, because I do think it is up to the jury
22 to make that determination of the facts. And it is my
23 policy and practice never to comment on the verdict of the
24 jury.

25 I will say there was evidence in the record by which

THE STATE V JAMES HENRY ROSS, JR.

330

1 you could have reached the decision that you reached.

2 This will conclude your services in connection with
3 this case, and I am going to discharge you from any further
4 service. And I will tell you that once you have been
5 discharged as a juror there is nothing illegal about you
6 talking with anyone about your service on this case. There
7 is nothing illegal about anyone talking to you about your
8 service on this case. It is a practice of which I strongly
9 disapprove, and I strongly discourage, but it is not
10 illegal. You have a right to talk with anyone, but you also
11 have the right not to talk with anyone. And if anyone wants
12 to talk to you about it, and harasses you after you have
13 told them you don't wish to discuss it, you let the Court
14 personnel know, and we will deal with them.

15 The only thing that is remaining to be done is for the
16 imposition of sentence, and we are going into the sentencing
17 phase right now, and I know jurors are often in knowing the
18 outcome of the case. And once I have discharged you, if you
19 would like to stay, as we go into the sentencing phase, you
20 are welcome to do so. What I would ask that you do is that
21 you go out this way, go ahead and give your badges to the
22 bailiffs, and come in at the back of the courtroom and have
23 a seat back there, and we will go into the sentencing phase.

24 I will tell you that I will allow you, or I will make
25 everyone else stay here until after you have been

THE STATE V JAMES HENRY ROSS, JR.

331

1 discharged, and are clear of the building, if you would like
2 to stay for the sentencing phase. That is entirely up to
3 you. You can stay if you would like to, or you can leave
4 when I have discharged you. But if you do want to stay,
5 just go around and come back in and have a seat in the back
6 of the courtroom, and I will release you before anyone else
7 is released.

8 I will tell you that by serving on the jury this week,
9 you have met your citizenship responsibilities for jury
10 service in the Circuit Court. That is, up here in the Court
11 of common pleas or the Court of general sessions where you
12 have been serving for the next three years. The first year
13 actually disqualifies you. If you were to get a summons
14 from the clerk in the next year we couldn't take you even if
15 you wanted to serve. And the second and third years you
16 have an exemption and you could not be required to serve.
17 So you can't be required to serve as a juror in the Circuit
18 Court more than once every three years. I can't help you
19 with Federal Court and Magistrate's Court, but as far as the
20 Circuit Court is concerned, you can't be required to serve
21 more than once every three years.

22 You will --- and I think Mr. Suggs already has your
23 checks ready. You will receive a small check for your
24 service on this jury. It will in no way compensate you for
25 the time you have spent up here this week, but it is a small

THE STATE V JAMES HENRY ROSS, JR.

332

1 token of appreciation on behalf of the county for your
2 services. Also if any of you need a certificate to take to
3 your employer or to show that you were serving on this jury
4 then the Clerk's Office will have those as well.

5 I hope that you have a better appreciation of our
6 criminal justice system as a result of having served on this
7 jury. I know that the trial was a great deal different from
8 television. It never ceases to amaze me that they can have
9 a crime committed, an investigation, an arrest and trial all
10 in sixty minutes less commercials. It doesn't work that way
11 in real life. But I do hope that you have a better
12 appreciation of our criminal justice system as a result of
13 having served this week. And on behalf of the state and the
14 county, I do appreciate your service. You are discharged
15 and you are free to go. Thank you very much.

16 (Whereupon, the jury was discharged at 12:07
17 p.m..)

MOTIONS

18
19 **THE COURT:** All right. Mr. Swilley, motions on
20 behalf of the defendant?

21 **MR. SWILLEY:** Your Honor, I'd make a motion for a
22 new trial on the grounds of lack of competent evidence to
23 convict the defendant for the Indictment of burglary first.

24 **THE COURT:** All right. I would respectfully deny
25 that motion. I think that if I were to grant the motion I

1 would be imposing my judgment for that of the jury. There
2 was evidence in the record that he did go in the house. In
3 fact, by his own statement he admitted that he was in the
4 house, and I think there is evidence in the record that the
5 jury could conclude that he could go in the house without
6 permission, without consent. That it did happen at night
7 time, and the elements of burglary first are met.

8 It appears that the jury was very conscious of their
9 considerations, because they did acquit him of the weapons
10 charge, the armed robbery, and the assault and battery
11 charges. So obviously they were very conscious in their
12 analysis of the testimony and concluded that the elements
13 were met.

14 I would therefore respectfully deny the motion.

15 All right. Ms. Parker, do you have the sentencing
16 sheet?

17 **MS. PARKER:** Yes, Your Honor.

18 **THE COURT:** Mr. Swilley if you will come up, and Ms.
19 Parker. And I will be glad to hear from you in regard to
20 criminal record and other things that we need to address at
21 this time. Let's go into the sentencing phase.

22 **SENTENCING HEARING**

23 **THE COURT:** All right. Hand up the sentencing sheets
24 please.

25 All right. The Court does have the sentencing sheet on

THE STATE V JAMES HENRY ROSS, JR.

334

1 the burglary first indictment which is the one the jury
2 found the defendant guilty with a CDR Code of 0079.

3 Ms. Carter, I am going to give you the three other
4 indictments, as well as the verdicts on the other three
5 cases which he was found not guilty.

6 All right. Let me address the victim in this case for
7 just a minute. Ms. Williamson, under our law, and of course
8 I have seen her, and I have heard you testify, but also
9 under our law as a victim in this case you have a right to
10 be kept apprised by the Solicitor's Office of everything
11 that has transpired, everything that is going on in court.
12 And you have the right to be present. And the law also
13 provides that you have a right to address the Court. So, if
14 there is anything that you would like to tell me, I will be
15 glad to hear from you at this time.

STATEMENT BY MS. WILLIAMSON THE VICTIM

16
17 **MS. WILLIAMSON:** Yes, Your Honor. I would just like
18 to say that as for the last year and a half it has just
19 really been a time for me just like I say that was my home.
20 That was my safe place. And to come home and finding
21 somebody in my house, and tell you the things that you had
22 done was not right. He did do those things to me. He was
23 there. It upset me, and it still upsets me. I look out
24 that window at my door, and all I see is his face. And I am
25 just hoping once I exit this courthouse today, that I can

1 put myself to some kind of rest. I have not slept just
2 thinking about you know, will there be somebody else that
3 will come. You know, keeping out, planning when I leave my
4 job, you know what am I going to do with my pocketbook, what
5 am I going to do, how am I going to get in my house, you
6 know without somebody walking up on me, or somebody going to
7 be in my house. I am opening up doors. I am opening up
8 closets. You know, just scared. So I am just hoping today
9 when I leave here that that will cease. I know it will take
10 a little time, but I want to go home when I get off from
11 work tonight, and I want to close my eyes. I just want to
12 rest.

13 **THE COURT:** I will tell you, Ms. Williamson, there is
14 nothing the law can do or nothing that I can do that can
15 ease that pain, or ease that concern that you have. I
16 certainly understand that. I do hope that whatever we do
17 today will give you some closure in connection to this
18 matter, and that you will be able to go forward with your
19 life, and hopefully put this matter behind you. But I do
20 appreciate you being here, and I appreciate your remarks.
21 Thank you very much.

22 All right. Ms. Parker, tell me about prior record.

23 **PRESENTATION OF PRIOR RECORD**

24 **MS. PARKER:** Your Honor, the defendant was convicted
25 on January 23, 2003 for involuntary manslaughter. I did

THE STATE V JAMES HENRY ROSS, JR.

336

1 want to point out to the Court that that was a female victim
2 that died, and that did result from a stab wound.

3 **THE COURT:** What was the sentence on that?

4 **MS. PARKER:** Your Honor, I have a true certified copy
5 of the Indictment. That was before my time here in the
6 Darlington Office. I did not know the circumstances of that
7 case. I believe Captain Watson was --

8 **THE COURT:** Y'all don't have the NCIC on this
9 defendant?

10 **MS. PARKER:** I do have the NCIC, Your Honor.

11 **THE COURT:** So would that reflect the sentence that
12 he got?

13 **MS. PARKER:** The time he got. The sentence, Your
14 Honor, yes, sir. I have the sentencing sheet. I apologize.
15 He received five years probation. Five years suspended to
16 three years probation. Excuse me.

17 **THE COURT:** Okay. What else. That was in '03?

18 **MS. PARKER:** That was in '03, yes, sir. In '04, he
19 was sentenced to three counts of burglary in the second
20 degree. All of those were dwellings under §16-11-312 under
21 the (a) portion of that statute. And for that he received
22 ten years, suspended to --- that also went into probation.

23 **THE COURT:** Completely suspended and then violation
24 of probation, or did he have ten years suspended and
25 probation for a period of time?

THE STATE V JAMES HENRY ROSS, JR.

337

1 **MS. PARKER:** Yes, Your Honor, probation to continue.
2 I don't see where they violated his probation, I believe it
3 just continued.

4 **THE COURT:** All right. That was '04.

5 **MS. PARKER:** That was three counts in December of
6 '04.

7 **THE COURT:** All right.

8 **MS. PARKER:** Yes, sir. The defendant 'also has --- he
9 pled to eight counts of petit larceny in July of '07 and
10 malicious injury to personal property under a thousand.
11 Seven counts of that, and all of that was thirty days.

12 And then --

13 **THE COURT:** Next.

14 **MS. PARKER:** And then in June of 2008, excuse me in
15 November of 2008, he plead to two counts of breaking into
16 auto tanks --- or excuse me, breaking into motor vehicles.

17 **THE COURT:** Two counts of B&E auto?

18 **MS. PARKER:** Yes, sir. And that was also probation.

19 **THE COURT:** That was what?

20 **MS. PARKER:** Probation. Out of Charleston County,
21 sir.

22 **THE COURT:** That was in Charleston?

23 **MS. PARKER:** Yes, sir. Most of his charges I believe
24 are Darlington County.

25 **THE COURT:** Where do y'all stand from the Probation

THE STATE V JAMES HENRY ROSS, JR.

