

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER PAUL MAHAFFEY,

APPELLANT

APPELLATE CASE NO. 2012-213062

RECORD ON APPEAL

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INDEX

INDEX.....i

TRIAL TRANSCRIPT (dated August 27-28, 2012)..... 1

MOTION TO SEVER THE CHARGES.....6

JURY QUALIFICATIONS..... 11

TESTIMONY

 ANDREW SUSTARE

 Direct examination by Ms. Jordan..... 14

 Cross examination by Ms. Hall..... 35

 Redirect examination by Ms. Jordan 38

 RICHIE BLACKWELL

 Direct examination by Ms. Jordan..... 41

 Cross examination by Ms. Hall..... 45

 Redirect examination by Ms. Jordan 47

 Recross examination by Ms. Hall 47

 BRUCE BISHOP

 Direct examination by Ms. Jordan..... 48

 Cross examination by Ms. Hall..... 51

 BRANDON HOWARD

 Direct examination by Ms. Jordan..... 53

 Cross examination by Ms. Hall..... 61

 Redirect examination by Ms. Jordan 62

 KEITH GIBBS

 Direct examination by Ms. Jordan..... 65

 Cross examination by Ms. Hall..... 70

 JAMES RHODES

 Direct examination by Ms. Jordan..... 71

 Cross examination by Ms. Hall..... 75

 ROBERT ROSENBERG

 Direct examination by Ms. Jordan..... 77

MARY ELIZABETH STUART
Direct examination by Ms. Jordan.....79

MOTION FOR A DIRECTED VERDICT.....84

TESTIMONY

RENEE ROGERS
Direct examination by Ms. Hall.....87

JOHN MAHAFFEY
Direct examination by Ms. Hall.....91
Cross examination by Ms. Jordan.....94

RENEWAL OF MOTION FOR A DIRECTED VERDICT95

MOTION FOR A LESSER CHARGE.....96

CHARGE ON THE LAW.....103

VERDICT.....130

MOTION FOR A NEW TRIAL133

SENTENCING.....134

INDICTMENTS AND SENTENCE SHEETS135

CERTIFICATE OF COUNSEL.....149

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT # 11 (PHOTOGRAPH)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State,)
-vs-) TRANSCRIPT OF RECORD
Christopher Paul Mahaffey,) 2012-GS-42-730;731;2836;2837
Defendant.) August 27 - 28, 2012
Spartanburg, South Carolina

B E F O R E :
HONORABLE J. DERHAM COLE, JUDGE; and a jury

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Linda D. Moffitt
Circuit Court Reporter

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>WITNESSES</u>	<u>PAGE</u>
ROBERT ROSENBERG (SW)	
Direct examination by Ms. Jordan	124
MARY ELIZABETH STUART (SW)	
Direct examination by Ms. Jordan	126
RENEE ROGERS (DW)	
Direct examination by Ms. Hall	134
JOHN MAHAFFEY (DW)	
Direct examination by Ms. Hall	138
Cross-examination by Ms. Jordan	141
Jury qualification	15
Jury sworn	49
Opening statements	56
Closing arguments	150
Jury charge	166
Verdict	193
Sentence	196
Certificate	202

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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23
24
25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	Copy of paycheck stub	111	136
D-2	Copy of bank statement	111	137

1 sentence could be imposed upon a conviction?

2 MS. HALL: Yes, sir.

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

5 MS. HALL: Yes, sir.

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

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

9 THE COURT: Okay.

10 (Pause.)

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

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

14 MS. JORDAN: Yes, sir.

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

16 THE COURT: Okay.

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

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

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

7
1 if these were all tried at the same time.

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

5 THE COURT: Present on his person?

6 MS. HALL: In the vehicle.

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: Ms. Hall.

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

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

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

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

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

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

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

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

20 Anything else?

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

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

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

1 Anchor?

2 MS. JORDAN: in Enoree.

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

5 THE COURT: Is that the Cross Anchor Highway?

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

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

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

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

14 MS. HALL: Thank you.

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

17 MS. JORDAN: No, sir.

18 THE COURT: Okay.

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

20 THE COURT: Yes, ma'am.

21 (Bench conference held off the record.)

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

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

Jury qualification

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

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

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

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

Jury qualification

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

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

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

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

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

Jury qualification

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

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

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

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

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

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

Andrew Sustare
Direct examination by Ms. Jordan

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

Andrew Sustare
Direct examination by Ms. Jordan

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

2 MS. HALL: Without objection.

3 THE COURT: It's admitted.

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

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

6 THE COURT: You may.

7 BY MS. JORDAN

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

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

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

16 THE COURT: Sure.

17 (Whereupon, the witness left the stand.)

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

20 Q Okay. Approximately how long is your driveway?

21 A 600 feet.

22 Q Okay. And is your house surrounded?

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

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

Andrew Sustare
Direct examination by Ms. Jordan

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

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

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

6 Q Who was with you?

7 A Richie Blackwell.

8 Q Okay. How do you know Richie?

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

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

15 A No.

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

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

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

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

Andrew Sustare
Direct examination by Ms. Jordan

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

3 (Whereupon, the witness left the stand.)

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

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

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

10 MS. JORDAN: Thank you, Your Honor.

11 BY MS. JORDAN

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

15 Q Okay.

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

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

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

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

Andrew Sustare
Direct examination by Ms. Jordan

1 both Richie and I went to the front door.

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

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

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

8 BY MS. JORDAN

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

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

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

17 A Yes.

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

19 A Yes.

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

22 MS. HALL: No objection.

23 THE COURT: They are admitted.

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

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

Andrew Sustare
Direct examination by Ms. Jordan

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

3 (Whereupon, the witness left the stand.)

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

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

8 A Okay.

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

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

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

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

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

17 Q Did you hear anything?

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

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

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

22 Q What did you do then?

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

Andrew Sustare
Direct examination by Ms. Jordan

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

3 Q Did you know the defendant?

4 A No.

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

7 A No.

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

9 A No.

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

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

14 A Yes.

15 Q Were your doors locked that day?

16 A No.

17 Q Do you have an alarm at your house?

18 A Yes.

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

20 A No.

21 Q Why not?

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

Andrew Sustare
Direct examination by Ms. Jordan

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

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

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

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

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

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

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

15 A No.

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

18 A Yes.

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

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

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

25 I noticed his vehicle was running. Richie was with

Andrew Sustare
Direct examination by Ms. Jordan

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

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

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

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

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

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

16 A Yes.

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

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

20 THE COURT: They are admitted.

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

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

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

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

Andrew Sustare
Direct examination by Ms. Jordan

1 where do you normally keep that?

2 A when I sleep it's by my side beside that lamp.

3 Q Okay. How do you keep it?

4 A It's in its holster laying by my side.

5 Q Okay. what does the holster look like?

6 A It's a leather holster made specifically for the
7 firearm.

8 Q Okay. Do you keep that gun loaded?

9 A Yes.

10 Q How do you keep it loaded?

11 A It is a 7-chamber revolver. I have six projectiles in
12 it, one not in the chamber for safety in carrying the
13 weapon. But there are six bullets in the revolver.

14 Q Okay. where -- what did you find when you came into
15 your house after locating the defendant in the front yard?

16 A My weapon was missing.

17 Q Okay. I'm going to point to a glove that's here and
18 ask you if you recognize that glove.

19 A Yes. That's my work glove.

20 Q Okay. Now, I'm going to focus your attention to
21 State's Exhibit No. 6 again and ask you just to talk to the
22 jury about what's in this photograph.

23 A That's the left side of the bed, my wife's side, the
24 end table there with the phone receiver.

25 Q Okay. what did you do on this side of the bedroom?

Andrew Sustare
Direct examination by Ms. Jordan

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

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

4 A That would be my other work glove.

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

7 A Yes.

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

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

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

15 A It was not open.

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

17 A Yes.

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

20 A Yes, I did.

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

23 A Yes.

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

Andrew Sustare
Direct examination by Ms. Jordan

1 A Yes.

2 Q Did it appear to have been altered or changed in any
3 way?

4 A No.

5 MS. JORDAN: Your Honor, at this time the state would
6 move to admit State's Exhibit No. 15. It's a 9-1-1 disc.

7 MS. HALL: We have no objection.

8 THE COURT: It's admitted.

9 (9-1-1 CD marked State's Exhibit No. 15.)

10 MS. JORDAN: Your Honor, at this time I'd like to
11 publish it to the jury.

12 THE COURT: You may.

13 Mr. Sustare, let me remind you you might need to get a
14 little bit closer to that microphone.

15 THE WITNESS: Okay.

16 BY MS. JORDAN

17 Q I tell you what. While she's loading that I'm going
18 to show you State's Exhibit No. 4 and ask if you recognize
19 this.

20 A Yes.

21 Q Okay. Does that -- what's in that photograph?

22 A The defendant's vehicle.

23 Q Okay. Does it fairly and accurately depict its
24 location on June the -- January 14th of 2012?

25 A Yes.

Andrew Sustare
Direct examination by Ms. Jordan

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

3 MS. HALL: No objection.

4 THE COURT: It is admitted.

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

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

7 BY MS. JORDAN

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

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

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

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

15 Q Yes, sir.

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

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

22 A My safe.

23 Q Where is your safe?

24 A In my garage.

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

Andrew Sustare
Direct examination by Ms. Jordan

1 phone.

2 A I approached the defendant and made him get on his
3 knees.

4 Q Did you have your gun with you at that point?

5 A Yes.

6 Q Okay. Did you ask the defendant any questions while
7 you were out there with him?

8 A Yes, I did.

9 Q What did you ask him?

10 A One in particular is specifically was where is it.

11 Q Okay. Did you get a response to the first question?

12 A No.

13 Q What did you do then?

14 A I said it with more enthusiasm.

15 Q Okay.

16 A That he did respond.

17 Q What was his response?

18 A Between the front seats.

19 MR. HALL: Your Honor, that calls for hearsay.

20 THE COURT: Overruled.

21 Q Could you repeat your answer again?

22 A His response was it's between the front seats.

23 Q Did you ever specifically ask him where the .357 is?

24 A No.

25 Q Your question was --

Andrew Sustare
Direct examination by Ms. Jordan

1 A Where is it.

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

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

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

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

13 Q Okay.

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

16 MS. HALL: Without objection.

17 THE COURT: It's admitted.

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

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

21 (Whereupon, the witness left the stand.)

22 A Right there.

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

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

Andrew Sustare
Direct examination by Ms. Jordan

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

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

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

4 A By my bed.

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

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

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

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

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

16 A It is in my front yard.

17 Q Okay.

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

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

22 A Yes.

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

25 MS. HALL: No objection.

Andrew Sustare
Direct examination by Ms. Jordan

1 THE COURT: They are admitted.

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

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

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

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

7 A Yes.

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

10 A That belongs to our business.

11 Q When did you notice this money bag outside?

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

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

17 A Yes. That is part of my bag.

18 Q Is that...

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

21 MS. HALL: No objection.

22 THE COURT: It's admitted.

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

24 Q Okay. Thank you.

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

Andrew Sustare
Direct examination by Ms. Jordan

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

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

8 A Yes. That is my blackberry cell phone.

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

11 A Yes.

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

14 MS. HALL: Without objection.

15 THE COURT: It's admitted.

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

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

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

22 Q Okay. Why was it inside your house?

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

Andrew Sustare
Direct examination by Ms. Jordan

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

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

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

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

10 A Yes.

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

13 MS. HALL: Without objection.

14 THE COURT: It's admitted.

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

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

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

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

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

Andrew Sustare
Direct examination by Ms. Jordan

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

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

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

8 A Yes.

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

11 THE COURT: What's the numbers again?

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

13 MS. HALL: No objection.

14 THE COURT: They're admitted.

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

16 BY MS. JORDAN

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

20 A Yes.

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

22 A Yes.

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

25 A Yes.

Andrew Sustare
Direct examination by Ms. Jordan

1 Q Okay.

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

3 (Pause.)

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

5 (Pause.)

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

7 18?

8 THE COURT: Sure.

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

11 BY MS. JORDAN

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

14 A Yes. That is the defendant.

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

17 A Yes.

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

19 A Yes, I do.

20 Q Would you point him out?

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

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

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

Andrew Sustare
Direct examination by Ms. Jordan

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

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

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

6 MS. JORDAN: Yes, sir.

7 THE COURT: Thank you.

8 BY MS. JORDAN

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

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

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

16 A Yes.

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

19 MS. HALL: No objection.

20 THE COURT: It's admitted.

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

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

23 CROSS-EXAMINATION

24 BY MS. HALL

25 Q You took the keys out of the vehicle.

Andrew Sustare
Cross-examination by Ms. Hall

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

Andrew Sustare
Cross-examination by Ms. Hall

1 got there.