338

1 Department? Did he complete those probations? Was he
2 revoked? What was the standpoint?

3 **PROBATION AGENT:** Your Honor, on the involuntary
4 manslaughter, that probation was revoked due to technical
5 violations on December 8, 2004.

6 **THE COURT:** All of it was revoked?

7 **PROBATION AGENT:** It was actually revoked in full,
8 yes, sir.

9 **THE COURT:** Revoked in full. Okay.

10 **PROBATION AGENT:** The three counts of burglary second,
11 he was actually given a sentence of ten years, suspended to
12 five years in The Department of Corrections with five years
13 probation.

14 **THE COURT:** So he had ten years suspended to five
15 years and five years probation?

16 **PROBATION AGENT:** Yes, sir.

17 **THE COURT:** So he did go to South Carolina -- The
18 Department of Corrections in '04 on the burglary charges?

19 **PROBATION AGENT:** Yes, sir. And the probation
20 revocation that I spoke of earlier was run concurrent with
21 that charge.

22 **THE COURT:** Okay.

23 **PROBATION AGENT:** And also the breaking into a motor
24 vehicle, that happened in Charleston, and they are actually
25 pending probationary cases. The judge when he sentenced him

THE STATE V JAMES HENRY ROSS, JR.

339

1 ordered those probation cases to be consecutive to what he
2 is actually on probation for now, which are the three counts
3 of burglary second. And this conviction would constitute a
4 violation of his probation.

5 **THE COURT:** Okay. Do you want to prepare a citation,
6 and serve him with a citation and go ahead and go ahead and
7 get that taken care of?

8 **PROBATION AGENT:** Yes, sir. I can go ahead and serve
9 it to him now. It will take just a second.

10 County of Darlington, personally appears before me Chad
11 Beard, who being duly sworn says that Henry Ross Jr., did in
12 the state on the 3rd day of February 2011, violate certain
13 conditions of his release in the following particulars.

14 By violating conditions of probation number 6, as
15 ordered in Indictment Number 04-GS-16-1786, 04-GS-16-1794,
16 and 04-GS-16-1796.

17 The violation is based on the following facts. Being
18 convicted in Darlington County General Sessions for a new
19 criminal offense, the Indictment Number pled to today was
20 10-GS-16-774.

21 **THE COURT:** All right. Mr. Swilley, do you
22 acknowledge then now that he has been served with the
23 violation of probation, and we can handle that at the same
24 time as the sentencing hearing?

25 **MR. SWILLEY:** I do, Your Honor.

THE STATE V JAMES HENRY ROSS, JR.

340

1 **THE COURT:** Okay. All right. Ms. Holt, is there
2 anything else that you would like to present on behalf of
3 the state before I call on the defense?

4 **MS. PARKER:** No, Your Honor. No, Your Honor.

5 **THE COURT:** All right. Mr. Swilley.

6 **STATEMENT BY MR. SWILLEY**

7 **MR. SWILLEY:** Thank you, Your Honor, if it pleases
8 the Court. Your Honor, Henry was actually the first client
9 I ever represented in this courtroom ever in my legal
10 career. I did his bond hearing in December of 2009, shortly
11 after I was hired with the Public Defender's Office. I have
12 been working with him ever since. He has been in the
13 Detention Center since December 2, 2009 on this matter, I
14 believe.

15 What I can say about Henry is of all the people that I
16 have dealt with who are incarcerated in the Detention Center
17 until disposition, Henry and I have never shared a curse
18 word. He has been polite, congenial, respectful, and just
19 pretty much easy to get along with in general, not just in
20 relation to other clients. I met his mother and father. He
21 comes from a very good family here in Darlington. And I
22 don't think anyone would argue with me about that. No one
23 is denying that he has a rather dismal record. But, from my
24 observations it is not indicative of his character. And I
25 really don't know what else to say, but to request that the

THE STATE V JAMES HENRY ROSS, JR.

341

1 Court have some mercy on Henry.

2 THE COURT: All right. Thank you, sir. I will be
3 glad to hear from anyone on his behalf, Mr. Swilley, if you
4 would like to call on anyone.

5 MR. SWILLEY: This is Mr. Ross, Sr.

6 THE COURT: Senior, yes. All right. Mr. Ross, yes,
7 sir.

8 STATEMENT OF HENRY JAMES ROSS, SR.

9 MR. ROSS SR.: The only thing I can say is I know my
10 son, and we talk a whole lot. Some of the things that he
11 has did in the past, one thing he has never lied. He has
12 never lied to me. If he did it then he would tell me
13 everything he did, and if I asked him he told me and he told
14 me the truth. And he has always been honest with me. I'm
15 saying that if he did these things, I really do believe that
16 he would have told me. I keep asking him the same questions
17 over and over and over. Son, did you do it? And he says,
18 no daddy if I did I would tell you. That's all I have to
19 say.

20 THE COURT: All right. Yes, ma'am. Is there
21 anything that you would like to tell me?

22 MRS. ROSS: (Negative response.)

23 THE COURT: All right. Mr. Ross, what would you like
24 to tell me, and keep in mind Mr. Swilley you may want to
25 tell him that anything that he says now of course could

THE STATE V JAMES HENRY ROSS, JR.

342

1 affect the matter if there is an appeal in connection with
2 this. So you may not want to get into the facts.

3 **MR. SWILLEY:** He wishes not to address the Court,
4 Your Honor.

5 **THE COURT:** Well, Mr. Ross, I will tell you what I
6 have a problem with. Here you are thirty-three years old,
7 and I haven't heard Mr. Swilley tell me anything about you
8 acting responsibly as a man. I mean at this point you
9 should be out of the house and supporting yourself, and not
10 still hanging around your parent's house and watching
11 television and playing video games at age thirty-three.
12 That doesn't show much responsibility to me, even if you
13 stayed out of trouble. But evidently you haven't stayed out
14 of trouble. You had an involuntary manslaughter. I don't
15 know the facts around that, but you had a involuntary
16 manslaughter conviction. Three previous burglaries. Petit
17 larcenies, malicious injury to property, and breaking and
18 entering an auto. And that has all been in the last eight
19 years. And it wasn't teenage stuff, because you are
20 thirty-three now, so you were in your twenties before you
21 started getting into this criminal trouble. And you haven't
22 straightened out.

23 The statutory -- do you agree Mr. Swilley that the
24 statutory provision for burglary first is fifteen to life?

25 **MR. SWILLEY:** I concur with that, Your Honor.

1 **THE COURT:** Do you also agree that it is considered a
2 violent crime?

3 **MR. SWILLEY:** I concur also.

4 **THE COURT:** And as a most serious crime it will
5 require --- it is most serious under our two strikes three
6 strikes law, I will tell you that, Mr. Ross. And I don't
7 know if you have any previous serious, or whether the others
8 were considered serious or most serious, but now you have a
9 most serious conviction under our two strikes -- three
10 strikes law, and if you were to have another most serious
11 conviction you would be facing life in prison. You are
12 facing life in prison today, do you understand that?

13 **MR. ROSS:** Yes, sir.

14 **THE COURT:** And also because it is a most serious,
15 and because of the amount of punishment involved, it means
16 that you will have to serve 85% of whatever I sentence you
17 to before you will be eligible for any kind of release under
18 community supervision. Do you understand that?

19 **MR. ROSS:** Yes.

20 **THE COURT:** Is that a yes?

21 **MR. ROSS:** Yes, sir.

22 **SENTENCE OF THE COURT**

23 **THE COURT:** All right. They say you have a bad
24 record. You have a record of breaking in other places. But
25 the thing that really does bother me is that you have a

THE STATE V JAMES HENRY ROSS, JR.

344

1 burglary, another home invasion here Mr. Ross. In my view,
2 and in my experience, and I have been in this business --
3 the law business now for about forty-five years, the last
4 fifteen of which have been on the bench. A man or woman's
5 house is his castle, or her castle. A person has a right to
6 be secure in their home.

7 Second, only to taking someone's life, burglary of a
8 dwelling at night is in my view as serious as any crime on
9 our books with the exception of maybe taking someone's life.
10 Because people do have the right to be secure in their
11 homes. And I can certainly understand and imagine the
12 terror you put this lady through just by breaking into her
13 house, and being there when she came home. And I can
14 imagine it will be a long time before she will ever feel
15 secure in her own home again. And you took that from her.

16 Burglary of a dwelling deserves a serious sentence.
17 Especially when you have a record for having done it before.

18 The sentence of the Court is therefore the defendant is
19 committed to the state, The Department of Corrections to a
20 term of twenty-five years. Giving credit for the time
21 served since December 2, 2009.

22 Also, in connection to this I find that there is a
23 violation of the probation by the finding of guilty in the
24 commission of a crime. All probationary sentences are
25 revoked to run concurrent.

THE STATE V JAMES HENRY ROSS, JR.

345

1 **PROBATION AGENT:** Your Honor, can we do a civil
2 judgment for the restitution?

3 **THE COURT:** Civil judgment for the restitution.

4 (Whereupon, this trial was concluded at 1:05 p.m..
5 On Friday, February 4, 2011.)

6 **-- END OF TRANSCRIPT --**

CERTIFICATE OF REPORTER

346

I, the undersigned, Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the trial of the above captioned case, relative to appeal, in The Court of General Sessions in Darlington South Carolina, on the 31st day of January; 2nd, 3rd, and 4th day of February 2011.

I do further certify that am neither, of kin, counsel, nor interest of any party hereto.

May 10, 2011

A handwritten signature in cursive script, appearing to read "Pamela Ozment-Cartee".

Pamela Ozment-Cartee
Circuit Court Reporter

COPY

FORM 5

14CP160456

STATE OF SOUTH CAROLINA

COUNTY OF DarlingtonHenry James Ross Jr. 306790
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

**APPLICATION FOR
POST-CONVICTION RELIEF****INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention L.C.I. 990 Wiscady Hwy Bishopville S.C. 29000
2. Name and location of Court which imposed sentence Darlington County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-05-16-0774
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2/4/2011 25 YEARS
 - (b) _____

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Revised 3/2003

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CLERK OF COURT
DARLINGTON COUNTY, S.C.