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

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

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

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

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

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

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

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

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

18 A Yes.

19 Q Is that correct?

20 A Yes.

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

22 A Yes.

23 Q About...

24 MS. HALL: No further questions.

25 Q Thank you.

Andrew Sustare
Redirect examination by Ms. Jordan

1 MS. JORDAN: Just followup, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. JORDAN

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

6 A Closed.

7 Q Thank you.

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

9 We'll take a short break before we go any further. So
10 I'll ask the jury panel to please go to your jury room.

11 But do not discuss the case in any fashion. I'll bring you
12 back after that break.

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

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

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

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

22 UNIDENTIFIED PERSON: Yes, sir.

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

25 UNIDENTIFIED PERSON: Yes, sir.

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

2 (Whereupon, a recess was taken.)

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

6 MS. HALL: Yes, Your Honor.

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

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

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

18 MS. HALL: It is not --

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

21 MS. HALL: No, Your Honor.

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

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

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

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

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

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

9 THE COURT: Okay. Thank you.

10 All right. Are we ready for the jury?

11 MS. JORDAN: Yes, sir.

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

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

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

18 MS. JORDAN: Yes, sir.

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

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

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

Richie Blackwell
Direct examination by Ms. Jordan

1 had, at least for those on this end.

2 All right. Ms. Jordan.

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

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

7 DIRECT EXAMINATION BY MS. JORDAN

8 Q Please state your name for the record.

9 A Richie Blackwell.

10 Q Mr. Blackwell, how tall are you?

11 A I am 6'9".

12 Q How much do you weigh?

13 A 250.

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

16 How do you know Andrew Sustare?

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

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

21 A Yes, I was.

22 Q What were y'all doing?

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

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

Richie Blackwell
Direct examination by Ms. Jordan

1 noticed something?

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

5 Q Okay. Can you tell us what happened?

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

12 Q Who is he?

13 A That would be Mr. Mahaffey.

14 Q Pointing to the defendant?

15 A Yes.

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

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

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

24 A Yes.

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

Richie Blackwell
Direct examination by Ms. Jordan

1 reporter.

2 A Yes, yes.

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

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

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

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

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

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

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

24 A Yes.

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

Richie Blackwell
Direct examination by Ms. Jordan

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

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

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

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

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

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

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

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

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

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

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

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

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

Richie Blackwell
Cross-examination by Ms. Hall

1 A Yes, I did.

2 Q What was that response?

3 A It was in the center console.

4 Q Okay. What did Mr. Sustare do after he stated that it

5 was in the center console?

6 A He went over there and looked in there, and he came

7 back over, and he said that he knew it was in there, he saw

8 it.

9 Q Okay. Richie, did you see anyone else on the property

10 that day?

11 A No, I didn't see anybody else.

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

13 CROSS-EXAMINATION

14 BY MS. HALL

15 Q You testified that you heard the door shut.

16 A Yes, I did.

17 Q And you testified that you saw Mr. Mahaffey walking

18 off the porch.

19 A Yeah.

20 Q Now, you just testified that Mr. Sustare asked

21 Mr. Mahaffey two questions.

22 And you were present in the courtroom during

23 Mr. Sustare's testimony?

24 A Yes, I was.

25 MS. HALL: One moment, please.

Richie Blackwell
Cross-examination by Ms. Hall

1 (Pause.)

2 BY MS. HALL

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

5 A Yes, I did.

6 Q Did you write that statement out?

7 A Yes.

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

10 A Yes, they did.

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

12 A I told them everything I knew.

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

16 A I don't remember.

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

19 A Yeah, it would.

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

21 THE COURT: You may.

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

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

25 THE COURT: Anything else?

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

1 REDIRECT EXAMINATION

2 BY MS. JORDAN

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

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

10 Q Thank you.

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

12 RECROSS-EXAMINATION

13 BY MS. HALL

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

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

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

21 A No, I did not.

22 Q Thank you.

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

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

Bruce Bishop
Direct examination by Ms. Jordan

1 (Whereupon, the witness was excused.)

2 MS. JORDAN: The state calls Bruce Bishop.

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

5 DIRECT EXAMINATION BY MS. JORDAN

6 Q Please state your name for the record.

7 A Officer Bruce Bishop.

8 Q Where are you currently employed?

9 A Spartanburg County Sheriff's Department.

10 Q How long have you been there?

11 A Twenty-five years.

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

13 A I work uniform patrol, master deputy.

14 Q Did you have an occasion to respond to --

15 MS. JORDAN: I apologize, Your Honor.

16 A Cross Anchor.

17 Q -- Cross Anchor Road in Enoree?

18 A Yes, I did.

19 Q What county is that located in?

20 A That's in Spartanburg County.

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

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

Bruce Bishop
Direct examination by Ms. Jordan

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

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

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

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

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

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

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

Bruce Bishop
Direct examination by Ms. Jordan

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

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

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

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

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

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

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

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

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

Bruce Bishop
Cross-examination by Ms. Hall

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

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

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

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

9 A Well --

10 Q Where did you take the defendant?

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

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

15 A Okay. The knives were turned into evidence.

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

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

23 CROSS-EXAMINATION

24 BY MS. HALL

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

Bruce Bishop
Cross-examination by Ms. Hall.

1 A Yes, I did.

2 Q Okay. You listed Christopher Mahaffey as a suspect.

3 A Yes, I did.

4 Q You also listed a Ronald Kiser as a suspect.

5 MS. JORDAN: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MS. HALL

8 Q You handled the witnesses, writing their statements,
9 is that correct?

10 A Yes. I gave them the statement forms for them to
11 write it.

12 Q You gave them the blank forms?

13 A Yes.

14 Q Did you watch them when they were writing their
15 statements, or did you see where they were?

16 A They were, yeah, pretty much over there in the front
17 yard. We were writing statements.

18 Q They were writing them at the same time?

19 A Yes.

20 Q Both together in the front yard?

21 A Well, one I think went over to the vehicle to have
22 something to write on. The other one is over here.

23 Q Over where?

24 A Well, just in the area with the clipboard.

25 Q Okay. You gave them all the time that they needed to

Brandon Howard
Direct examination by Ms. Jordan

1 fill those statements out?

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

4 Q Thank you.

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

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

9 (whereupon, the witness was excused.)

10 MS. JORDAN: State calls Brandon Howard.

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

13 DIRECT EXAMINATION BY MS. JORDAN

14 Q Please state your name for the record.

15 A Brandon Howard.

16 Q If you can, would you pull closer to the microphone?

17 Mr. Howard, where are you currently employed?

18 A Currently work at B.M.W.

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

21 A Spartanburg County Sheriff's Office.

22 Q How long were you employed there?

23 A Roughly three years.

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

Brandon Howard
Direct examination by Ms. Jordan

- 1 A Was a crime scene investigator. I worked I.D.
- 2 Q Okay. Did you have an occasion to be called out to
- 3 -- here in Spartanburg County?
- 4 A I was.
- 5 Q On January the 14th?
- 6 A Yes.
- 7 Q When you arrived on scene what did you do?
- 8 A I arrived on scene. I spoke to deputies who gave me a
- 9 brief synopsis of the incident. And I photographed the
- 10 scene and collected some evidence.
- 11 Q Okay. I'm going to show you what's been previously
- 12 marked as State's Exhibit...
- 13 (Pause.)
- 14 Q Mr. Howard, I'm going to show you State's No. 19 and
- 15 ask you if you can identify that, and 20.
- 16 A It appears to be the center console.
- 17 THE COURT: Excuse me just a minute.
- 18 Use that microphone, please.
- 19 THE WITNESS: Oh, I'm sorry.
- 20 BY MS. JORDAN
- 21 A It appears to be the center console of the Ford
- 22 Expedition that was parked in the driveway.
- 23 Q Okay. And as part of your job as the crime scene
- 24 investigator did you take photographs of the console of the
- 25 Expedition?

Brandon Howard
Direct examination by Ms. Jordan

1 A I did.

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

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

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

10 A Yes.

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

13 MS. HALL: No objection.

14 THE COURT: It's admitted.

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

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

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

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

Brandon Howard
Direct examination by Ms. Jordan.

- 1 A To the best of my knowledge.
- 2 Q I'm going to show you what's previously been marked as
3 state's Exhibit No. 11. Been marked and admitted already.
4 Did you also take the photographs of the 30 -- of the .357
5 that day?
- 6 A I did.
- 7 Q Okay. The photograph in the far left corner, top left
8 corner, tell the jury what that is.
- 9 A That's the center console where the firearm was
10 located.
- 11 Q And what are the other photographs?
- 12 A The firearm after it was removed from the vehicle. I
13 laid it out and took photographs of it and the holster, the
14 firearm and the make and model.
- 15 Q Okay. Were you able to ascertain who the owner of
16 this firearm was?
- 17 A Yeah. It was determined that it belonged to the
18 victim.
- 19 Q Okay. Who did you return this firearm to?
- 20 A It was returned to the victim, Mr. Sustare.
- 21 Q Did you complete paperwork to that effect?
- 22 A I did.
- 23 Q Did you also go inside the home?
- 24 A I did. I went in and took the photographs inside the
25 residence.

Brandon Howard
Direct examination by Ms. Jordan

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

3 A I went to the sheriff's office.

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

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

6 Q Did you assist him in taking photographs?

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

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

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

14 Q Okay.

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

18 MS. HALL: No objection.

19 THE COURT: It's admitted.

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

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

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

Brandon Howard
Direct examination by Ms. Jordan.

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

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

4 A It is.

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

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

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

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

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

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

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

19 A I did.

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

22 A It is approximately \$28.31.

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

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

Brandon Howard
Direct examination by Ms. Jordan

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

3 A I did.

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

6 A I do.

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

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

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

13 A That would be Deputy Gibbs.

14 Q Okay.

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

17 MS. HALL: No objection.

18 THE COURT: They are admitted.

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

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

23 A I did. I collected two pocketknives.

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

Brandon Howard
Direct examination by Ms. Jordan

1 identify what's in that box.

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

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

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

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

11 MS. HALL: No objection.

12 THE COURT: They're admitted.

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

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

15 THE COURT: Okay.

16 (Pause.)

17 BY MS. JORDAN

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

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

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

Brandon Howard
Cross-examination by Ms. Hall

1 CROSS-EXAMINATION

2 BY MS. HALL

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

5 A Yes.

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

7 A That is correct.

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

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

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

14 A That is correct.

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

17 A I did not.

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

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

23 Q Do you have a report?

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

Brandon Howard
Redirect examination by Ms. Jordan

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

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

4 A Uh-huh.

5 Q where did you find that money?

6 A I did not find that. I just photographed it.
7 Investigator -- I believe it was Investigator Dominesey
8 that located it. Or it may have been one of the other
9 deputies.

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

12 A No. It was not.

13 Q Correct?

14 MS. HALL: No further questions.

15 REDIRECT EXAMINATION

16 BY MS. JORDAN

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

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

21 Q Yes, sir.

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

24 Q Thank you.

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

1 excused.

2 (Whereupon, the witness was excused.)

3 MS. JORDAN: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

24 END OF PROCEEDINGS AUGUST 27, 2012

25

1 (Proceedings August 28, 2012)

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

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

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

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

10 MS. HALL: No, sir.

11 THE COURT: Okay. Bring them in.

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

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

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

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

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

Keith Gibbs
Direct examination by Ms. Jordan

1 presentation this morning.

2 Ms. Jordan.

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

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

7 DIRECT EXAMINATION BY MS. JORDAN

8 Q Please state your name for the record.

9 A My name is Keith Gibbs.

10 Q Where are you currently employed?

11 A Spartanburg County Sheriff's Office.

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

14 A Okay.

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

17 A Just over ten years.

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

19 A Yes, I was.

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

22 A Yes, I was.

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

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

Keith Gibbs
Direct examination by Ms. Jordan

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

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

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

7 Q Did you see the defendant that day?

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

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

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

20 Q Okay. I'm going to show you what's previously been
21 marked as State's Exhibit No. 20 and ask if you can
22 identify that photograph.