347

ATTORNEY GENERAL'S OFFICE

RECEIVED 6/11/14

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END

HAVE COPIES MADE

ROUTE TO

ORDER: TRANSCRIPT

PEN RECORDS CLERK RECORDS

OTHER:

- (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. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 2/13/14
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2014-UP-052
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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SOUTH CAROLINA
COURT OF APPEALS

- (a) Ineffective Assistance of Counsel 6th Amend U.S. Const.
- (b) Mirandize Violation 10th U.S. Const.
- (c) Due process violation 10th U.S. Const.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel to contest Miranda violations, and other failures
- (b) Failed to object to the Miranda violation
- (c) Said ineffectiveness caused a due process violation please see Attachments

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____

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SCOTT B. JONES
CLERK OF COURT/700 D.C.
CHARLINGTON COUNTY, S.C.

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- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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DARLINGTON COUNTY, S.C.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (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? _____

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. Matthew Sully
- ii. William E. Groves
- iii. J. Richard Jones

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal / JUDGE BLENN RICHARD STEVENS SCDEI
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacation / and or Resentencing

20. Are you now under sentence from any other court that you have not challenged?

N/A

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CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

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Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Revised 3/2003

14CP160456

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Henry J. Ross Jr.

SWORN to and subscribed before me this 5
day of June, 2014.

Debra Surles (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Revised 3/2003

14CP160456

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Henry J. Ross Jr.
Applicant

SWORN or affirmed to and subscribed before me this

5 day of June, 2014.

Debra Jones
Notary Public

My Commission Expires: 11-4-2015

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SCOTT B. JONES
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

Scott B. Jones
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

Despite the importance of PCR Remedies as a safeguard against unjust, unconstitutional, and erroneous confinements, this systemic devolving of the importance of PCR process is widespread. Conduct of PCR Counsel for a convicted persons in S.C. raising post-conviction challenges rely almost exclusively on appointed counsel, "most of whom have little experience in this area of the law."

Many appointed lawyers devote little time to investigating available grounds for Relief and in preparing the case for trial. This is especially unfortunate because, in most cases, the state PCR process will be the inmate's last chance to raise any additional challenges to his conviction or sentence.

The Purpose of the PCR Act

Is to provide convicted persons with a comprehensive mechanism to bring to the State's attention any unresolved and previously not mentioned questions of facts and law relevant to their convictions or sentences.

The Relationship Between PCR and direct Appeal

The doctrine that "errors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in PCR proceedings - sometimes referred to as the "Simmons" Rule has been reaffirmed in a host of more capital cases. *State v. Rockville*, - S.C. -, 423 S.E. 2d 32, 34-35, cert denied, 113 S.Ct. 2978 (1993). Issues not raised in those cases should be included in the application for PCR accompanied by an allegation of ineffective assistance of appellate counsel. *Deaton*, SC at - 430 S.E. 2d at 520 (citing *Hyman v. State*, 278 S.C. 501, 299 S.E. 2d 330 (1983) (PCR curiam). *Simmons v. State* - S.C. - 419 S.E. 2d 225 (1992); *Sisler v. Leno*, 293 S.C. 531, 365 S.E. 2d 22 (1987) (granting PCR because of trial errors which court did not review on direct appeal due to a lack of contemporaneous objection). Due Post Conviction Procedure Act is designed to incorporate all rights available under Federal habeas corpus." Citing *Harvey v. South Carolina* 310 F.Supp 83 D.S.C. 1970) (holding that insufficiency of evidence is a federal constitutional claim).

Pleading Grounds for Relief

Application must allege particular grounds for relief the specific defects in the trial or criminal proceedings that warrant a reversal or revision including the legal basis for the claim and supporting facts; and relief desired. To include affidavits, court records, or other material relevant. PCR Counsel is the forerunner and must investigate, ascertain and develop petitioner's constitutional violations, that is petitioner's constitutional right, to effective assistance of counsel at PCR.

Counsel should keep the federal habeas corpus exhaustion doctrine in mind. Before a claim may be presented in federal court, it must have first been presented to the State court; therefore, available state remedies must be exhausted. A claim is generally considered exhausted when the claim has been "fairly presented" once to the State court.

The United States Supreme Court has held that the exhaustion requirement is satisfied even if the State tribunal does not fully consider the claim, as long as it had a fair opportunity to do so, and as such, the State courts were reasonably informed of the nature of the claim; generally, this means that the State court must be given the relevant facts and law and must be apprised that the claim rests in whole or in part, on the Federal Constitution. * Therefore, for pleading purposes, counsel should insure that all grounds for PCR Relief fully inform the court of those relevant facts and the claims Federal Constitutional basis. *Anderson v. Harless*, 459 U.S. 4 (1982) See; *Pound v. Curran*, 404 U.S. 270, 275-76 (1971)

Furthermore, PCR Council's failure to sufficiently and adequately present such claim will be the "neg" and the "prejudice" to overcome a procedural default, and thus a claim of ineffective assistance of counsel claim will be brought against PCR Council's failure to protect petitioner's claims

This is a formal Request for my Appointed PCR Counsel to investigate, ascertain and to develop any and all issues that are Constitutional violations in this proceeding. To gather all evidence, discovery, people and information that would support my grounds for relief. To consult with me in a timely manner regarding manner of action, defense, lack of defense, available defense, case law or any other information. Said failure to do so at this critical stage would be a constitutional violation of the Sixth Amendment.

X

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CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT

Henry James Ross, Jr., #306790,

) Case No. 2014-CP-16-456
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

)

Respondent, making its Return to the Application for Post-Conviction Relief filed June 9, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In July 2010, the Darlington County Grand Jury indicted Applicant for first degree burglary (2010-GS-16-774), armed robbery (2010-GS-16-775), assault and battery of a high and aggravated nature (2010-GS-16-776), and possession of a weapon during the commission of a violent crime. Matthew S. Swilley, Esquire, represented Applicant. On January 31, 2011, Applicant proceeded to trial before the Honorable Howard P. King and a jury. On February 4, 2011, the jury found Applicant guilty of first degree burglary. The jury found Applicant not guilty of all other charges. Judge King sentenced Applicant to twenty-five (25) years imprisonment for first degree burglary.

Applicant filed a timely notice of appeal, and Breen Richard Stevens, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief. The South

¹ Anders v. California, 386 U.S. 738 (1967).

Carolina Court of Appeals dismissed Applicant's appeal on February 5, 2014. State v. Ross, Op. No. 2014-UP-52 (S.C. Ct. App. filed February 5, 2014). The remittitur was returned to the circuit court on February 25, 2014.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:²

1. "Ineffective Assistance of Counsel 6th Amend. U.S. Const."
 - a. "Counsel to contest Miranda violation, and other failures"
2. "Mirandize violation 10th U.S. Const."
 - a. "Failed to object to the Miranda violation"
3. "Due process violation 10th U.S. Const."
 - a. "Said ineffectiveness caused a due process violation"

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this Return and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

² Applicant also attached a two page document to his application, which appears to be largely a recitation of selected passages from John H. Blume, An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina, 45 S.C. L. Rev. 235 (1994).

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the

applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that Applicant's allegations regarding the alleged Miranda violation should be dismissed. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, Respondent requests these allegations be dismissed pursuant to Rule 12(b)(6), SCRCP.

V.

Applicant further alleges due process violations. These allegations appear to be merely recitations of his other grounds of relief. Therefore Respondent submits these allegations are without merit and incorporates its responses in Parts III-IV, supra.

In the event Applicant alleges other independent 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, 260, 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), SCRCP, 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), SCRCP, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on those issues so requiring one.

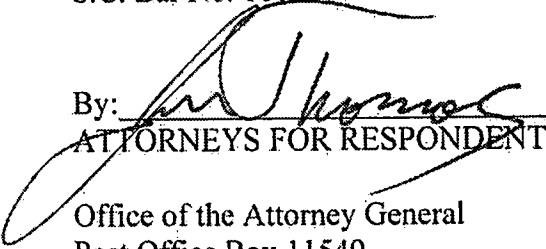
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Nov. 19, 2014

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

HENRY JAMES ROSS, JR., 306790

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

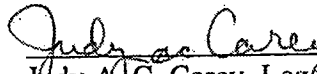
2014-CP-16-0456

AFFIDAVIT OF SERVICE BY MAIL

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** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
 Axelrod & Associates, PA
 4701 Oleander Drive
 Myrtle Beach SC 29577

DATED this 19th day of November, 2014.


 Judy A.C. Carey, Legal Assistant
 For Respondent

In Circuit Court of the
Fourth Judicial Circuit
2014-CP-16-0456

HENRY JAMES ROSS, JR.,

Plaintiff,

vs.

THE STATE,

Defendant .

Transcript of Record

Marlboro, South Carolina
July 20, 2016

B E F O R E:

The Honorable G. Thomas Cooper

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

Mr. Tristan M. Shaffer, Esquire
Attorney for the Plaintiff

Mr. Caitlin E. Hastings, Esquire
Attorney for Defendant

Hattie Gordon
Circuit Court Reporter

Transcribed by:
Lisa S. Carter

I N D E X

WITNESSESPAGE

Henry James Ross, Jr.:

Direct Examination by Mr. Shaffer 13

Cross Examination by Ms. Hastings 20

Matthew Sherrod Swilley:

Direct Examination by Mr. Shaffer 23

Cross Examination by Ms. Hastings 31

Redirect Examination by Mr. Shaffer 36

Re-cross Examination by Ms. Hastings 37

EXHIBITSNO.DESCRIPTIONEV.

(NO EXHIBITS INTRODUCED DURING HEARING)

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1 THE COURT: Call your first witness, I mean, your
2 first case.

3 MS. HASTINGS: Your Honor, this is the case of Henry
4 Ross versus the State of South Carolina. Case number
5 2014-CP-16-0456. The applicant is presently confined in
6 the South Carolina Department of Corrections pursuant to
7 the order of commitment from the Darlington County Clerk of
8 Court.

9 In July of 2010 the Darlington County Grand Jury
10 indicted the applicant for first-degree burglary, armed
11 robbery, assault and battery of a high and aggravated
12 nature and possession of a weapon during the commission of
13 a violent crime.

14 The applicant was represented by Matt Swilley. And on
15 January 31, 2011, the applicant proceeded to trial before
16 the Honorable Howard P. King and a jury.

17 On February 4, 2011, the jury found the applicant
18 guilty of first-degree burglary and not guilty of all of
19 the charges. Judge King sentence the applicant to twenty-
20 five (25) years imprisonment for the first-degree burglary
21 charge.

22 The applicant subsequently filed a timely notice of
23 appeal and Breen Richard Stevens of the Office of Appellant
24 Defense perfected the appeal with the filing of an Ander's
25 brief. The South Carolina Court of Appeals dismissed the

1 applicant's appeal on February 5, 2014 and a remittitur was
2 issued in circuit court on February 25, 2014.

3 The applicant subsequently filed his application for
4 post-conviction relief on June 9, 2014.

5 The applicant is present here in the courtroom today
6 and is represented by PCR counsel, Tristan Shaffer. And I
7 believe that there's a motion before the Court on behalf of
8 the applicant. And I'll turn it over to PCR counsel at
9 this time.

10 THE COURT: Mr. Shaffer?

11 MR. SHAFFER: Thank you, Your Honor. There were
12 several amendments submitted to opposing counsel last week
13 that I don't think the State is going to object to. After
14 speaking with my client last week and then thinking about
15 the case a little while, I actually came up with an
16 additional issue which I brought the attention of opposing
17 counsel on Monday.

18 Your Honor, I'm actually moving for a continuance in
19 this case because of the fact, I would like a little more
20 time to develop this issue. I spoke with -- the issue
21 involves and I'll give you a little background of the case.
22 Mr. Ross was convicted of burglary and acquitted of all of
23 the charges that he had pending. Essentially, this was a
24 case where a lady said that he broke into her home, held a
25 knife to her throat, assaulted her and then fled. She was

1 unable to identify who she gave a general description and I
2 guess, you know, later on they were able to do a line-up
3 based off of DMV photos, on a computer. She looked through
4 a bunch of DMV photos for about thirty minutes and finally
5 found him and said I'm not hundred percent sure but that
6 might've been the guy who did it. Okay. He looks like the
7 guy who did it. He was subsequently arrested. Okay. So
8 they brought him in for questioning. He said, no, I have
9 an alibi. He was subsequently arrested. And went to his
10 initial bond hearing. At the bond hearing, he was
11 obviously advised of his right to have an attorney. My
12 question is whether or not he asserted his right there and
13 that's an issue that I would like to explore little bit
14 more. After that bond hearing they brought him in the
15 court, like immediately after, according to, at least, the
16 police testimony during the Jackson v. Denno hearing,
17 immediately afterwards they brought him in, brought him
18 into the police station and did a video statement from him.
19 That video statement ---

20 THE COURT: After the preliminary --

21 MR. SHAFFER: The bond ---

22 THE COURT: ---the bond hearing?

23 MR. SHAFFER: Yes. So if he would have asserted ---

24 THE COURT: Was there a -- why would he -- what did
25 you say about a Denno hearing?

1 MR. SHAFFER: Well, they raise it at the Denno --
2 they did a Denno hearing before the confession. They
3 didn't specifically raise whether or not ---

4 THE COURT: At the trial?

5 MR. SHAFFER: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. SHAFFER: So he gave a statement right after the
8 bond hearing, at least according to the police officers,
9 stated that during the Jackson v. Denno hearing.

10 THE COURT: So they went from the bond hearing to
11 the police office, the police department?

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: And he gave a video statement there?

14 MR. SHAFFER: That's correct. It reads ---

15 THE COURT: Was he Mirandized there?

16 MR. SHAFFER: Yes, Your Honor. He was Mirandized
17 there.

18 THE COURT: Was he Mirandized at the bond hearing?

19 MR. SHAFFER: Your Honor, I think he was advised of
20 his right to counsel and advised of his right that he could
21 get a public defender. I'm not sure -- what I want to do
22 is get the application for the public defender and find out
23 when exactly that was heard because if he's asserting his
24 right at the bond hearing with the arresting officer there
25 who later takes him to the police station immediately there

1 afterwards, there may be ---

2 THE COURT: Well, did he give them a statement?

3 MR. SHAFFER: Yes, Your Honor. He gave ---

4 THE COURT: Even though -- even though he was told
5 that he had the right to remain silent?

6 MR. SHAFFER: Yes, Your Honor, he did.

7 THE COURT: And that he had the right to an
8 attorney?

9 MR. SHAFFER: Yes, Your Honor. The issue becomes
10 whether or not, I guess, there's two different lines of
11 cases here. There's a Sixth Amendment Right case which,
12 you know, the Sixth Amendment Right to Counsel after
13 questioning which I understand might not be there but I
14 think there still protection under his Edwards Right, when
15 he's saying I want an attorney and then they take him,
16 essentially, right over to -- if he saying I want an
17 attorney and then they immediately take him to a ---

18 THE COURT: Have you got a transcript of the bond
19 hearing?

20 MR. SHAFFER: No, Your Honor, I do not.

21 THE COURT: I wouldn't think so.

22 MR. SHAFFER: What I would like to do is,
23 essentially, find out from the officers is one, the
24 application for his public defender. Then I want to find
25 out from the officers whether or not they knew he's asking

1 for an attorney right there and immediately take him over
2 to question him.

3 THE COURT: So he said he's ask--- he's told you
4 he's asked for an attorney.

5 MR. SHAFFER: Your Honor, he's definitely asked for
6 an attorney. He's not exactly sure when that process took
7 place. That's what he just told me. Is that in all
8 honesty he's not, he doesn't recall right now when he got
9 ---

10 THE COURT: Well, he certainly didn't do it at the
11 police station because, I believe, they would've stopped
12 the questioning if he had.

13 MR. SHAFFER: Well, I think that he probably did not
14 do it whenever he -- I certainly know he did not do it when
15 he was in front of the camera when there was giving his
16 Miranda rights.

17 THE COURT: Right.

18 MR. SHAFFER: So , Your Honor, obviously, under the
19 Supreme Court, I don't think is Sixth Amendment Right to
20 Counsel might not attached under current -- his Fifth
21 Amendment Right to Counsel under Edwards still survives
22 that because once he is asserts, you know, ---

23 THE COURT: Once he asserts ---

24 MR. SHAFFER: They can't ---

25 THE COURT: I understand that. Is there any

1 evidence he asserted at the bond hearing?

2 MR. SHAFFER: No, Your Honor, not other than whether
3 or not he would've asked for public defender there. I
4 don't have any evidence with me today, Your Honor. It's
5 something I would like to investigate, essentially.

6 THE COURT: What's these State's position?

7 MS. HASTINGS: Your Honor, the State objects to this
8 continuance, um, we're ready to proceed with this case.
9 It's been set for a roster twice according to our records.

10 THE COURT: So this is the third ---

11 MS. HASTINGS: This is the third time ---

12 THE COURT: --- continuous?

13 MS. HASTINGS: Yes. And pursuant to Rule 15 (a) ---

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

15 MS. HASTINGS: Pursuant to Rule 15 (a), the State
16 would assert that this amendment to his application is
17 untimely and we haven't had proper time to prepare. And
18 also there is no evidence that he asked for his right to
19 counsel at the bond hearing. This is all just conjecturing
20 at this point.

21 THE COURT: It is -- well, Mr. Shaffer admits it's
22 conjecture at this point. All right. Mr. Shaffer, your
23 motion is denied to continue.

24 However, in the course of your representation of Mr.
25 Ross if you're able to uncover anything that gives credence

1 to your theory, I certainly will take that into
2 consideration in terms of any final decision. But after
3 two continuances, I think, the State is entitled, at least,
4 to go ahead and put the evidence on the record and I'll
5 withhold ruling on it within a period of time to give you
6 sufficient time. And, if indeed that turns up, he may be
7 entitled to whatever relief he is accord under the law. In
8 the meantime, we're going ahead today.

9 MR. SHAFFER: Thank you, Your Honor.

10 THE COURT: All right.

11 MS. HASTINGS: Thank you, Your Honor.

12 THE COURT: Yes, ma'am.

13 MR. SHAFFER: Your Honor, I should probably go ahead
14 put on the record the other amendments that the State is
15 not ---

16 THE COURT: Well, I don't have them but I haven't
17 heard any objection from the State to the amendments.

18 MS. HASTINGS: No, Your Honor. *

19 THE COURT: Okay. So they -- we can go forward on
20 those. If you wish for me to look at them I'll be glad --
21 all I have is the applicant's application.

22 MR. SHAFFER: Your Honor, I actually, the amendments,
23 I wasn't able to find the paper copy that I have brought,
24 I'm pulling them up currently have on my phone.

25 THE COURT: Okay.

1 MR. SHAFFER: I was going to assert that counsel was
2 ineffective during the portions of the closing argument.
3 They were not objected whenever ---

4 THE COURT: Do you have a copy?

5 MS. HASTINGS: Yes, Your Honor. It is highlighted, if
6 that's okay.

7 MR. SHAFFER: It may only be a copy of my email, Your
8 Honor.

9 MS. HASTINGS: It is a copy of ---

10 THE COURT: Well, we can get it -- I think you can
11 get a copy -- can we get a copy made somewhere?

12 MS. HASTINGS: Yes, Your Honor.

13 THE COURT: There's a copy machine right here. I
14 don't know how to operate it.

15 MR. SHAFFER: And I have no objection to the
16 highlighted or anything like that.

17 THE COURT: Does anybody know how to operate this
18 copy machine?

19 MR. SHAFFER: That's a printer.

20 THE COURT: Oh, that's a printer. I'm sorry.
21 Well, I've got the perfect person to go -- I've got the
22 lawyer to go ---

23 THE CLERK: I can make you a copy.

24 THE COURT: All right. Mr. Shaffer, call your
25 first witness.

Henry Ross - Direct Examination by Mr. Shaffer:

13

1 MR. SHAFFER: Thank you, Your Honor. I would call
2 Henry Ross to the stand.

3 THE COURT: Come around, Mr. Ross. Place you left
4 hand on the Bible and raise right hand please. Do you
5 solemnly swear or affirm the testimony you're about to give
6 in this hearing be the truth, the whole truth, and nothing
7 but the truth so help you God?