23 A Yes, I can. It's the console and a couple of the --
24 just in front of the center console.

25 MS. JORDAN: Your Honor, out of an abundance of

Keith Gibbs
Direct examination by Ms. Jordan

1 precaution I'm going to move to admit State's Exhibit
2 No. 20. I believe I did yesterday, but I did not mark it
3 down. And I wanted to make sure.

4 THE COURT: It's not been offered.

5 MS. JORDAN: Okay. I offer -- at this time the state
6 would move to admit No. 20.

7 MS. HALL: No objection.

8 THE COURT: It's admitted.

9 MS. JORDAN: Thank you.

10 (Photograph previously marked State's Exhibit No. 20.)

11 BY MS. JORDAN

12 Q I'm going to hand you a pointer and ask you on State's
13 Exhibit No. 20 if you can point on the screen as to the
14 item that you're talking about that drew your attention
15 first.

16 A The drug paraphernalia is right here. It's a pill
17 bottle, and the top they put some aluminum foil and poke
18 holes in the top of it. And then in the side drill a
19 little hole and put a, like a, Big pen or something like
20 that through there. And they put the drugs in the top and
21 light them and pull through it and --

22 THE COURT: Excuse me, but when you're responding to
23 the question you're turning your head away from the court
24 reporter and away from the microphone.

25 THE WITNESS: Okay. I'm sorry.

Keith Gibbs
Direct examination by Ms. Jordan

1 THE COURT: And so she's having difficulty
2 understanding your response.

3 THE WITNESS: I'll correct that.

4 THE COURT: You'll need to answer that question again.

5 BY MS. JORDAN

6 A Okay. The drug paraphernalia that I initially saw was
7 right here. And in the top of it they take aluminum foil
8 and poke holes in the top of it, and they put the drugs in
9 there and light them and pull through a Bic pen or any open
10 piece of plastic. And they pull through it just like a
11 pipe.

12 Q Okay. After you found or located the drug
13 paraphernalia, what did you do then?

14 A There was a piece of paper or a newspaper article
15 right here. I lifted it up. And it's hard to see, but
16 right about there there was a clear plastic bag with a
17 white rock substance in it. And I identified that as more
18 than likely a crack cocaine rock. And I had the I.D.
19 officer take a picture.

20 Q I'm going to show you State's 21 and 22 that I believe
21 were admitted into evidence yesterday and ask if you can
22 identify 21.

23 A Twenty-one is the white rock substance in my hand.

24 Q Okay. And 22?

25 A Twenty-two is the cigarette pack on the left of the

Keith Gibbs
Direct examination by Ms. Jordan

1 previous picture. I picked it up and looked inside, and
2 there were green pills on the inside of it, this bag.

3 Q Okay. What did you do with the pills and the white
4 substance?

5 A After the photograph was taken I took them to the --
6 the trunk of my patrol car. And I put them in an evidence
7 bag. And then I locked my trunk and went back to the car
8 and finished the inventory.

9 Q Okay. I'm going to show you what's been marked as
10 State's Exhibit No. 16 and ask if you can identify that.

11 A Yes. This is an evidence bag. And inside the
12 evidence bag we placed the drugs I found from the console.
13 And then I seal it up and turn it into the evidence drop
14 box that we have. It's like a blue mailbox. And you can't
15 get it out once it goes in.

16 Q Do you know much about the bag that you guys use to
17 place drug evidence in?

18 A This evidence bag on the inside?

19 Q Yes, sir.

20 A Well, it's for the evidence people to test the bag.

21 Q Okay. Do you seal it completely?

22 A Yeah. There's a -- this funny little squiggly line on
23 top right here, once it's sealed and taped together you
24 can't get it open again without messing that line up. And
25 if that line's messed up you know it's been tampered with.

Keith Gibbs
Cross-examination by Ms. Hall

1 And this -- this looks fine to me. I don't -- I don't see
2 a problem with it.

3 Q Did you -- did you seal it?

4 A Yes, I sealed that and signed my initials on it.

5 Q Okay. And what did do you do with it again?

6 A Then we put it in the Spartanburg County evidence
7 drop, which is like a safe.

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

9 CROSS-EXAMINATION

10 BY MS. HALL

11 Q What time did you get called out to the scene?

12 A I responded when the initial call came out.

13 Q Do you remember what time you got there?

14 A No, I do not.

15 Q Was it midday, daytime?

16 A Yes, it was daytime.

17 Q Was it about lunchtime, do you think?

18 A I believe it was after lunch.

19 Q Okay. When you took these items into evidence did you
20 take any -- attempt to take any swabs off of them to
21 collect any potential D.N.A. on them?

22 A No. I just put gloves on. And I took them straight
23 out of the console and put them in the Manila envelope.

24 MS. HALL: I have no further questions.

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

James Rhodes
Direct examination by Ms. Jordan

1 THE COURT: You may step down.

2 (Whereupon, the witness was excused.)

3 MS. JORDAN: The state calls Jim Rhodes.

4 JAMES RHODES, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. JORDAN

7 Q Please state your name for the record.

8 A James Rhodes. Go by Jim.

9 Q Where are you currently employed?

10 A Spartanburg County Sheriff's Office.

11 Q How long have you been there?

12 A Fourteen and a half years.

13 Q What's your current position?

14 A I am currently a canine handler in their uniform
15 patrol working day shift.

16 Q Okay. Was that your position back on January the
17 14th of this year?

18 A Yes, ma'am.

19 Q Were you called out to the incident location at

20 -- ?

21 A Yes.

22 Q Okay. Could you do me a favor and just let the
23 court -- let the jury who know what the call-out time was
24 or the incident time?

25 A I was called on the -- I believe they told me the

James Rhodes
Direct examination by Ms. Jordan

1 incident time was about 1:17. Then I responded shortly
2 after that from another call.

3 Q Okay. Was that 1:17 a.m. or p.m.?

4 A P.M. in the afternoon.

5 Q Okay. When you arrived did you also have your canine
6 with you?

7 A Yes.

8 Q Okay. What is his name?

9 A His name is Elbow.

10 Q Can you tell the Court what you did once you arrived?

11 A When I arrived I got the information that's what I was
12 told took place.

13 They wanted me to attempt to track for what we were
14 told was a possible suspect, a second suspect.

15 I deployed my canine dog. He's a patrol dog trained
16 in tracking. I deployed him and got two of the guys -- I
17 believe Deputy Gibbs and Deputy Nepper -- went with me as
18 security, because it's my job just to watch what that dog
19 does and read his behavior.

20 As we started in the yard where I was told the
21 possible second suspect fled we moved over, and I noticed
22 that something gained my dog's attention, what we call hot
23 human odor. And where that had been there was a, I believe
24 a, bank bag and a hat.

25 I made note of it and called the other deputies on the

James Rhodes
Direct examination by Ms. Jordan

1 scene. They came over and said, yes, that's where the
2 homeowner wrestled with Mr. Mahaffey.

3 And from that point on I called a cast-out trying to
4 look for a possible track to see if he hits or locates
5 another -- another track.

6 Q Could you take a moment and just explain to the jury
7 what a track is?

8 A A track would be or a trail would be where a subject
9 leaves the scene.

10 A canine has the ability just to smell that odor left
11 behind either through fresh grass or skin or odor, sweat
12 that's laid off and falls off and lays on the ground.
13 They've got the ability to smell that.

14 My dog has trained in that and is able to smell that.
15 And if we locate that I'm able to read his behavior change.
16 In other words, my dog is going to put his head down and
17 his tail up.

18 He kinda hunkers his shoulders up, and then he pulls
19 really hard from the tracking harness with me running
20 behind him. And I'm able to read that behavior.

21 In this instance we did not hit another track. We
22 searched the area, cast the area looking for that other
23 track and did not hit another track. We did not locate
24 anybody else.

25 Q Could you describe which areas of the property you

James Rhodes
Direct examination by Ms. Jordan

1 took Elbow out on or he went out on?

2 A I started in the front yard in the direction I was
3 told the possible second suspect ran.

4 And if you look out from their front yard up through
5 the wide open hardwoods all the way back up to Cross Anchor
6 Road looking from the front door, it's wide open to their
7 driveway.

8 Looking back to their right, looking away from their
9 house, there's another neighborhood that kind of backs up
10 to them.

11 At first I cast out, and we walked more or less
12 through those woods to that neighborhood trying to locate.
13 I think we may have even spoken to a couple of neighbors.
14 They were saying that they didn't see anybody, nobody ran.

15 MS. HALL: Objection. That calls for hearsay.

16 THE COURT: Sustained.

17 BY MS. JORDAN

18 Q If you will, just tell me where you tracked.

19 A I took the dog out through there. We checked that
20 neighborhood and didn't find anything.

21 We came back, and I cast him around the other way from
22 where I was told the possible suspect had ran, second
23 suspect, and did locate another track over to the yard. So
24 from the neighborhood over to the front yard is where we
25 attempted to track.

James Rhodes
Cross-examination by Ms. Hall

1 Q How long have you had Elbow?

2 A This December will be four years.

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

4 CROSS-EXAMINATION

5 BY MS. HALL

6 Q How many officers were on scene when you arrived?

7 A That I remember there was Deputy Bishop, Deputy
8 Nepper, Sergeant Hopkins and Deputy Gibbs when I arrived.

9 Q Four people had already responded when you arrived.

10 A Yes.

11 Q Do you recall what time you arrived?

12 A About ten till 2:00, I believe is when I arrived.

13 Q And you testified before that the incident you believe
14 was about 1:15 or 1:17.

15 A 1:17, yes.

16 Q You recall. Do you normally get a call to bring your
17 dog to a burglary?

18 A Yes. A burglary in progress or has just occurred,
19 yes. I respond to quite a few of those.

20 Q And when you bring your dog you're looking for
21 someone.

22 A I am looking to see what evidence we can, may or may
23 not, find.

24 Q Okay. You said you started your track by -- in the
25 yard where there was a bank bag on the ground.

James Rhodes
Redirect examination by Ms. Jordan

1 A We started just before that and came up on the -- a
2 bank bag and a hat.

3 Q Okay. Now, you testified you started in the front
4 yard and you went in one direction. The dog apparently
5 wasn't able to pick up anything. So you came back in the
6 front yard and went across the other way in the front yard.

7 A Basically, when I went out to the right looking from
8 the front doorway. I went out towards the neighborhood and
9 really didn't locate anything. Came back and made a
10 semicircle across the front yard towards the driveway to
11 try and see if he picked up anything left out from that
12 area.

13 Q So you didn't go around in the back yard.

14 A No, I didn't go around the back yard.

15 Q Okay. You didn't take the dog into the car or the
16 truck that was there.

17 A No. I did not go into the truck.

18 Q Okay. That's all.

19 REDIRECT EXAMINATION

20 BY MS. JORDAN

21 Q Did you receive any information that there was a need
22 to go into the back yard?

23 A No. Actually I was informed by responding deputies
24 that that's where the victim had come from.

25 MS. JORDAN: Nothing further.

77
Robert Rosenberg
Direct examination by Ms. Jordan

1 THE COURT: You may step down.

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

3 THE COURT: He may be.

4 (Whereupon, the witness was excused.)

5 MS. JORDAN: Next the state calls Robert Rosenberg.

6 ROBERT ROSENBERG, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. JORDAN

9 Q Please state your name for the record.

10 A Robert Rosenberg.

11 Q Where are you currently employed?

12 A I am currently employed at the Spartanburg County
13 Sheriff's Office.

14 Q How long have you been there?

15 A Approximately 28 years.

16 Q What is your current job title?

17 A I'm currently assigned to the evidence division.

18 Q Okay. How long have you been in evidence?

19 A Around 11 years.

20 Q Did you have an occasion to receive some evidence in
21 this case?

22 A Yes, I did.

23 Q Setting in front of you is State's Exhibit No. 17 --
24 16.

25 A Yes.

Robert Rosenberg
Direct examination by Ms. Jordan

- 1 Q Do you recognize that item?
- 2 A Yes, I do.
- 3 Q Did you take that item into custody?
- 4 A Yes, I did.
- 5 Q Could you tell the jury about that?
- 6 A On January 17th of 2012 I took this out of our drop
7 box, which is a secure -- it's like a mailbox, secure
8 mailbox, that we have in the area where officers can drop
9 their evidence.
- 10 Q Okay. Is that box inside the sheriff's office, or
11 out?
- 12 A It's in the sheriff's office. It's in a hallway, but
13 it's secure.
- 14 Q Okay. Did you document when you took this out?
- 15 A Yes.
- 16 Q Okay. While this item was in your possession did you
17 alter or tamper with it in any way?
- 18 A The only thing, this blue bag comes in a brown bag,
19 brown envelope. We take it out of the brown envelope. I
20 write the subject's name down. And then I put a sticker on
21 it, a case sticker, where we enter it into the computer.
22 And then we put it back in the brown envelope and we set in
23 a secure area for the lab to pick up.
- 24 Q Okay. To the best of your knowledge while this was in
25 your custody was it altered or tampered with in any way,

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 the items inside the bag?