8 MR. ROSS: Yes, Your Honor.

9 THE COURT: All right. Have a seat in the witness
10 box and state your full name.

11 MR. ROSS: Yes, my name is Henry James Ross, Jr.

12 THE COURT: I didn't quite hear you.

13 MR. ROSS: My name is Henry James Ross, Jr.

14 THE COURT: Okay.

15 HENRY JAMES ROSS, JR., first being
16 duly sworn, testified as follows:

17 Direct Examination by Mr. Shaffer:

18 Q. Mr. Ross, where are you originally from?

19 A. I'm originally from Darlington, South Carolina.

20 Q. Okay. Tell us a little bit about the allegations
21 that's against, that were against you that resulted in your
22 incarceration?

23 A. You talking about the ---

24 Q. Yeah, what did the State say you did?

25 A. The State said I burglarized someone's house.

1 Q. Okay. Now, if you could tell us a little bit about,
2 you were represented by Mr. Swilley, correct?

3 A. Yes, sir.

4 Q. And tell us a little bit about your representation
5 with him, how many times did you meet?

6 A. I was -- I was in the county jail for twelve, about
7 fourteen months and I'd say he came to see me, probably,
8 about, at least, two or three times.

9 Q. Okay. So he came to see you two or three times. What
10 was the substance of y'all's conversations or what did you,
11 did y'all talk about trial strategy or the evidence against
12 you?

13 A. No. We didn't talk about the evidence. We just
14 talked about the trial strategy.

15 Q. Okay. Did he ever mention whether or not you,
16 probably, should plead guilty?

17 A. No, sir.

18 Q. Did he ever give you a plea offer in the case?

19 A. No, sir. They sent me a letter in the mail about a
20 plea offer.

21 Q. Okay. What was the plea offer in the case?

22 A. Fifteen (15) years.

23 Q. You turned it down?

24 A. I turned it down.

25 Q. Okay. Now, you gave a statement in this case,

1 correct?

2 A. Say that again.

3 Q. You gave a statement to the police?

4 A. Yes, sir.

5 Q. Okay. That's a video recorded statement, right?

6 A. Yes, sir.

7 Q. Just summarize for the Court what the substance of
8 that statement was?

9 A. They was asking me questions about, basically, about
10 the charges that I was charged with. And there some more
11 charges that I didn't know nothing about period, they was
12 asking me about and, basically, about, about it.

13 Q. Okay. And you, basically, told them you burglarized
14 the house, is that correct?

15 A. Yes, sir.

16 Q. Okay. Why did you -- is that statement correct?

17 A. No, it's not correct. I mean, ---

18 Q. Why did you give that statement?

19 A. The reason why I gave that statement because me being
20 blind to the law, I knew nothing about the law, and me
21 being blind to it, I thought if I tell them what they want
22 to hear they would leave me alone not knowing they was
23 gonna get me a whole bunch of trouble.

24 Q. Okay. Now, you say you were, blind to the law, but
25 you had prior charges, correct?

1 A. Yes, sir.

2 Q. Did you end up pleading guilty to those prior charges?

3 A. I pled guilty to those.

4 Q. Okay. Now, have you ever been charged or accused of
5 anything this serious before?

6 A. No, sir.

7 Q. What was going to be the strategy going forward in
8 your mind? What did Mr. Swilley make the strategy be going
9 forward for the purposes of trial?

10 A. What you mean by that?

11 Q. Okay. What did you understand would be argued at your
12 trial?

13 A. My innocence.

14 Q. Okay. And you had an alibi, correct?

15 A. Yes, sir.

16 Q. And you got family that testified, correct?

17 A. Yes, sir.

18 Q. You ask Mr. Swilley to call family members to testify
19 in court?

20 A. Yes, sir.

21 Q. Did you end up, yourself -- did you end up, yourself,
22 testifying during your trial?

23 A. No, sir.

24 Q. Why didn't you testify?

25 A. He thought -- what Mr. Swilley said, it probably

Henry Ross - Direct Examination by Mr. Shaffer:

17

1 wouldn't be a good thing because if I testified they would
2 bring up my prior record.

3 Q. And what was your prior record?

4 A. Burglary.

5 Q. Okay.

6 THE COURT: Was what?

7 A. Burglary II.

8 THE COURT: Just one?

9 A. Two.

10 THE COURT: Two different burglaries?

11 A. Two different.

12 Q. And you made a couple of different claims on your PCR
13 application, right?

14 A. Yes, sir.

15 Q. You got -- you've actually written me and ask me to
16 raise an issue about your indictment, is that correct?

17 A. Yes, sir.

18 Q. And could you explain, just for the Court and I'll
19 explain a little bit more later, but what is your
20 understanding of your indictment issue?

21 A. While I'm -- while I'm incarcerated I goes back and
22 forth to the law library, you know, working on my case.
23 And I discovered that they -- I got it from out of the law
24 book, in the South Carolina Rules of -- law book and the
25 dates that is on my indictment it's like they was messed up

1 or something and the dates that I got from out of the law
2 book, saying that they supposed to convene in general
3 sessions on indictments on a certain date and mines it's
4 totally different.

5 Q. Okay. So on your indictment, does it indicate that
6 the grand jury met on your case before they delivered the
7 report?

8 A. Yes, sir.

9 Q. Okay. And does it indicate that the date that they
10 met was not during a term of general sessions?

11 A. No, sir.

12 Q. Now, you also wrote me and made me aware of the Brown
13 case, correct?

14 A. Yes, sir.

15 Q. That you had written me about and we've discussed?

16 A. Yes, sir.

17 Q. And you recognize the fact that, that could be, that,
18 basically, says that, that's okay, is that right?

19 A. Yes, sir.

20 Q. Okay. But where you have asserted that your attorney
21 was ineffective for that, right?

22 A. Yes, sir.

23 Q. Okay. We're not mentioning that issue?

24 A. Yes, sir.

25 Q. And you assert that your state constitutional right to

Henry Ross - Direct Examination by Mr. Shaffer:

19

1 an indictment was violated as a result ---

2 A. Yes, sir.

3 Q. --- to the way the grand jury met?

4 A. Yes.

5 Q. Okay.

6 THE COURT: He's talking about trial counsel or
7 appellate counsel?

8 MR. SHAFFER: Your Honor, I don't think the appellate
9 counsel raise the issue.

10 THE COURT: Well, I was just wondering what ---

11 MR. SHAFFER: I guess, the trial counsel would be ---

12 THE COURT: Okay.

13 MR. SHAFFER: --- he did move to quash the
14 indictment.

15 THE COURT: Okay.

16 Q. Now, there's another issue involving, that you asked
17 me to raise involving a third-party guilt, is that correct?

18 A. Yes, sir.

19 Q. Explain that a little bit.

20 A. The victim in my case, she stated to the police in her
21 incident report that she came home and found Frankie
22 Williamson in the house. And this is what she stated
23 herself. She came home -- she says she came home and found
24 Frankie Williamson in her house.

25 THE COURT: Who?

1 A. Frankie Williamson. My name is Henry Ross and I don't
2 know why -- she stated that she came home and found this
3 guy in the house.

4 Q. Now, the police actually showed, did a show off of
5 this man that you're alleging ---

6 A. Yes, sir.

7 Q. Do you -- excuse me, I guess, did you receive a police
8 report as far as the discovery was delivered to you that
9 indicated that?

10 A. Yes, sir.

11 Q. Did you ever ask your attorney to raise that issue
12 involving third-party guilt?

13 A. No, sir.

14 Q. Why didn't you?

15 A. The reason why I didn't do that because I knew nothing
16 about the third-party guilt.

17 Q. Okay. Did you think your attorney was raising all the
18 issues he could?

19 A. Um, no.

20 Q. Okay. What issues did you want him to raise at the
21 time and I'm not talking about now, but at the time, were
22 there any issues that you ask him to raise that he did not?

23 A. No, I didn't.

24 Q. Okay. But at that time, did you know anything about
25 third-party guilt?

Henry Ross- Cross Examination by Ms. Hastings:

21

1 A. No, sir.

2 Q. Okay.

3 MR. SHAFFER: No further questions.

4 THE COURT: Attorney General?

5 MS. HASTINGS: May it please, the Court?

6 Cross Examination by Ms. Hastings:

7 Q. Good morning, Mr. Ross.

8 A. Good morning.

9 Q. How are you doing?

10 A. All right.

11 Q. I just have a few questions for you.

12 A. Okay.

13 Q. You made two statements to the police, is that
14 correct?

15 A. Yes, sir -- yes, ma'am.

16 Q. In the first one, you actually went voluntarily to
17 talk to them, is that right?

18 A. Yes, ma'am.

19 Q. Okay. And for the second one, when you were talking
20 with investigator Valazack, I believe, ---

21 A. Yes, ma'am.

22 Q. She -- it was videotaped, correct?

23 A. Yes, ma'am.

24 Q. And she actually read you your Miranda rights?

25 A. Yes, ma'am.

1 Q. And did she go through a form with you and have you
2 initial by each right? Do you remember?

3 A. No, ma'am, I don't remember.

4 MS. HASTINGS: I begged the Court's indulgence for a
5 moment. Permission to approach, Your Honor?

6 THE COURT: Sure. I've got a transcript here if
7 you want him to look at it.

8 Q. Would you mind reading this line right here for ---

9 THE COURT: Where are you?

10 MS. HASTINGS: I'm sorry, Your Honor, page 195.

11 A. Go ahead.

12 THE COURT: What line?

13 MS. HASTINGS: Line 20, Your Honor, or line 19.

14 THE COURT: Go ahead.

15 A. "I actually read them off a statement form, custodia
16 statement form which list the Miranda rights. I had him
17 initialed beside each one showing that he understood them."

18 Q. Thank you. And do you recall your attorney mentioning
19 at trial Mr. F. Williamson?

20 A. No, sir.

21 MS. HASTINGS: No. Okay. No further questions, Your
22 Honor.

23 MR. SHAFFER: No redirect, Your Honor.

24 THE COURT: All right. You can come down, sir.

25 Thank you very much.

Matthew Swilley- Direct Examination by Mr. Shaffer:

23

1 MR. SHAFFER: I'd like to call Matt Swilley.

2 THE COURT: Call Matthew Swilley. Place your left
3 hand on the Bible and raise right hand. Thank you. You
4 solemnly swear or affirm the testimony you're about to give
5 in this hearing be the truth, the whole truth, and nothing
6 but the truth so help you God?