2 A No, it was not.

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

4 MS. HALL: No questions.

5 THE COURT: You may step down.

6 MS. JORDAN: May this witness be excused?

7 THE COURT: He may be.

8 (whereupon, the witness was excused.)

9 MS. JORDAN: The state calls Mary Elizabeth Stuart.

10 MARY ELIZABETH STUART, having
11 been first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. JORDAN

13 Q Please state your name for the record.

14 A Mary Elizabeth Stuart.

15 Q where are you currently employed?

16 A Spartanburg County Sheriff's office.

17 Q How long have you been there?

18 A A little over nine years now.

19 Q what is your title at the sheriff's office?

20 A I am a forensic chemist at the sheriff's office.

21 Q Can you just give the jury and the Court information
22 about your educational background?

23 A Sure. I have a bachelor's of science in chemistry and
24 a bachelor's of science in biochemistry, both from the
25 College of Charleston. And I have a master's degree in

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 chemistry from the University of South Carolina.

2 I have been to the D.E.A., which is the federal drug
3 agency for forensic chemistry. I've been to the D.E.A.
4 school for clandestine labs, which we are commonly known as
5 meth labs.

6 I have been to the criminal justice academy. I am
7 certified by the American Board of Criminalistics in all
8 areas of forensic science as a fellow.

9 I have been to many agulant training schools. We're
10 required 40 hours in our main discipline and 20 hours in
11 the other discipline and training every year and so on and
12 so forth.

13 Q Have you testified --

14 MS. HALL: We'll stipulate to her qualification.

15 MS. JORDAN: Your Honor, I was going to move her in as
16 an expert in the -- as a forensic analyst.

17 THE COURT: Any objection?

18 MS. HALL: No objection.

19 THE COURT: She is so qualified.

20 BY MS. JORDAN

21 Q Investigator Stuart, I'm going to show you what's
22 previously been marked and talked about as State's Exhibit
23 No. 16. Do you recognize that?

24 A I do. On the inner bag, which I call the BEST bag --
25 has my initials, the letters OK and the date. And then in

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 the outer part -- because I would have put this all back
2 into this plastic bag which y'all see -- you see my
3 initials and the date and the lab number that I assigned
4 it, and the seal.

5 Q You used the term BEST bag. Can you explain to the
6 jury what that is?

7 A Yes. A BEST bag is -- BEST is simply an acronym for
8 best evidence sample testing.

9 We receive evidence not only from the sheriff's office
10 but every agency within Spartanburg County including
11 federable -- federal, local, state, everything. So we
12 needed a uniform way, a common way, for everyone to submit
13 evidence.

14 With a BEST bag -- I know it's hard to see -- at the
15 top it has a seal and down the sides it has lines. So once
16 the officer seals a BEST bag -- it's not tamperproof and
17 you can get in it if you want to. You can cut it -- cut it
18 with a knife or whatever. But if someone does you're going
19 to be able to tell. There'll be evidence, what's tamper
20 evident. The lines would be distorted if someone tried to
21 rip it, or it'd have to be cut open if someone had got into
22 it.

23 Q And when did you receive this item?

24 A I received it on January the 17th of 2012.

25 Q Okay. When you received it had the BEST bag as you

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 referred to it been altered or tampered with in any way?

2 A When we go to the evidence room to pick up drug
3 evidence we check inside the bag and check the BEST bag and
4 make sure it's sealed because we won't accept it if it's
5 not sealed. So that's -- I would have done that on the
6 17th.

7 On the outside of the BEST bag I have my initials, the
8 letters OK, and the date January 18th of 2012, which would
9 be the day that I actually cut the BEST bag open and test
10 it.

11 I don't put the letters OK unless it's sealed before I
12 open it.

13 So, once again, before I opened it I checked it again
14 to make sure it was sealed, wrote my initials, the date I
15 opened it and the letters OK. So it was sealed before I
16 opened it.

17 Q While this item or the items inside that bag were in
18 your custody did you perform testing on those items?

19 A I did.

20 Q Could you tell the jury specifically as to the items
21 inside what you found?

22 A All the items?

23 Q Yes, ma'am.

24 A Okay. The first item was an off-white rock substance.
25 And I performed testing on it and found it to be cocaine

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 base commonly known as crack with a weight of 0.46 grams.

2 The other item was three and a half green tablets with
3 the inscription OP80 on it. The inscription indicated that
4 it was oxycodone. And then I found a half of a white
5 tablet, which I chose not to analyze.

6 MS. JORDAN: Your Honor, at this time we would move
7 State's Exhibit No. 16 into evidence.

8 MS. HALL: No objection.

9 THE COURT: It's admitted.

10 (Crack cocaine and oxycodone marked State's Exhibit No.
11 16.)

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

13 MS. HALL: I have no questions for this witness.

14 THE COURT: You may step down.

15 MS. JORDAN: Your Honor, at this time the state would
16 rest.

17 THE COURT: All right. Ladies and gentlemen, that is
18 all of the testimony or other evidence to be offered by the
19 state, at least in their case in chief.

20 Before we go further I've got some matters to address
21 with the lawyers. So I'll ask you to please go to your
22 jury room. Do not yet discuss the case. I'll bring you
23 back shortly.

24 (The following takes place outside the presence of the
25 jury.)

1 THE COURT: Any motions or other matters to address
2 before we go further?

3 MS. HALL: We would have a motion at this time if the
4 Court is ready.

5 THE COURT: All right.

6 MS. HALL: Your Honor, I would make a motion at this
7 point in the trial for a directed verdict in favor of the
8 defendant based on the Court's adverse rulings to the
9 defendant's objections throughout the trial at this point;
10 and also insufficient evidence has been presented in order
11 to allow this case to go to the jury.

12 THE COURT: Where do you perceive the state's evidence
13 to be lacking?

14 MS. HALL: Your Honor, as far as the burglary first
15 degree charge goes, lacking evidence to show my client
16 entered the residence, as well as being armed with a deadly
17 weapon.

18 THE COURT: Well, there appears to be more than
19 substantial circumstantial evidence to establish each of
20 those facts.

21 Any others?

22 MS. HALL: No, sir.

23 THE COURT: All right. Motion for a directed verdict
24 is denied.

25 Have you discussed with your client his right to

1 testify or not?

2 MS. HALL: I have, but I would ask at this time for a
3 moment again to review that with him to be certain of our
4 course.

5 THE COURT: All right. We'll take 15 minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right. What does your client want to
8 do, Ms. Hall?

9 MS. HALL: Client is -- will not be testifying, Your
10 Honor.

11 THE COURT: Any other witnesses you're going to call?

12 MS. HALL: Yes, sir. I have two.

13 THE COURT: Okay. Bring the jury in, please.

14 Excuse me just a minute. Let me ask one thing.

15 Mr. Mahaffey, your lawyer tells me that you're not
16 going to testify.

17 Do you understand you do have a right to if you want
18 to?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: But you understand nobody can make you.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: When you're charged with a crime you have
23 a right to remain silent, and also at the same time you
24 have a right to testify to provide a jury any evidence you
25 want to if you wish to. Nobody can require that you do

1 that. It's simply your choice.

2 If you choose to testify you'd have to answer all of
3 the questions that were asked to the extent they were
4 relevant even if some of the answers might tend to prove
5 you guilty. And if you don't testify I'm going to instruct
6 the jury they can't hold that against you.

7 THE DEFENDANT: Yes.

8 THE COURT: Have you had plenty of time to talk with
9 your lawyers about the advantages and disadvantages of
10 testifying, as well as not testifying?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you appreciate what those advantages
13 and disadvantages are?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you reached a decision about whether
16 or not you'll testify?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And what is it?

19 THE DEFENDANT: I will not testify.

20 THE COURT: And is that a decision that you reached of
21 your own free will and accord?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you're satisfied with it?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Bring the jury in, please.

Renee Rogers
Direct examination by Ms. Hall

1 office manager. I do all scheduling, payroll. That's
2 basically what I do.

3 Q Okay. Do you know Christopher Mahaffey?

4 A Yes, I do.

5 Q And how do you know him?

6 A He was employed with us.

7 Q Okay.

8 A If I'm not mistaken, it was from August of 2011 until
9 this past January of 2012.

10 Q And did you know what type of work he did?

11 A Yes. Just about anything we asked. He learned to
12 operate the denailer machine, the nail guns.

13 Q Tell me what Steve's Pallet -- what business it is.

14 A It's a recycling -- wooden pallets for transfer,
15 shipping in 18 wheelers, and also for the large box
16 business that is used for plastic pallets that they
17 recycle.

18 Q Okay. Thank you.

19 I'm going to show you what has previously been marked
20 as Defendant's No. 1. Do you recognize this document?

21 A Yes. It is the bank stubs from the checking account
22 on the payroll.

23 Q Okay.

24 MS. HALL: Your Honor, I move at this time to enter
25 this into evidence.

Renee Rogers
Direct examination by Ms. Hall

1 MS. JORDAN: No objection from the state.

2 THE COURT: It's admitted.

3 (Copy of paycheck stubs marked Defendant's Exhibit No.
4 1.)

5 Q Is there a stub on there for where Christopher
6 Mahaffey was paid?

7 A Yes.

8 Q Can you give us a check number and date and amount?

9 A The check number on 1408 was dated January the 6th of
10 2012, and he drew \$194.

11 Q Is there another check in January?

12 A Yes, ma'am. The check number is 1461 -- I'm sorry --
13 1416, and it was dated January the 13th of 2012 -- \$198.

14 Q Okay. I'd like to show you what's been marked
15 Defendant's Exhibit No. 2. I'm showing it to the
16 solicitor. Do you recognize this document?

17 A Yes. This is the bank statement that we received each
18 month. And if you'll notice there's a star next --

19 Q Did you place that on the document?

20 A No. The C.P.A. did --

21 Q Okay.

22 A -- because I received it back from them.

23 Q You requested this?

24 A Yes.

25 Q And what is marked on there with the star?

Renee Rogers
Direct examination by Ms. Hall

1 A It's Christopher's check stubs where it had cleared
2 the bank.

3 Q Okay. Can you read us the check number and the
4 amount?

5 A Yes, ma'am. On 1/6 it was check No. 1408 for \$194,
6 and on January the 13th, check No. 1416 for \$198.

7 Q And what does that mean when it's on this statement
8 like that, the date?

9 A The date is when it actually is cashed at the bank.

10 Q Okay. So that's the date it comes out of your
11 account.

12 A Yes, yes.

13 Q Okay.

14 MS. HALL: Your Honor, I'd like to move Exhibit No. 2
15 into evidence.

16 MS. JORDAN: No objection from the state.

17 THE COURT: It's admitted.

18 (Copy of bank statement marked Defendant's Exhibit No.
19 2.)

20 MS. HALL: I have no further questions.

21 MS. JORDAN: No questions, Your Honor.

22 THE COURT: You may step done.

23 THE WITNESS: Thank you.

24 MS. HALL: Your Honor, may Ms. Rogers be excused?

25 THE COURT: She may be.

John Mahaffey
Direct examination by Ms. Hall

1 (whereupon, the witness was excused.)