7 MR. SWILLEY: I do.

8 THE COURT: Have a seat. State your full name for
9 the record.

10 MR. SWILLEY: Matthew Sherrod Swilley.

11 MATTHEW SWILLEY, first being
12 duly sworn, testified as follows:

13 **Direct Examination by Mr. Shaffer:**

14 Q. Mr. Swilley, tell us a little bit about the
15 allegations against Mr. Ross?

16 THE COURT: I'm sorry, I couldn't hear the
17 question.

18 MR. SHAFFER: I was asking him to give a description
19 of the allegations against Mr. Ross.

20 THE COURT: Okay.

21 MR. SHAFFER: And actually I might modify that.

22 Q. Tell us a little bit about the evidence that the State
23 had against Mr. Ross?

24 A. Basically, what had happened was that there was a lady
25 who had, I believe, come home and alleged that there was an

1 assailant in her home. She alleged that the assailant held
2 her, pulled a knife on her, demanded money. She gave the
3 assailant money and that the assailant grabbed her breast
4 and then exited the home, based upon my recollection.
5 believe, that she, there was either a 9-1-1 call, she
6 called 9-1-1 and in the recording she was very frantic and
7 hysterical. Subsequent to this taking place, I believe she
8 was taken to the Darlington City Municipal Police
9 Department. I think that she was put on a computer -- I
10 think she was sat down in front of a computer by either Moe
11 Valazak or Danny Watson, who was the captain at the time,
12 and she was, I think, she was able to go through, what I,
13 based upon my recollection, I believe, were mug shots. And
14 I think she came to Henry's mug shot and said that, that,
15 basically, communicated to them that, that was the person
16 who she believed was in her home that night. Subsequent to
17 that I believe that Mr. Watson or Ms. Valazak, maybe
18 together, went, got Henry, brought Henry into the Police
19 Department and gave -- well, conducted an interrogation of
20 Henry. In which Henry informed them after several minutes
21 that he had been in the alleged victim's house and had
22 exited the home when she arrived home. That's pretty much
23 a summation of the evidence.

24 Q. Okay. And he wasn't just charged with burglary
25 initially, correct?

1 A. He was charged with burglary, armed robbery, assault
2 and battery of a high and aggravated nature and possession
3 of a weapon in commission of a violent crime.

4 Q. Now, the jury only convicted him of the burglary,
5 correct?

6 A. That's correct.

7 Q. Now, during his statement, I mean, his second
8 statement, did he admit to anything other than burglary?

9 A. No, not to my recollection.

10 Q. Okay. So the jury didn't find him guilty of the other
11 charges that she said he did, just the burglary he admitted
12 to, correct?

13 A. They found him guilty of everything that he admitted
14 to in that interview. That's correct.

15 Q. Is there any -- was there any other evidence that he
16 was in that home, burglarized the home, other than his
17 statement and her ID'ing of him?

18 A. Based upon my recollection there was absolutely
19 nothing that connected Henry to that burglary other than
20 the lady picking, picking his picture out and then his
21 statement. There was nothing else, nothing that would've
22 corroborated that.

23 Q. Now, during the trial you did a Jackson v. Denno
24 hearing?

25 A. I did.

1 Q. What were you arguing during that Jackson the Denno
2 hearing?

3 A. Basically, that Henry's will have been overborne
4 during the interview. The investigators specifically
5 Detective or Captain Watson, rather, was very aggressive
6 with Henry. He -- it was a very intense interview session.
7 I felt as though Henry was very afraid based upon what I
8 could see. He was scared of Captain Watson. He was scared
9 of going to prison for a long time. He was, he was just
10 very frantic. And my argument was that, you know, based
11 upon what was portrayed in the video that his will have
12 been overborne and that the State couldn't show by a
13 preponderance of the evidence that the statement was given
14 voluntarily.

15 Q. Okay. Do you recall whether they -- when they
16 responded to the scene after the 9-1-1 call ---

17 A. Yes.

18 Q. --- whether police were able to find a suspect
19 matching the general description in the area?

20 A. I don't -- I don't recall. Basically, from my
21 recollection I believe that they didn't, they didn't bring
22 anybody else into question. I think they brought the lady
23 in the next day for the, to view the pictures, from my
24 recollection.

25 MR. SHAFFER: Your Honor, if I may approach?

Matthew Swilley- Direct Examination by Mr. Shaffer:

27

1 THE COURT: Certainly.

2 MR. SHAFFER: I'd like to hand this up to refresh his
3 recollection.

4 THE COURT: Go ahead.

5 Q. I'm handing you what was purported to me and I believe
6 this is probably the incident report from this incident,
7 does that look like the incident report from that incident?

8 A. It does.

9 Q. If you can read the second paragraph, see if that
10 refreshes your recollection.

11 A. "Later when patrolman Cauthen located a male suspect
12 fitting the description the person believed to be involved
13 with the break-in, I transported the" -- let me start over.
14 I apologize. "Later when patrolman Cauthen located a male
15 suspect fitting the description of the person believed to
16 be involved with the break-in, I transported the
17 complainant to the Food Lion parking lot to see if she
18 recognized the suspect. Complainant requested that the
19 suspect step out of the patrol vehicle so she could get a
20 good look. Complainant was hesitant in answering. The
21 suspect then looked at the complainant and smiled at her. I
22 asked the suspect if he knew the complainant to which he
23 stated, no. The complainant then stated no, that's not
24 him."

25 Q. Okay. Now, do you -- does that refresh your

1 recollection of whether or not they found someone in the
2 area?

3 A. Yes.

4 Q. Okay. Do you recall her ever giving an explanation as
5 to why she did not believe that with him?

6 A. I don't.

7 Q. Okay. What was your strategy at this trial? What was
8 going to be your strategy?

9 A. After the Denno motion had been denied by Judge King,
10 my strategy was, basically, was just you try to make clear
11 and -- well, I guess, the theory of the case was that they
12 had gotten the wrong person. This lady was mistaken. At
13 trial, I think she was impeached a few times about, you
14 know, her description of the suspect and that Henry had
15 given the statement, you know, under duress and that he
16 gave the statement because he was scared and he wanted the
17 police to leave them alone, essentially.

18 Q. Okay.

19 A. Misidentification, I guess, you can say.

20 Q. Okay. And you presented an alibi witnesses, correct?

21 A. Yes.

22 MR. SHAFFER: Court's indulgence.

23 Q. A few minutes ago I was asking you about whether or
24 not you remember what the victim statement, um, is there a
25 reason why she did not believe that suspect, when they got

Matthew Swilley- Direct Examination by Mr. Shaffer:

29

1 into the Food Lion parking lot, was the person involved.

2 You, I believe, your answer was you didn't recall, is that
3 correct?

4 A. Yeah, I didn't recall that into you showed me the
5 incident report.

6 Q. I'm going to show you this supplemental incident
7 report to refresh your recollection.

8 A. Okay.

9 Q. And just look over that and see if that refreshes your
10 recollection as to why the police ---

11 A. Are you referring to the third paragraph?

12 Q. Yes.

13 (Whereupon, Mr. Swilley took time to read the incident
14 report)

15 A. Okay.

16 Q. Now, does that refresh your recollection as to why the
17 victim said that, that was not the person?

18 A. Yes.

19 Q. Based off the discovery, what was your indication as
20 to why she thought that, that was not the person?

21 A. Well, it was made clear that she thought that the
22 suspect or that the person in the car at the Food Lion was
23 not as slim or as tall and was -- was not as slim or tall
24 as the person who was in her home and that the individual
25 in the car was darker skin than the individual who had been

1 in her house.

2 Q. Okay. It also says something about a belt buckle?

3 A. Right. And she -- yes, that the suspect she did not
4 notice a large belt buckle on the suspect.

5 Q. Okay. Now, the record wouldn't indicate that you made
6 any objection to quash the indictment, is that....

7 A. Yeah, I did not make a motion to quash the indictment.

8 Q. I'm going to show you a copy of the indictment.

9 MR. SHAFFER: The Court should have this in the file.

10 THE COURT: I do.

11 Q. Can you tell us the date they indicated that the
12 action of the grand jury was taken?

13 A. It indicates that the grand jury issued true billed
14 indictment on July 15, 2010.

15 Q. And on the other page, can you tell us the date that
16 indicates the grand jury would've been convened?

17 A. It says that the -- indicates the grand -- in the
18 verbiage that the grand jury had convened on July 19, 2010.

19 Q. Did you -- do you believe that's inconsistent with the
20 proper procedure under the statute, at least, for when the
21 grand jury should convene?

22 A. Well, I haven't looked at it in a while, but the way I
23 understand it is, the grand jury convenes in secrecy and
24 it's usually on, I believe, a Friday of every month, I
25 believe it was in Darlington when officers would show up

Matthew Swilley- Cross Examination by Ms. Hastings:

31

1 and testify before the grand jury. But I don't know. I
2 don't know why the stamp doesn't correspond with the
3 verbiage in the indictment.

4 Q. Okay.

5 A. I don't know.

6 Q. And, obviously, you would've had the indictment,
7 right?

8 A. Yes.

9 Q. Okay.

10 MR. SHAFFER: No other questions, Your Honor.

11 THE COURT: Anything other from the State?

12 MS. HASTINGS: Yes, Your Honor.

13 THE COURT: Go ahead.

14 MS. HASTINGS: May it please, the Court?

15 **Cross Examination by Ms. Hastings:**

16 Q. Mr. Swilley, hi, how are you?

17 A. Good.

18 Q. Just jump back, how long have you been practicing law?

19 A. I passed the bar in November 2009.

20 Q. And what portion of this would you say is criminal
21 law?

22 A. Of my practice from since then?

23 Q. Yes.

24 A. Almost, entirely, all criminal law.

25 Q. Okay. And were you appointed or retained in this

1 case?

2 A. I was appointed. I was the full time, at the time I
3 was full-time public defender for the Fourth Circuit Public
4 Defenders Office.

5 Q. Okay. And how many times did you meet with Mr. Ross
6 prior to your trial?

7 A. Maybe around, from the time I got Henry's case, I did
8 the bond hearing. I did the preliminary hearing. I would
9 say around, maybe, five or six, I feel like, but I can't be
10 exactly sure.

11 Q. Okay. And was he very cooperative during your
12 representation? No issues?

13 A. Yeah, I liked Henry. I like him now.

14 Q. Prior to trial, did you discuss all the elements of
15 the charges Henry was facing and the State's burden of
16 proof that they would have to prove at trial?

17 A. Yes.

18 Q. Yes. Would you discuss Mr. Ross's versions of the
19 facts?

20 A. Yes. Well, yes, we did.

21 Q. Did you discuss any possible defenses that he may have
22 had?

23 A. Yes.

24 Q. And during -- and in these discussion of defenses, did
25 you discuss the possible third-party guilt?

1 A. We did. Yes.

2 Q. And isn't it true that you did bring, you did mention
3 Mr. F. Williamson in trial, you brought in that testimony?

4 A. Well, during my opening, as I recall, there is an
5 individual that I had identified that I thought had
6 committed, had committed the crime by the name of Ron
7 Moses, if you look at the opening statement, I believe. I
8 can't recall if I elicited any testimony concerning Mr.
9 Williamson or not.

10 MS. HASTINGS: Your Honor, if you look to page 168 of
11 the transcript.

12 THE COURT: One fifty eight?

13 MS. HASTINGS: One sixty eight.

14 THE COURT: Sixty eight.

15 MS. HASTINGS: And permission to approach?

16 THE COURT: Sure.

17 Q. And line 6, if you could just start -- yes, start
18 there.

19 A. Question: "I'm sorry, I'm sorry officer. Officer
20 Lui, you were the one who offered the initial incident
21 report to the Darlington Police Department?" Answer:
22 "That's correct." Question: "And you mentioned in your
23 report, this officer yourself, complainant C. Williamson
24 and then you say suspect (F. Williamson) who is that?"
25 Answer: "Do you mind if I Look on my report?" Question:

1 "Absolutely." Question: "Permission to approach, Your
2 Honor?" Answer: "Yes, sir." Question: "You say suspect
3 and in parentheses you have an (F. Williamson)?" Answer:
4 "Yes, sir." Question: "And who might that gentleman be?"
5 Answer: "This would be the person that we detained at the
6 Food Lion parking lot." Question: "So he was listed as a
7 suspect at the time of your report?" Answer: "At that
8 time because his clothing description matched. We just
9 listed him down as a possible suspect." Question: "I see.
10 And in your report you recall taking Ms. Williamson out to
11 the Food Lion to see the suspect and view him in person,
12 correct?" Answer: "Yes." Question: "Okay. Was there
13 anything suspicious about that encounter?" Answer: "No."
14 Q. Thank you. So you did try to bring his testimony in
15 and try to present at least some potential third-party
16 guilt?
17 A. Yes. I mean, I cross-examined officer Ken Lui about
18 the incident with Mr. Williamson.
19 Q. Okay. And did you file any Brady or Rule 5 motions in
20 this case?
21 A. Yes. My office would, at the time when we got
22 appointed, would generate a Rule 5, Brady motion to the
23 clerk of court and to the solicitor's office. So that
24 would've been done very shortly after Henry's appointment.
25 Q. And you reviewed all of his discovery ---

Matthew Swilley- Redirect Examination by Mr. Shaffer: 35

1 A. I did.

2 Q. --- prior to his trial? And through your trial
3 strategy, isn't that right, that in your closing you talked
4 about hamburger without a packaging, what did you mean ---

5 A. I honestly can't recall. I'd come up with a lot of
6 interesting auguries in closing arguments in the past, I
7 can't recall.

8 Q. But you would say at the time your trial strategy was
9 that ---

10 A. Oh, without -- where's the beef.

11 Q. Right.

12 A. As I recall -- yeah -- the commercial from the 80's.
13 Yeah, I recall now. Yeah, that was the point I was trying
14 to make that there was enough evidence to convict Henry.

15 Q. Okay. And going to the indictments, have you seen a
16 difference in dates on indictments before? Is that
17 something uncommon?

18 A. You know, I as far as when -- as far as what Mr.
19 Shaffer brought up, I can't recall ever noticing something
20 like that before.

21 Q. But at the time, you didn't see any reason to move to
22 quash the indictment?

23 A. I didn't. I didn't see that as -- I didn't see the
24 difference in dates as anything of consequence. So no, I
25 didn't feel that, that was a valid reasonable argument to

1 move to quash the indictment.

2 Q. And for the closing argument, the applicant alleged
3 that you didn't object to the solicitor's closing argument,
4 why?

5 A. I can't remember which part was being referred to. I
6 can't recall what, specifically, I would've objected to. I
7 mean, ---

8 Q. But, at the time, you didn't see any reason to object?

9 A. At the time, no, I couldn't have seen a reason to
10 object.

11 Q. Is that something you usually do in your practice?

12 A. If they break the rules of evidence, I'll object in
13 the closing argument and an opening.

14 Q. And there was a Jackson v. Denno hearing?

15 A. There was.

16 Q. In his trial?

17 A. There was.

18 Q. Okay.

19 MS. HASTINGS: No further questions, Your Honor.

20 THE COURT: Mr. Shaffer?

21 MR. SHAFFER: Redirect, Your Honor.

22 **Redirect Examination by Mr. Shaffer:**

23 Q. I'm going to have you direct your attention to page
24 298, lines 1 through 4 of the transcript.

25 A. Okay.

Matthew Swilley- Re-cross Examination by Ms. Hastings: 37

1 Q. Does that appear to be the closing argument made by
2 the State?

3 A. Yes.

4 Q. Do you think that's objectionable? And you can read
5 it because the Court has ---

6 A. But it is about right and wrong, as it is wrong. We
7 have laws in this State that we live and that govern our
8 communities and that is when you go back there and you
9 deliberate and consider the evidence. I think that's
10 objectionable. Yeah.

11 Q. Okay. Did you make the objection then?

12 A. No.

13 MR. SHAFFER: No further questions.

14 THE COURT: Anything -- go ahead.

15 **Re-cross Examination by Ms. Hastings:**

16 Q. At the time if you would have found that
17 objectionable, would you have made an objection?

18 A. I'm sorry, say that again.

19 Q. At the time when you were in trial, if you would've
20 found his closing statement to be an issue or
21 objectionable, would you have made an objection?

22 A. Yes. And that was five and a half years ago, I
23 believe.

24 Q. So at the time, you did not see a reason to object to
25 his closing argument?

Matthew Swilley- Re-cross Examination by Ms. Hastings: 38

1 A. Yes.

2 Q. Okay.

3 MS. HASTINGS: No further questions.

4 MR. SHAFFER: Nothing further, Your Honor.

5 THE COURT: All right. You may come down.

6 MR. SHAFFER: The applicant rest.

7 THE COURT: Anything on behalf of the State?

8 MS. HASTINGS: The State rest, Your Honor.

9 THE COURT: All right. Let me have proposed orders
10 within thirty (30) days. Mr. Shaffer, I don't think it's
11 necessary for you to submit an order.

12 MR. SHAFFER: Okay.

13 THE COURT: But I'll be glad to accept one if you
14 wish to do so.

15 MR. SHAFFER: Your Honor, just for the record I want
16 to make sure that the Court realize that, I recognize the
17 indictment issue is actually augured and expressed. I just
18 want to make that clear. That case that I cited in there
19 would raise that. Essentially, I'm saying that even though
20 there's a Supreme Court case on it I think if you read the
21 plain language of the statue cited, it would require that
22 the grand jury be in a term during the time they actually
23 took action, Your Honor. I think that's a fair reading of
24 the plain language of the statue despite the presences, I
25 think it's ---

1 THE COURT: Of course, we've got the 15th and 19th,
2 could be within the same week, I don't know. Oh, there was
3 one other thing, it is my understanding that Mr. Swilley
4 testified that he was at, and representing your client, at
5 the bond hearing, didn't he just testify to that?

6 MR. SHAFFER: No, Your Honor, I don't believe that's
7 correct.

8 MS. HASTINGS: He did. I believe that he did, Your
9 Honor.

10 THE COURT: Come on backup, Mr. Swilley. I meant
11 to ask you, I'm sorry. You can stay right there. You're
12 still under oath.

13 MR. SWILLEY: Yes, sir.

14 THE COURT: Did you not just testified that you
15 were with the applicant at his bond hearing? I think you
16 just said that.

17 MR. SWILLEY: At the circuit court bond hearing is
18 where I was with him with the applicant, Your Honor. The
19 initial arraignment when he was first arrested, I was not
20 there.

21 THE COURT: Okay. But you were at the bond hearing
22 because the bond had to be set by the circuit court, you
23 were there?

24 MR. SWILLEY: Yes, sir.

25 THE COURT: All right. All right. Thank you. Mr.

1 Shaffer, does that change your desire to further
2 investigate this? If he went in front of a magistrate and
3 the magistrate did not set bond because he had no
4 jurisdiction to do so, what would be the argument that he
5 would have been entitled to counsel at that time?

6 MR. SHAFFER: Your Honor, I actually think it would
7 strengthen my argument at that point. If the transcript I
8 took out my report ---

9 THE COURT: That's okay.

10 MR. SHAFFER: --- if I could find the Jackson v Denno
11 hearing ---

12 THE COURT: It's all right. Go ahead. Take your
13 time.

14 MR. SHAFFER: Your Honor, I actually don't think it
15 would change anything because the transcript that I'm
16 referring to page 49, lines 5 through 11, which is where
17 the investigator said a statement was made at the bond
18 arraignment ---

19 THE COURT: That "a statement" was made?

20 MR. SHAFFER: Or a statement was made after the bond
21 arraignment. So she said that he went for a bond
22 arraignment at 10:30 which I believe ---

23 THE COURT: I see. I see.

24 MR. SHAFFER: Yes, Your Honor. And then they made a
25 statement probably around ---

1 THE COURT: All right.

2 MR. SHAFFER: --- immediately after ---

3 THE COURT: I understand. I'll still withhold
4 ruling on it. Thirty (30) days, enough time?

5 MR. SHAFFER: Thank you, Your Honor.

6 THE COURT: All right.

7 MS. HASTINGS: Your Honor, the State would like to
8 request to be able to review anything that Mr. Shaffer
9 files?

10 THE COURT: No problem.

11 MR. SHAFFER: Certainly, Your Honor.

12 THE COURT: Send it to the Attorney General's
13 Office.

14 MR. SHAFFER: Thank you, Your Honor.

15 THE COURT: I just won't sign any order until I'm
16 comfortable that Mr. Shaffer's has an opportunity to
17 investigate his theory. All right.