2 MS. HALL: The defendant would call John Mahaffey to
3 the stand.

4 JOHN MAHAFFEY, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. HALL

7 Q would you state your name for us please, sir?

8 A John Mahaffey.

9 Q Okay. Your first time testifying in court?

10 A Yes, ma'am.

11 Q Okay. A little bit nervous?

12 A Yes, ma'am.

13 Q I'm sorry. we will take our time. Okay. Let me know
14 if you need a drink of water or anything.

15 A Okay.

16 Q Mr. Mahaffey, do you know who I am?

17 A Yes, ma'am.

18 Q Okay. we talked before.

19 A Yes, ma'am.

20 Q Okay. And what's your relationship to Christopher
21 Mahaffey?

22 A He's my brother.

23 Q Okay. I just want to get some brief background
24 information. Can you tell us your age?

25 A I'm 35.

John Mahaffey
Direct examination by Ms. Hall

- 1 Q Okay. You're Christopher's younger brother?
- 2 A Younger brother, yes, ma'am.
- 3 Q And where do you reside.
- 4 A At Road in Inman.
- 5 Q Okay. Where were you on January 14th of this year?
- 6 A I was at my father's house.
- 7 Q Where does your father live?
- 8 A Road.
- 9 Q What city?
- 10 A Woodruff.
- 11 Q Okay. And what were you doing at your father's house
- 12 that day?
- 13 A I would down -- I come down to see him. We were going
- 14 to cook out that day.
- 15 Q Who all was there?
- 16 A Me, my brother.
- 17 Q Which brother?
- 18 A Chris.
- 19 Q Okay.
- 20 A Austin, Chase, my mother Diane, and my father Eddie.
- 21 Q Okay. About what time were you there? Can you
- 22 remember or estimate for us?
- 23 A I think I got there around 9:30 or 10:00 that morning.
- 24 Q Okay. How long did you stay?
- 25 A Stayed until about -- I think it was about 4:00 or

John Mahaffey
Direct examination by Ms. Hall

1 5:00 o'clock that afternoon.

2 Q Now, you just told us all of the people that were
3 there. Did Chris ever leave?

4 A Yes, ma'am.

5 Q Okay. How did he leave?

6 A He left in an SUV with -- there was a guy who came up.
7 My father said his name was Ronald. He left driving the
8 vehicle.

9 Q So you're saying that Chris left the house. And the
10 SUV, was it -- what kind -- can you tell us what color?

11 A It's my father's SUV. It's a green Expedition.

12 Q Okay.

13 A And the other guy left driving.

14 Q Do you recall what time it was when Chris left the
15 house?

16 A It was around -- I'm wanting to say about 11:00 --
17 11:30 or 11:00.

18 Q Could you tell what direction they went in?

19 A They headed up the road.

20 Q Okay.

21 A Which would be -- I'm not sure which way it would be.

22 I guess --

23 Q Fair enough.

24 MS. HALL: One moment, please.

25 (Pause.)

John Mahaffey
Cross-examination by Ms. Jordan

1 MS. HALL: I have no further questions.

2 Q Please answer any questions the solicitor may have for
3 you.

4 MS. JORDAN: Just a few, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. JORDAN

7 Q Mr. Mahaffey, does your brother smoke cigarettes?

8 A Yes.

9 Q Do you know what kind he smokes?

10 A Newport, I believe.

11 Q After your brother Chris left the house that day, did
12 you see him again on January the 14th back at the house?

13 A No, I did not.

14 Q Okay. And he left around 11:00 with another
15 individual?

16 A Yes, ma'am.

17 Q So after 11:00 you didn't see him.

18 A No, ma'am.

19 MS. JORDAN: No further questions, Your Honor.

20 MS. HALL: I have nothing further.

21 THE COURT: You may step down.

22 MS. HALL: May this witness be excused?

23 THE COURT: He may be.

24 (Whereupon, the witness was excused.)

25 MS. HALL: The defense rests at this time.

1 THE COURT: Any reply?

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

3 THE COURT: Ladies and gentlemen, that's all of the
4 evidence that's going to be received. What remains to be
5 done are the lawyers' final summations, after which I'll
6 instruct you on the law. And then you can begin
7 deliberations.

8 Before we do that I've got some matters to address
9 with the lawyers. So I'll ask you to please go to your
10 jury room. Do not yet discuss the case. I'll bring you
11 back in just a few minutes.

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

14 THE COURT: Any motions or other matters to address?

15 MS. HALL: At this time I'd just like to renew my
16 previous motion for a directed verdict.

17 THE COURT: That motion is again denied.

18 Any requests for jury instructions from the state?

19 MS. JORDAN: Your Honor, I would request a hand-of-one
20 charge just because they have alluded to or made references
21 to another individual who was there.

22 And if that's going to be a position or a defense that
23 they're going to take in closing, I believe that the state
24 should be entitled to a hand-of-one, hand-of-all theory for
25 the jury to consider.

1 THE COURT: Okay. Any objection?

2 MS. HALL: Your Honor, I wouldn't object to that, but
3 I would ask if the Court does instruct them hand of one,
4 hand of all that the Court would also give an instruction
5 of mere presence.

6 THE COURT: I will.
7 Any other requests by the state?

8 MS. JORDAN: No, sir.

9 THE COURT: Any other requests by the defendant?

10 MS. HALL: Your Honor, we're requesting a charge of
11 the lesser included burglary in the second degree.

12 THE COURT: And what would be the basis for that?

13 MS. HALL: The basis for that, Your Honor, is that
14 there is a reasonable doubt that the jury could find as to
15 being armed with a deadly weapon, precisely the gun.

16 We have testimony that my client was stopped on the --
17 in front of the house, didn't get to the vehicle. The gun
18 was found in the vehicle.

19 THE COURT: Well, it came out of the house.

20 MS. HALL: Your Honor, we had one witness I believe
21 testify to that.

22 The officer returned the weapon without doing anything
23 else to verify it did come out of the house and it
24 belonged --

25 THE COURT: Well, what would he have done to verify

1 that it came out of the house other than ask the owner?

2 MS. HALL: There was a serial number on the weapon,
3 Your Honor.

4 THE COURT: Well, how would that tell you where it
5 came from, out of the house or out of the car?

6 MS. HALL: It could have been used to establish
7 ownership.

8 We know that from testimony the homeowner did reach
9 into the car and take the keys out and went back and looked
10 again for the gun.

11 There's been testimony elicited that my client left
12 his father's house that day with another individual.

13 I think there's enough there for a jury to have a
14 reasonable doubt as to whether or not my client ever had
15 his hands on that weapon.

16 We also know that the forensic investigator took a
17 swab off the gun that didn't produce any results or
18 testing, in fact, of who could have touched it.

19 THE COURT: What's the state's position?

20 MS. JORDAN: Your Honor, the state's position is that
21 the defense is not entitled to a burglary second charge.

22 My understanding of their reading of the -- or from
23 their case point is that he didn't go in the house, that he
24 wasn't involved in going into the house, that I believe he
25 was not the right guy.

1 I don't think that they're entitled to the lesser
2 included offense if that's the defense that they're going
3 to take.

4 As to the aggravated element in the burglary first, as
5 the Court knows, the statute reads when in effecting entry
6 or while in the dwelling the defendant or another
7 participant in the crime either displays or is armed with a
8 deadly weapon. A deadly weapon could be a knife or a gun.

9 In this case we have the defendant by testimony from
10 Officer Bishop with two knives on his person, one in each
11 front pocket, along with the defendant's testimony in
12 response to the victim's question to where -- where is it,
13 where is it. His response is it's in the center console.
14 He finds his gun in the center console. The gun was last
15 seen by the victim inside this house where he always kept
16 it on the bedside table.

17 Your Honor, it's our position that we're arguing both
18 ways, that the defendant was armed when he went into the
19 house with pocketknives he had in his possession and came
20 out with them and also with the gun that he took while in
21 the dwelling.

22 MS. HALL: As to the gun, Your Honor, the state's
23 witness testified that gun was placed somewhere hidden in
24 the house, he was the first one to see it in the vehicle
25 and that it was never moved from that point.

1 The jury's entitled to believe what they want of a
2 witness, and this jury may not believe that someone took
3 that gun -- another person -- out of the house and put it
4 in the car.

5 THE COURT: You mean they might believe that
6 Mr. Sustare took the gun out of the nightstand and went
7 outside and put it in Mr. Mahaffey's father's car?

8 MS. HALL: They could believe that, Your Honor.

9 THE COURT: They could?

10 MS. HALL: Could they also believe that a
11 second suspect --

12 THE COURT: Could they also believe that Mr. Sustare
13 took some pocketknives and stuck them in Mr. Mahaffey's
14 pocket? I guess they could believe that. There wouldn't
15 be any evidence tending to support it, but I guess they
16 could believe that.

17 MS. HALL: They could also believe, Your Honor, that a
18 second suspect who was never found took that weapon and put
19 it in a car and was able to escape without being
20 apprehended.

21 The testimony is that my client was stopped in front
22 of the house. He never made it to the car. No one ever
23 saw him touching this gun. We have no D.N.A. or
24 fingerprints of his on this gun.

25 THE COURT: Well, there's also no evidence that

1 anybody else was at that house other than Mr. Mahaffey.

2 I know that somebody suggested that he was driving a
3 vehicle, but nobody said that he ever went to Mr. Sustare's
4 house. There's no evidence that anybody else was there
5 other than Mr. Mahaffey that I recall. Is there some?

6 MS. HALL: We have the -- I believe it was Officer
7 Rhodes testified he was called to look for another suspect.

8 THE COURT: Well, I suspect Officer Rhodes was called
9 to look for anything that might be helpful to resolving the
10 case, but that doesn't mean that he was actually looking
11 for somebody other than Mr. Mahaffey.

12 I mean, obviously you don't just show up at a crime
13 scene and ignore possibilities but -- but I don't know that
14 he was looking for anyone else.

15 MS. HALL: Your Honor, I'd like to if I may argue just
16 one more point about the knives.

17 The statute requires that they -- that be -- well,
18 first, armed with a deadly weapon. A pocketknife is not
19 always a deadly weapon. And plenty of people carry
20 pocketknives for reasons completely innocuous.

21 Your Honor, I carried one before I started coming
22 through courthouses with metal detectors. My client worked
23 at a pallet recycling business.

24 And as far as displaying what appears to be a knife,
25 there's no testimony that the knives were ever displayed,

1 ever used, ever used to threaten anyone.

2 He was arrested and searched. They found them in his
3 pocket.

4 THE COURT: So are you suggesting that doesn't count
5 towards the aggravating factor of burglary first?

6 MS. HALL: That is my argument. And I believe it is a
7 question for the jury to be able to consider.

8 THE COURT: Well, I certainly think it's a question
9 for the jury to consider.

10 They'd have to find that the -- that the evidence
11 supported him being armed with a deadly weapon. The
12 pocketknife obviously is a deadly weapon, I believe. I
13 guess they -- I guess they could find that he wasn't. But
14 do you think that would be reasonable? It's not a
15 contested fact, is it?

16 MS. HALL: It's not a contested fact that he had the
17 pocketknife.

18 THE COURT: Is there any other evidence from which
19 anybody could reasonably infer that he was not armed with a
20 deadly weapon?

21 MS. HALL: Reasonably they could infer that a
22 pocketknife that remains in his pocket the entire time that
23 no one ever sees until the police search him is not a
24 deadly weapon.

25 THE COURT: Okay. All right. I understand the

1 argument.

2 Do you want to be heard on that, Ms. Jordan?

3 MS. JORDAN: Your Honor, just briefly.

4 The statute just refers to displays or just refers to
5 it as a knife.

6 It doesn't give any indication as to how long the
7 knife has to be, any length of it. It doesn't exclude the
8 pocketknife. Our argument is that it is a deadly weapon.

9 THE COURT: Well, I understand. But there's no
10 evidence he displayed the knife.

11 MS. JORDAN: No, sir. There's not. But as far as
12 just being armed with a deadly weapon.

13 THE COURT: Well, I understand.

14 MS. JORDAN: I believe a knife of any sort, regardless
15 of the length, could be used as a deadly weapon.

16 THE COURT: I don't -- I don't believe in this case
17 there's any evidence from which the jury could reasonably
18 find him to be guilty of only the lesser offense. So based
19 upon that fact I'm going to deny your motion to instruct
20 the jury on the lesser included.

21 All right. Any other requests?

22 MS. HALL: I have no other requests other than your
23 standard charges, Your Honor.

24 THE COURT: Okay. All right. Bring the jury in,
25 please, sir.

Jury charge

1 17 minutes.

2 One common denominator is that he left in that
3 vehicle. That vehicle shows up, , and
4 he's the one there.

5 Ladies and gentlemen, like I told you at the very
6 beginning of this case, no one asked you to check your
7 common sense at the door. You get to bring that in here.
8 You get to bring in your everyday experiences.

9 Christopher Mahaffey wants you to believe that he's
10 the victim in this case, he's the victim of a big
11 conspiracy that somehow placed him at this address, that
12 somehow had him to be found by Mr. Sustare and Richie with
13 Mr. Sustare's items on him. He's not the victim.

14 If it walks like a duck and quacks like a duck, it's a
15 duck. Everything in this case points to the fact that he
16 burglarized Mr. Sustare's home, that he took his items and
17 that he had drugs in his vehicle.

18 Mr. Sustare is the victim here. His home was
19 burglarized; his items were taken. His security that we
20 should all have in our homes was taken away, and it was
21 taken away by Christopher Mahaffey. Thank you.

22 THE COURT: Mr. Foreman and ladies and gentlemen of
23 the jury, you of course have now heard and seen all of the
24 evidence. You've heard the final summations of the
25 lawyers; and therefore it now becomes my duty and

Jury charge

1 obligation to instruct you on the law that's applicable.

2 Then you'll be asked to go back and begin with your
3 deliberations. And through that process you'll examine the
4 evidence, decide the facts, apply the law and arrive a fair
5 and just decision in the case, whatever that decision may
6 be.

7 It is your exclusive duty to determine what the facts
8 are. You do that through your own common-sense examination
9 and evaluation of all of the testimony and other evidence
10 received during the course of this trial.

11 You 12 jurors alone will decide what weight, value and
12 effect to give to any particular witness' testimony or
13 other evidence in the case. Your sole objective is to
14 simply reach the truth in the matter. By doing that you
15 will have fulfilled your obligations as jurors, and that is
16 to simply give both the state and the defendant a fair and
17 impartial trial.

18 Now, in this case, as you are aware, the state through
19 the prosecutor has accused the defendant with four separate
20 and distinct offenses.

21 Those offenses are alleged to have arisen out of one
22 particular event or a course of events which the state
23 alleges occurred back on January the 14th of 2012. But
24 there are four separate and distinct charges for which you
25 are to render four separate and distinct verdicts.

Jury charge

1 As I've told you previously, your verdicts may be the
2 same as to each of the charges. They may be different.
3 That of course will depend upon your determination of fact
4 as it relates to that particular charge and then your
5 application of the law to those facts as you determine
6 those facts to be.

7 But the defendant is charged with burglary in the
8 first degree, with larceny, with possession of crack
9 cocaine, and possession of a Schedule II drug, being
10 oxycodone.

11 As to those charges -- and those charges are set forth
12 in each of the indictments that I referred to prior to and
13 after your selection in the case. But please understand
14 that the indictments are not evidence of anything. They
15 don't prove anything; they don't establish anything.
16 They're simply the means by which a person is brought into
17 this court and formally accused of a crime.

18 The indictments however will be in the jury room even
19 though they're not evidence. That's because the
20 indictments will serve as the verdict form.

21 Mr. Foreman, it's going to be on the back of each
22 indictment you will be indicating the jury's verdict as it
23 relates to that particular charge. So the indictments will
24 be in the jury room, but they are there solely to serve as
25 the verdict forms. They serve no other purpose so far as

Jury charge

1 you jurors are concerned.

2 Now, as to the allegations set forth in each of those
3 indictments the defendant has entered a plea of not guilty.
4 And that plea of not guilty has placed upon the state the
5 burden of proving the allegations that they have set forth
6 in each of those indictments, the burden of proving each of
7 the essential elements that constitute the crime that is
8 alleged in a particular indictment; and therefore the
9 burden is upon the state to establish the defendant's guilt
10 as it relates to a particular charge beyond a reasonable
11 doubt before a verdict of guilty could be returned as to
12 that particular charge.

13 The burden is never upon a defendant to prove that he
14 or she is not guilty or to prove that he or she is innocent
15 because in some cases that might not be possible. The
16 burden is always upon the state because they bring the
17 charge against the defendant to establish that person's
18 guilt beyond a reasonable doubt.

19 You are further instructed that it is a vital,
20 important and cardinal rule of law that every defendant in
21 a criminal trial -- and it does not matter how serious the
22 offense might be for which that person stands charged --
23 the defendant shall always be presumed innocent of that
24 charge.

25 That presumption of innocence remains with any

Jury charge

1 defendant as it does with this defendant from the time that
2 he is placed under arrest and throughout the course of the
3 criminal process and even throughout the course of the
4 actual trial in the case.

5 As I told you, that presumption of innocence will be
6 with Mr. Mahaffey even as you go back to begin your
7 deliberations, and that presumption of innocence will be
8 with him in that jury room, and it'll be with him forever
9 unless you 12 jurors determine that he's no longer entitled
10 to that presumption of innocence.

11 In other words, after you've carefully considered all
12 the evidence in the case, and from that evidence you've
13 determined the facts, and upon determining those facts you
14 apply the law that I have provided you, if you 12 jurors
15 unanimously determine that his guilt as to a particular
16 charge has been proven beyond a reasonable doubt, then he
17 would no longer be entitled to the presumption of innocence
18 as it relates to that charge. But it's only if, unless and
19 until you are satisfied of his guilt beyond a reasonable
20 doubt that the presumption of innocence would no longer be
21 applicable.

22 Now, while the state does have the burden of proving
23 the defendant's guilt beyond a reasonable doubt, that does
24 not mean the state has to prove his guilt beyond all doubt
25 or beyond any possible doubt. But it does require the

Jury charge

1 state to prove his guilt to your satisfaction beyond a
2 reasonable doubt.

3 The term reasonable doubt should be given its plain
4 and ordinary meaning. A reasonable doubt is the kind of
5 doubt that would cause a reasonable person to hesitate to
6 act upon the information provided.

7 A defendant in a criminal trial is entitled to any
8 reasonable doubt that arises from the evidence or lack of
9 evidence in a case. And if upon any factual issue
10 essential to a finding of a verdict of guilty you have some
11 reasonable doubt as to how that issue should be resolved,
12 it would be your duty to resolve that reasonable doubt in
13 favor of the defendant.

14 And therefore if upon your consideration of the whole
15 case as it relates to a particular charge you have a
16 reasonable doubt as to his guilt you must resolve that
17 reasonable doubt in his favor and return a verdict of not
18 guilty as it relates to that particular charge.

19 At the same time, after you've considered all the
20 evidence and decided the facts and applied the law, if you
21 have no reasonable doubt as to his guilt as it relates to a
22 particular charge, then it would be your corresponding duty
23 to find him guilty of that charge where you have been
24 convinced beyond a reasonable doubt of its commission by
25 him.

Jury charge

1 The same law that provides that you are the judges of
2 the facts also provides that I am the judge of the law.
3 And that simply means that nobody's going to tell you how
4 to arrive at your determination of fact in this case. You
5 do that as I've stated through the exercise of good
6 judgment and common sense conscientiously applied to the
7 testimony and evidence in the case.

8 You must however accept the law as I provide it to you
9 as being the law that you are to apply in the case. In
10 other words, you're never to concern yourself with what you
11 thought the law was before you came to serve as a juror
12 this week or what you think the law ought to be.

13 Under your oath as a juror you must accept the law as
14 I provide it to you as being the law that you are to apply
15 in the case. You then simply take that law and you apply
16 it to the facts as you 12 jurors determine those facts to
17 be based upon your own common-sense examination of the
18 evidence received in the case.

19 Now, because you are the judges of the facts in this
20 case you are therefore necessarily the sole judges of the
21 credibility, that is the believability, of each witness
22 that has testified during the course of this trial. And
23 therefore you should consider several factors in arriving
24 at your assessment as to a particular witness' credibility,
25 and I'm going to list those factors for you.

Jury charge

1 You should consider the demeanor of the witness as the
2 witness testified from the witness stand. Was the witness
3 straightforward in responding to questions, or was the
4 witness hesitant or evasive in responding to questions that
5 were asked of the witness.

6 Simply put, did the witness appear to you to be
7 telling the truth and to have knowledge of the facts to
8 which that witness has testified.

9 You should also consider whether or not the testimony
10 of a witness is consistent, or is it inconsistent with that
11 witness' own testimony or statements made by that same
12 witness outside of court, as well as whether or not the
13 testimony of a witness is consistent or inconsistent with
14 other witnesses' testimony or other evidence in the case.

15 You should also consider how the witness came to know
16 the facts to which that witness has testified. In other
17 words, what was that witness' opportunity and ability to
18 perceive the existence of those facts to which that witness
19 has testified by having previously used his or her senses.
20 And then what is that witness' ability to be able to come
21 into court and to accurately recollect to you as to what
22 they have previously perceived.

23 You should also consider any bias or prejudice or
24 interest that a witness might have with regard to the case.
25 In other words, do you find some reason why a particular

Jury charge

1 witness would come into court and would testify one way or
2 another to help or to hurt one side or the other.

3 And you may consider any interest that a witness might
4 have in the outcome of the case if you determine that a
5 witness does have such an interest and you find that that
6 interest would bear upon that particular witness'
7 credibility.

8 You should also consider whether or not the testimony
9 of a witness is strengthened, or is it weakened by other
10 testimony or other evidence received during the course of
11 the trial.

12 Now, because you are the sole judges of the facts and
13 because you are the sole judges of the credibility of each
14 witness that has testified you are permitted to believe as
15 much or as little of what a witness has testified to as you
16 deem is appropriate. And therefore you may believe
17 everything that a witness testified to. You may choose to
18 believe none of it. You may believe one portion of a
19 witness' testimony and reject some other portion of that
20 same witness' testimony. In a given case you could believe
21 one witness as opposed to several, or several as opposed to
22 one.

23 But whatever your good judgment and common sense tells
24 you is the most believe and credible testimony is the
25 testimony you should accept, and you should reject any

Jury charge

1 testimony or other evidence that you find not to be
2 credible or believable.

3 Again, your sole objective is to simply reach the
4 truth in the matter, and by doing that you will have
5 fulfilled your obligations as jurors.

6 Now, while there are various forms of evidence such as
7 testimony, photographs, documents, charts, maps and other
8 types of physical exhibits, there are really only two types
9 of evidence. Either or both of those two types of evidence
10 may be used to prove any fact that is in issue. But the
11 two types of evidence are direct evidence and
12 circumstantial evidence.

13 Direct evidence is the testimony of a person who
14 testifies from actual knowledge of that fact. It is
15 testimony by a person who has perceived the existence of
16 some fact by use of their senses and they come into court
17 and they testify as to what they have previously perceived.

18 Circumstantial evidence, on the other hand, is the
19 proof of some other fact or a set of facts which taken
20 either singly or collectively may prove the existence of a
21 fact in question as a necessary consequence, that is
22 through an inference.

23 An inference is simply a deduction of fact that may
24 logically and reasonably be drawn from the proof of some
25 other fact or set of facts.

Jury charge

1 In other words, it's not a fact proven by the direct
2 testimony of a person based upon their personal perception,
3 but it is a conclusion which might reasonably be drawn from
4 the proof of other facts.

5 In other words, you may infer that a particular event
6 occurred or that a particular fact exists based upon the
7 proof of sufficient factual circumstances which would
8 reasonably warrant your arriving at such a conclusion.

9 The law makes absolutely no distinction between the
10 weight or value to be given to either direct evidence or
11 circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence as opposed to
13 direct evidence.

14 Whatever the type of evidence used to prove any fact,
15 you should consider all of the evidence presented during
16 the trial of this case. And after carefully considering
17 all of that evidence in your minds if you are not convinced
18 of the defendant's guilt as to a particular charge beyond a
19 reasonable doubt, then you must resolve that doubt in his
20 favor and return a verdict of not guilty as it relates to
21 that charge.

22 Now, in this case, as you know, the defendant is
23 charged with burglary in the first degree, larceny,
24 possession of crack cocaine and possession of oxycodone.
25 And so I'm -- those are all statutory offenses. In other

Jury charge

1 words, the legislature meets every year from January until
2 June. They pass a number of laws and rules and regulations
3 that govern our conduct in a variety of ways.

4 Some of those statutes that they pass are
5 criminal-penalty statutes, and that just means that they
6 prohibit us as citizens from engaging in particular types
7 of conduct.

8 Where we are found to have engaged in that prohibited
9 conduct in violation of a particular statute, then it
10 subjects us to some form of punishment or penalty for
11 having engaged in that conduct in direct violation of the
12 statute.

13 Please understand however that you are never to be
14 concerned with punishment or penalty. That's not something
15 that you determine nor decide. Your sole obligation and
16 duty under your oath as a juror is to determine whether or
17 not the defendant's guilt has been proven beyond a
18 reasonable doubt as it relates to a particular charge. And
19 you must make that decision without considering any
20 consequence as to punishment or as to any penalty.

21 Section 16-11-311 is the statutory provision that
22 defines the crime of burglary in the first degree. And
23 that particular section states that a person is guilty of
24 burglary in the first degree if the person enters a
25 dwelling without consent and with the intent to commit a

Jury charge

1 crime therein, and when in effecting entry or while in the
2 dwelling or in immediate flight therefrom he or any other
3 participant in the crime is armed with a deadly weapon.
4 And there are other factors which are not applicable under
5 the evidence as presented in this case.

6 So based upon the foregoing statute, before you could
7 return a verdict of guilty as to the crime of burglary in
8 the first degree it would be necessary that the evidence in
9 this case has proven to your satisfaction beyond a
10 reasonable doubt four essential elements.

11 First, it must be proven that the defendant entered a
12 dwelling. Entry is an indispensable element in the crime
13 of burglary. Entry is the act of going into a dwelling.

14 It is not necessary that actual physical force be used
15 to accomplish the entry, nor does any door, window or other
16 barrier have to be opened or removed in order to effect an
17 entry. There simply must be an entry of a dwelling.

18 A dwelling is defined as a building or a structure
19 which is used or normally used for sleeping, living or
20 lodging by a person.

21 Secondly, there must be an entry of a dwelling without
22 consent. Entering without consent means to enter a
23 dwelling without the consent of the owner or person
24 otherwise in lawful possession of the premises.

25 Thirdly, there must be an entry of a dwelling without

Jury charge

1 consent and with the intent to commit a crime in the
2 dwelling. There must be an intent to commit a crime,
3 whether or not the crime is actually committed,
4 accomplished or completed.

5 The mere entering of a dwelling without an intent to
6 commit a crime does not constitute burglary. It is only
7 when there is an entering accompanied with an intent to
8 commit a crime that the crime of burglary is complete. And
9 a crime of any grade or severity is sufficient to satisfy
10 this particular element of the crime of burglary.

11 And the term intent means the state of a person's mind
12 which directs his actions toward a specific object or goal.
13 The entering of a dwelling without consent and with the
14 intent to commit a crime therein completes the crime of
15 burglary.

16 The fourth element necessary to establish a burglary
17 in the first degree is either that when effecting entry or
18 while in the dwelling or in immediate flight therefrom the
19 defendant or another participant in the crime is armed with
20 a deadly weapon.

21 So in order to be found guilty of the crime of
22 burglary in the first degree it would be necessary that the
23 state has established to your satisfaction beyond a
24 reasonable doubt that the defendant or another participant
25 in the crime did enter a dwelling without consent with the

Jury charge

1 intent to commit a crime therein and at the time was armed
2 with a deadly weapon.

3 The defendant is also charged with the crime of
4 larceny. Larceny is commonly referred to and known as
5 stealing.

6 Larceny is defined in the law as the taking, the
7 stealing and the carrying away of the personal property of
8 another with the intention of depriving the true owner of
9 use and possession of his property and converting that
10 property to the taker's own use.

11 Grand larceny is the larceny or theft of property
12 having a value of more than \$1,000.

13 Petit larceny is the theft of personal property that
14 belongs to another having a value of \$1,000 or less. In
15 this case the state has alleged the defendant to be guilty
16 of the crime of petit larceny.

17 A person who is charged with the commission of a crime
18 may be convicted of that crime as a principal offender or
19 as an accomplice. An accomplice is one who knowingly and
20 voluntarily and with a common intent with a principal
21 offender unites with that principal offender in the
22 commission of the crime.

23 An accomplice is sometimes referred to as an aider or
24 an abettor. But such a person is also deemed to be a
25 principal under the law.

Jury charge

1 In this case the state is alleging that the defendant
2 is guilty of the crimes of burglary and of larceny as a
3 principal or as an aider and an abettor in the commission
4 of those crimes.

5 It is the law of this state that where two or more
6 people act together with a common intent and purpose and
7 they combine, conspire, plan or otherwise agree to the
8 commission of a crime, each person who is present to aid,
9 abet, assist or participate in the commission of that crime
10 is equally guilty.

11 The act of one is deemed to be the act of all. Any
12 person who joins with another or others to accomplish an
13 illegal purpose is held to be criminally responsible for
14 everything that was done by any other person which occurs
15 as a natural and probable consequence of the acts done
16 pursuant to and in furtherance of that common plan and
17 purpose.

18 And therefore where two or more people are acting
19 together and they are aiding, abetting, assisting and
20 participating with each other in the commission of a crime,
21 the acts of one become the acts of all. The hand of one is
22 the hand of all. And all are equally guilty of any crime
23 accomplished by those joint efforts.

24 In order to be guilty as an aider or as an abettor in
25 the commission of a crime one must be actually present at

Jury charge

1 the scene of the crime with the intention of aiding,
2 abetting, assisting or participating in the commission of
3 that crime, and the crime is completed.

4 Prior knowledge by a defendant that some other person
5 is intending to commit a crime without more is not
6 sufficient to make the defendant guilty of the crime of
7 which he is shown to have had knowledge. And, likewise,
8 the mere presence of the defendant at the scene of a crime
9 or in close proximity thereto even with knowledge that
10 another is intending to commit the crime is not sufficient
11 standing alone to prove the defendant guilty of the crime
12 of aiding and abetting in the commission of that crime.

13 In order for the defendant to be found guilty of a
14 crime under the legal theory of aiding and abetting it must
15 be proven beyond a reasonable doubt that the defendant was
16 actually present at the scene of the crime with the
17 intention of aiding, abetting, assisting or participating
18 in the common plan or scheme which culminates in the
19 completion of that crime.

20 A criminal intent is also a necessary element which
21 must be established beyond a reasonable doubt, for there
22 must be a common design or intent to commit a crime, and
23 the crime must be completed with the defendant committing
24 the crime or aiding, abetting, assisting and participating
25 in the commission of a crime by another.

Jury charge

1 An intent means the state of a person's mind which
2 directs his actions towards a specific object or goal. A
3 criminal intent is a state of mind that operates jointly
4 with an act in the commission of a crime.

5 Criminal intent is a mental state of conscious
6 wrongdoing in contrast to the commission of some act which
7 is the result of accident, inadvertence or mistake. An
8 intent may be proven by acts, declarations and conduct of
9 the defendant, as well as any other circumstances which are
10 established by the evidence in the case from which you
11 might naturally and reasonably infer any such intent.

12 Now, I will instruct you on the law as it relates to
13 the two offenses where the defendant is alleged to have
14 been in possession of a controlled substance or possessing
15 a drug unlawfully.

16 Section 44-53-375 of the Code of Laws provides that it
17 should be unlawful to possess cocaine base, which is
18 sometimes referred to as crack cocaine.

19 Section 44-53-370 of the Code of Law provides that it
20 shall be unlawful to possess a Schedule II controlled
21 substance unless the substance was obtained pursuant to a
22 valid prescription which was authorized and dispensed by a
23 person authorized under the law to dispense such substances
24 in the course of their professional practice.

25 You are also instructed that oxycodone is classified

Jury charge

1 as a Schedule II controlled substance under the law of this
2 state.

3 Before a person may be deemed to be in possession of a
4 substance it must be proven beyond a reasonable doubt that
5 that person did knowingly or intentionally have in his
6 actual or constructive possession the substance which is
7 alleged to have been possessed. In this case the
8 substances are crack cocaine and oxycodone.

9 Knowingly is defined as having knowledge of the fact.
10 It's an act which is done wilfully, purposefully and
11 consciously.

12 Intentionally is defined as purposefully, that is by
13 aim or design and not by accident or inadvertence.

14 It may be further defined as the state of a person's
15 mind which directs his actions toward that specific object
16 or goal.

17 Actual possession of a substance occurs when the
18 substance is shown to have been in the actual physical
19 custody or control of the person charged with possession
20 and with knowledge of its presence.

21 Constructive possession of a substance, on the other
22 hand, occurs when a person although not in actual physical
23 custody of the substance exercises dominion and control
24 over the substance or has the right to exercise dominion
25 and control over that substance.

Jury charge

1 A person has possession of a substance within the
2 meaning of the law when he has both the ability and the
3 intent to control the disposition or use of that substance.

4 The act of possession, as well as the element of
5 knowledge, may be proven by either direct evidence or by
6 circumstantial evidence or a combination of both of those
7 two types of evidence. And possession of a substance may
8 be jointly shared by two or more persons.

9 You are permitted to infer the act of possession, as
10 well as the element of knowledge, from evidence of acts,
11 declarations or conduct of the person charged with
12 possession, as well as any other circumstances which have
13 been established by the evidence in the case from which you
14 might reasonably infer such knowledge and possession.

15 You are however instructed that the proof of mere
16 presence of the defendant at or near a location where a
17 quantity of an unlawful substance is found is not
18 sufficient by itself to prove the defendant to be guilty of
19 possessing that substance.

20 A defendant's mere presence where a quantity of a drug
21 is located even with knowledge of its presence is not
22 sufficient standing alone to prove the crime of possessing
23 that substance.

24 If after your review of the evidence in this case you
25 determine that the state has only proven that the defendant

Jury charge

1 was merely present at or near a place where a quantity of
2 crack cocaine or oxycodone was located but they failed to
3 prove that the defendant did have it in his actual or
4 constructive possession, then you must find the defendant
5 not guilty of that particular charge.

6 And, on the other hand, if after you review all of the
7 evidence in the case you determine that the state has
8 proven beyond a reasonable doubt that the defendant did
9 knowingly have in his actual or his constructive possession
10 the substance alleged to have been possessed by him, then
11 your verdict would be guilty as to that particular charge.

12 You are further instructed, and I emphasize to you,
13 that the fact that a defendant does not testify during the
14 course of a criminal trial is not a circumstance that may
15 be considered by you in any way whatsoever during your
16 deliberations or in your determination as to whether or not
17 his guilt has been proven beyond a reasonable doubt.

18 You may not permit such a fact to weigh in the
19 slightest degree against a defendant. As I've told you,
20 the burden is on the state to prove his guilt beyond a
21 reasonable doubt.

22 The burden is not upon a defendant to prove that he is
23 not guilty or to prove that he is innocent of any charge
24 the state claims that he has committed.

25 And therefore you are not to reach any conclusion nor

Jury charge

1 are you to draw any inference from the fact that a
2 defendant does not testify during the course of the trial,
3 nor may you even discuss that fact during your
4 deliberations, nor may you allow that to enter in any way
5 in your determination as to whether or not his guilt has
6 been proven beyond a reasonable doubt.

7 As I have stated, I'm not concerned with what your
8 decisions are. But as I have told you, the verdicts must
9 be unanimous. All 12 of you must be in agreement.

10 Mr. Foreman, as you know, you're going to be called
11 upon to preside over the jury deliberations simply to
12 ensure that they are carried out in some orderly fashion.
13 But all jurors are expected to participate because the
14 verdict is the unanimous consensus opinion of all.

15 You have four separate indictments. You have one for
16 burglary; you have one for larceny; you have one for
17 possession of crack cocaine; you have one for possession of
18 oxycodone.

19 On the back of each of those indictments in the lower
20 left-hand corner you'll see the word verdict. It's beneath
21 that word, Mr. Foreman, that you're going to indicate the
22 jury's decision as it relates to that particular charge.

23 With respect to each of the separate indictments you
24 have two potential verdict forms. Those potential verdict
25 forms are guilty and not guilty. So whatever that decision

Jury charge

1 is, indicate it in the space provided. Sign your name as
2 the foreperson. You are the only juror that has to sign
3 the verdict form. And also place the appropriate date.

4 During your deliberations there may come a time where
5 you have a question about the evidence in the case, you
6 have a question about the testimony. I am never permitted
7 to respond to questions that relate to issues of fact or
8 evidence.

9 Also, please understand that no additional evidence
10 may be introduced now that you're going back to begin with
11 your deliberations.

12 Sometimes jurors go back to deliberate and they think
13 there's something else that might help them resolve the
14 matter, and so they ask if it exists, and if it does can
15 they have it.

16 Please understand that it doesn't matter whether it
17 exists or not. You cannot have it because the evidence is
18 closed. The case is now going to be submitted to you for
19 your determination.

20 So no additional evidence may be received whether it
21 exists or not. So don't ask about the reception of
22 additional evidence.

23 If you have a question about witness testimony and you
24 think that that question can be answered by having a
25 witness' testimony reheard, then you are permitted to have

Jury charge

1 a replay of testimony.

2 I do not have transcripts of the witnesses' testimony.
3 But if you want to hear a witness' testimony replayed in
4 some part or in whole, let me know. We'll bring you back
5 into the courtroom to accomplish that purpose.

6 If at any time you ever have a question about the law
7 that is applicable, I am permitted to answer those
8 questions. So if you need a reinstruction, if you need an
9 additional instruction, you need a clarification or some
10 explanation of the law that you are to apply, I am
11 permitted to answer those questions that relate to
12 questions as to the law.

13 So, Mr. Foreman, if at any time you need to address
14 some matter to me or you have an issue that you'd like some
15 help with, then I can help you resolve, or you need further
16 guidance as to the law, if you'll write that matter or that
17 issue or that question on a piece of paper, give it to the
18 bailiff, he'll provide it to me and I'll respond
19 accordingly.

20 I don't know if we have any smokers on the jury. If
21 we do, you can smoke during deliberations, but you cannot
22 smoke in the jury room. You'll have to be taken outside
23 for that purpose. So if anybody wants to smoke let the
24 bailiff know. He will take you outside for the purpose of
25 accomplishing that.

Jury charge

1 But please understand that if any juror is absent from
2 the jury room for some authorized purpose the deliberations
3 have to stop. They may only resume when all 12 jurors are
4 present so that all may participate.

5 If you get to a point in your deliberations -- you
6 never know how long deliberations are going to take. That
7 obviously depends upon the jury's discussions and how
8 quickly you come to a resolution or an agreement.

9 But if you get to a point during your deliberations
10 that you believe it's appropriate to order lunch, you can
11 also let the bailiff know that you'd like to order lunch.
12 And the clerk will come in there to take your lunch orders.

13 It usually takes about an hour, maybe a little over an
14 hour, to have the lunches ordered, prepared and brought to
15 the jury room for your benefit. So keep that in mind as
16 you go back and you make your determination as to whether
17 or not you think it appropriate to order lunch. I'll just
18 wait to hear from you as to that point.

19 Mr. Foreman, after you and your fellow jurors have
20 reached a unanimous decision you're going to knock on the
21 jury room door. Tell the bailiff you have reached your
22 decisions, and we'll bring you back into the courtroom to
23 receive those verdicts.

24 You will hold onto the verdict forms. Do not give
25 those to the bailiff. I'll receive those from you after

Jury charge

1 you have returned to the courtroom and been seated in the
2 jury box.

3 I think that covers everything, but if it doesn't I'm
4 sure one of these lawyers will remind me that I have
5 neglected to provide you with something that I should have.

6 So I'm going to ask you right now with the exception
7 of Ms. Irby who I'll ask to remain with me in the courtroom
8 -- I'm going to ask the 12 primary jurors to please retire
9 to your jury room. But do not begin deliberations until I
10 send you word to do so.

11 I'll discuss some matters with the lawyers. If I
12 don't need to bring you back I'll send word by way of the
13 bailiff. And in that event he'll bring to the jury room
14 all of the exhibits which have been introduced.

15 And to you, Mr. Foreman, he'll also bring the
16 indictments which will serve as the verdict form.

17 So please retire to your jury room, but do not begin
18 deliberations until I send you word to do so.

19 (Whereupon, the jury retired to deliberate at
20 12:12 p.m.)

21 (Whereupon, the alternate juror was excused.)

22 THE COURT: Are there any exceptions taken to the
23 instruction or requests for additions to the instruction by
24 the state?

25 MS. JORDAN: Your Honor, the only thing -- and I don't

Jury charge

1 think it really has an impact in the factual situation
2 here -- is that the petit larceny is up to two thousand
3 instead of up to a thousand. But there's no question as to
4 monetary value here.

5 And the other thing is as to that indictment. It does
6 contain the third or subsequent language.

7 THE COURT: Yes. I did err with the value, but I
8 don't think it does make any difference here, does it?

9 MS. HALL: No, Your Honor.

10 THE COURT: I mean --

11 MS. HALL: You described both the petty and the grand.

12 THE COURT: They're only going to be able to consider
13 the petit larceny. So, I mean, if they find him guilty of
14 larceny we all are in agreement it is petit larceny.

15 MS. JORDAN: Yes, sir.

16 MS. HALL: Yes, Your Honor.

17 THE COURT: Yes. And as far as the -- as far as that
18 indictment goes, do you have a redacted version?

19 MS. JORDAN: I do not yet. If I can get some whiteout
20 I can redact one and make a copy real fast.

21 THE COURT: Okay.

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

23 (Bench conference held off the record.)

24 THE COURT: All right. The indictment has been
25 appropriately redacted?

Verdict

1 MS. JORDAN: Yes, sir, Your Honor.

2 MS. HALL: Yes, sir.

3 THE COURT: And all the exhibits are accounted for?

4 MS. JORDAN: Yes, sir.

5 MS. HALL: Yes, sir. My only objection was the
6 noninclusion of burglary second.

7 THE COURT: Okay. All right. Send the exhibits back,
8 and the verdict forms. Tell the jury to begin their
9 deliberations and notify us when they have concluded.

10 We will be at ease while the jury is deliberating.

11 (Whereupon, a recess was taken.)

12 (Question from the jury marked Court's Exhibit No. 1.)

13 THE COURT: All right. I'm told the jury has reached
14 a decision in Mr. Mahaffey's case. Are we ready to receive
15 it?

16 MS. JORDAN: Yes, sir.

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

18 THE COURT: Okay. Bring them in, please.

19 (Whereupon, the jury returned to the courtroom at
20 3:20 p.m. to report its verdict.)

21 THE COURT: Mr. Foreman, have you and your fellow
22 jurors reached a unanimous decision on each of the separate
23 indictments?

24 THE FOREMAN: Yes, sir, we have.

25 THE COURT: And have you indicated those decisions on

Verdict

1 the back of the indictments as requested?

2 THE FOREMAN: Yes, I have.

3 THE COURT: Have you signed your name as the
4 foreperson and dated each?

5 THE FOREMAN: Yes, I have.

6 THE COURT: If you would, please hand those up by way
7 of the bailiff.

8 You may publish the verdicts.

9 THE CLERK: In the General Sessions Court, Case No.
10 2012-GS-42-730, state of South Carolina vs. Christopher
11 Paul Mahaffey, indictment for burglary first degree, the
12 verdict is guilty. This is signed and dated by the
13 foreperson.

14 Case No. 2012-GS-42-731, indictment for petit larceny,
15 the verdict is guilty. This is also signed and dated by
16 the foreperson.

17 Case No. 2012-GS-42-2836, indictment for possession of
18 cocaine base, the verdict is guilty. Signed by the
19 foreperson and dated today's date.

20 Case No. 2012-GS-42-2837, indictment for possession of
21 oxycodone, the verdict is guilty. Signed by the foreperson
22 and dated today's date.

23 Ladies and gentlemen of the ver -- of the guilt -- of
24 jury, if these are your verdicts and still your verdicts,
25 please raise your right hand.

Verdict

1 (Whereupon, all jurors responded in the affirmative.)

2 THE CLERK: So say you all.

3 THE COURT: Does the defendant wish to have the jury
4 polled?

5 MS. HALL: Yes, Your Honor. We request the jury
6 polling.

7 THE COURT: All right. Poll the jury please, ma'am.

8 THE CLERK: Ladies and gentlemen of the jury, I will
9 pose a question to you; after which I'll ask you to stand
10 individually and answer the question, the question being is
11 this your verdict and still your verdict.

12 Ms. Hunter.

13 THE COURT: The question is is this your verdict. And
14 if it is still your verdict, indicate so.

15 THE JUROR: Yes.

16 THE COURT: All right. Thank you, ma'am.

17 THE CLERK: Thank you.

18 Mr. Branzuela.

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Mr. Dyches.

21 THE JUROR: Yes, ma'am.

22 THE CLERK: Ms. Smith.

23 THE JUROR: Yes.

24 THE CLERK: Ms. Snoddy.

25 THE JUROR: Yes.

Sentence

1 THE CLERK: Mr. Boutellier.

2 THE JUROR: Yes.

3 THE CLERK: Ms. Jones.

4 THE JUROR: Yes, ma'am.

5 THE COURT: Mr. Gilliam.

6 THE JUROR: Yes.

7 THE CLERK: Mr. Riddle.

8 THE JUROR: Yes.

9 THE CLERK: Ms. Wilson.

10 THE JUROR: Yes.

11 THE CLERK: Mr. Scofield.

12 THE JUROR: Yes.

13 THE COURT: Ms. Boyd.

14 THE JUROR: Yes.

15 THE CLERK: Your Honor, the jury has been polled.

16 THE COURT: All right. All have responded in the
17 affirmative.

18 Any other matters we need to address with the jury
19 present?

20 MS. HALL: No, not at this time.

21 (Whereupon, the trial jury was excused.)

22 THE COURT: All right. Any other matters we need to
23 address prior the imposition of sentence?

24 MS. HALL: Your Honor, the defense needs to make a
25 motion at this time for a new trial based on the grounds

Sentence

1 that I gave the Court earlier in my motion for a directed
2 verdict, and also for the Court's refusal to issue a charge
3 on the lesser included burglary second.

4 THE COURT: Okay. That motion is denied.
5 Do y'all have sentencing sheets?

6 MS. JORDAN: Yes, sir, Your Honor. I've passed them.
7 (Pause.)

8 THE COURT: All right. Anything further from the
9 state?

10 MS. JORDAN: Yes, Your Honor.

11 As to the defendant's prior record, he has a 1998
12 driving under suspension; a 2005 open container; a 2008
13 driving under suspension; 2008, public disorderly conduct;
14 2009, criminal domestic violence; 2009, shoplifting; and in
15 2009 he also has a use of a vehicle without owner's consent
16 and a petit larceny.

17 He has a 2011 driving under suspension third; and in
18 2012 he was -- he pled guilty to habitual traffic offender
19 three days prior to committing this offense.

20 I do not know if Mr. Sustare would like to be heard at
21 this time if I may have a moment.

22 THE COURT: All right.

23 MS. JORDAN: Your Honor, if Mr. Sustare could be heard
24 briefly.

25 THE COURT: Sure.

Sentence

1 THE COURT: All right. Thank you, sir.

2 Anything further from anyone?

3 MS. HALL: No, sir, not at this time.

4 THE COURT: Ms. Hall, let me ask you.

5 You're in agreement with the state that the sentence
6 on the larceny is properly enhanced pursuant to 16-1-57
7 based upon his prior shoplifting and the prior larceny
8 convictions?

9 MS. HALL: My review of the record I was provided,
10 yes, Your Honor, it does show at least two prior, the
11 shoplifting and petit larceny.

12 THE COURT: Okay. All right. On Indictment 2012-730,
13 an indictment for burglary, wherein you have been found
14 guilty by the jury of that offense, burglary in the first
15 degree, sentence of the Court is you, Christopher Paul
16 Mahaffey, be confined to the South Carolina Department of
17 Corrections for a period of 25 years.

18 Indictment 2012-731, larceny, ten years.

19 Indictment 2012-837 -- excuse me -- 2837, possession
20 of oxycodone, two years.

21 Indictment 2012-2836, possession of crack cocaine, two
22 years.

23 Now, Mr. Mahaffey, you have a right to appeal the
24 verdict of the jury and the sentence of the Court. You
25 must file any notice of your intention to appeal those

Sentence

1 decisions within ten days of today's date.

2 END OF REQUESTED TRANSCRIPT OF RECORD

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WITNESSES

Spartanburg County Sheriff's Office

Spartanburg County Sheriff's Office

ARREST WARRANT NUMBER

1757490

ACTION OF GRAND JURY

oreperson of Grand Jury
ate:

True Bill
FEB 23 2012

VERDICT

oreperson of Petit Jury
ate:

DOCKET NO. 12-GS-42-030

The State of South Carolina
County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2012

TERM

THE STATE
vs.

Christopher Paul Mahaffey

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL/EXM (V)

FILED
CLERK OF COURT

2012 FEB 29 PM 1:45

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 STATE VS.)
 Christopher Paul Mahaffey)
 AKA:)
 Race: 1.1 Sex: M Age: 20)
 DOB:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4200730 ✓
 A/W#: M757490
 Date of Offense: 1/14/2012
 S.C. Code § : 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

City, State, Zip: Woodruff, SC 29388-8842
 DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree 15 years - life

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

WITNESSETH:
 JORDAN JENNIFER A 69423 SC Bar# *Cl Mahaffey* Defendant *McCall* Attorney for Defendant 78229 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
 Set by SCDPPPS

PTUP days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: *C. Estep*
 Court Reporter: *L. Moffitt*
 SCCA/217 (