18 (CONCLUSION OF THE HEARING ON JULY 20, 2016)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 20TH day of July, 2016.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

September 11, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

Henry James Ross, Jr.,)
S.C.D.C. No. 306790,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT**TRUE CERTIFIED COPY,**

2014-CP-16-0456

Scott B. Suggs
**CLERK OF COURT/RMC
DARLINGTON COUNTY, SC****ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 9, 2014. Respondent made its return on November 19, 2014. An evidentiary hearing was held on July 20, 2016, at the Chesterfield County Courthouse. Applicant was present and represented by Tristan M. Shaffer, Esquire. Caitlin Bazan Hastings, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant and his trial counsel, Matthew S. Swilley, Esquire, testified at the hearing. The Court had before it Applicant's trial transcript, the Darlington County Clerk of Court records, the South Carolina Department of Corrections records, Applicant's appellate records, Applicant's PCR application and amendments, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In July 2010, the Darlington County Grand Jury indicted Applicant for first degree burglary (2010-GS-16-774), armed robbery (2010-GS-16-775), assault and battery of a high and aggravated nature (2010-GS-16-776) and possession of a weapon during the commission of a violent crime. Matthew S.

Swilley, Esquire, represented Applicant. On January 31, 2011, Applicant proceeded to trial before the Honorable Howard P. King and a jury. On February 4, 2011, the jury found Applicant guilty of first degree burglary. The jury found Applicant not guilty of all other charges. Judge King sentenced Applicant to twenty-five (25) years imprisonment for first degree burglary.

Applicant filed a timely notice of appeal, and Breen Richard Stevens, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on February 5, 2014. State v. Ross, Op. No. 2014-UP-52 (S.C. Ct. App. filed February 5, 2014). The remittitur was returned to the circuit court on February 25, 2014.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCP 71.1(e)). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d

¹ Anders v. California, 386 U.S. 738 (1967).

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at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. " Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

And "where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006 (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)).

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds

from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant alleged Trial Counsel failed to contest alleged violations of Applicant's Miranda Rights; failed to object to portions of the Solicitor's closing statement; failed to move to quash the indictment; failed to present a defense of third party guilt; and alleged due process violations from Trial Counsel's alleged ineffectiveness.

I. Alleged violation of Applicant's 6th Amendment Rights

At the hearing, PCR Counsel moved to amend Applicant's PCR application to include an allegation that Applicant's 6th Amendment rights were violated by the Darlington police officers investigating Applicant's case. With this new amendment, PCR Counsel alleged that Applicant possibly exercised his 6th Amendment Right to Counsel at his bond hearing by filling out a general form in which he requested a public defender. Filling out this form is standard procedure in some counties throughout the State. After his bond hearing, Applicant was immediately taken to the police station where he was mirandized and questioned by officers. This Court allowed PCR Counsel to amend Applicant's application and kept the record open allowing PCR Counsel

GT 4

to provide this Court and the South Carolina Attorney General's Office with any further information he found that indicated Applicant was already represented by a public defender when he was taken to the station to be questioned after his bond hearing. PCR Counsel has provided no further information on this allegation. Accordingly, this Court finds that this allegation cannot be further considered and must, therefore, be denied and dismissed with prejudice.

II. Alleged failure to contest alleged violations of Applicant's Miranda Rights

At the hearing, Applicant testified that Trial Counsel was ineffective for failing to contest alleged Miranda violations that occurred during the investigation of his case. Applicant testified that the two statements he gave the police were not knowing and voluntary and, therefore, violated his rights. Applicant testified that although he confessed via a video statement in which he was mirandized, his confession "was not correct." Applicant stated that he was "blind to the law," and thought that the police would "leave him alone if he said what they wanted him to." Trial Counsel testified that he did make a motion to suppress both Applicant's pre-arrest and post-arrest statements made to the police. A Jackson v. Denno hearing was subsequently held. During the hearing, Trial Counsel testified that he argued that Applicant's "will had been overborne" by the police, and the State could therefore not show voluntariness. However, the trial judge denied both Trial Counsel's motions, allowing both statements to come into evidence.

This Court finds Applicant has failed to meet his burden of establishing that Trial Counsel was ineffective for failing to contest the alleged violations of Applicant's Miranda rights. At the beginning of the trial, Trial Counsel moved to suppress both statements Applicant made to the police while being questioned. Accordingly, the trial court held a Jackson v. Denno hearing. After the hearing, the trial court found that both the pre-arrest and post-arrest statements



made by Applicant were "knowingly, intelligently, [and] voluntarily made." (Tr. p. 33-95). Therefore, this Court finds Trial Counsel acted within "reasonable professional norms." Further, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

III. Alleged failure to object to portions of Solicitor's Closing Statement

Applicant asserts that Trial Counsel was ineffective for failing to object to portions of the Solicitor's closing statement that were designed to appeal to the passions and prejudices of the jury. Trial Counsel testified that he's not aware of anything in the Solicitor's closing that he should have objected to and explained it is his practice to object to closing remarks if necessary.

This Court finds that Applicant has failed to meet his burden of establishing that Trial Counsel was ineffective for failing to object to the Solicitor's closing remarks. Further, this Court finds that Trial Counsel acted within "reasonable professional norms," and Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

IV. Alleged failure to move to quash the indictment

Applicant asserts that Trial Counsel was ineffective for failing to move to quash Applicant's indictments. Applicant alleges that his indictments are in violation of S.C. Code Ann. § 14-9-210 because they were true billed before the grand jury convened. Applicant testified that his indictments show that they were true billed on July 15, 2010, but that the grand jury did not convene until July 19, 2010. Trial Counsel testified that he did not remember there being an issue with Applicant's indictments. When questioned about the conflicting dates, Trial Counsel still testified that he did not believe this was an issue for Applicant's case. Trial Counsel

GJZ 6

further testified that the Grand Jury convenes in secret, so it's not uncommon for there to be errors reflecting the dates.

During the first term of general sessions of the calendar year, the county grand jury is empaneled. Brown v. State, 316 S.C. 258, 260, 449 S.E.2d 494, 495 (1994). "By Administrative Order of the Chief Justice, the Chief Judge for Administrative Purposes in each judicial circuit is responsible for scheduling when the grand jury in each county within the circuit will convene to receive evidence and deliberate." Id. Once the grand jury has convened and deliberated, it reports its findings as either "True Bill" or "No Bill" to the court of general sessions. Id. This report may be made on the same day as the grand jury's deliberations, or it may be at some earlier or later time. Id. In certain counties, it is not out of the ordinary for the grand jury to take action on indictments on a date which is earlier than the date on which they make their report to the court of general sessions. Id.

This Court finds Applicant has failed to meet his burden of establishing that Trial Counsel was ineffective for failing to move to quash his indictments. Further, this Court finds that Trial Counsel acted within "reasonable professional norms," and Applicant can show no prejudice. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

V. Alleged failure to present third party guilt as a defense

Applicant asserts that Trial Counsel was ineffective for failing to present a defense of third party guilt at his trial. After the Court denied Trial Counsel's motion to suppress Applicant's confession, Trial Counsel testified that his strategy was to show that Applicant confessed due to fear and that the police had no evidence directly linking Applicant to his charges other than his confession. The theme of Trial Counsel's closing statement was "Where's

602-7

the beef?" (T. p. 267-69). Trial Counsel argued that the State did not have any meat in their hamburger; it only had the buns. Throughout his examinations, Trial Counsel illuminated how the State had no knife despite the Victim's claims that one was used during the commission of the crime. Trial Counsel also argued the State had no matching prints or DNA from Applicant from the Victim's home either. Further, Trial Counsel testified that he did try to introduce evidence of potential third party guilt at trial by showing that on the incident report another man was listed as the suspect (T. p. 169-70).

This Court finds Applicant has failed to meet his burden of establishing Trial Counsel was ineffective for failing to present a defense in Applicant's case. This Court further finds that Trial Counsel acted within "reasonable professional norms," and Applicant can show no prejudice. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

VI. Alleged Due Process Violations

Applicant asserts that he suffered due process violations due to Trial Counsel's alleged ineffectiveness. This allegation appears to be merely recitations of his other grounds for relief. Therefore, this Court finds that this allegation is without merit and must be denied and dismissed with prejudice.

All Other Allegations

As to any additional allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial. Trial Counsel was not deficient in any manner, and Applicant was not prejudiced by his representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 17 day of February, 2017.


 G. THOMAS COOPER, JR.
 Presiding Judge
 Fourth Judicial Circuit

Clawson, South Carolina.

FILED

2017 FEB 24 AM 11:25

SCOTT B. SUGGS
CLERK OF COURT/R.D.P.
BARRETT COUNTY, S.C.

WITNESSES

M Valazak

Darlington Police Department

Law Enforcement Case #: 0911-0252

863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J677527

ARRESTED ON: 2009-12-02

ACTION OF GRAND JURY

Grand Jury Foreperson

Date JUL 15 2010

VERDICT

TRUE BILL

Petit Jury Foreperson

Date

DOCKET NUMBER:

2010-GS-16-0774

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:

July 2010

THE STATE

vs.

Henry James Ross Jr

INDICTMENT FOR

Burglary / Burglary (After June 20, 1985) -
First degree

§16-11-0311

CDR Code: 0079

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON) INDICTMENT FOR
) Burglary / Burglary (After June 20, 1985) - First
) degree

§16-11-0311

At a Court of General Sessions, convened on July 19, 2010, the Grand Jurors of Darlington County present upon their oath:

BURGLARY, 1ST DEGREE

CDR: 0079 16-11-0311

That Henry James Ross Jr did in Darlington County on or about November 27, 2009, enter the dwelling of Christy Williamson located at _____, Darlington, S. C. without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, armed with a deadly weapon, to wit: a knife, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR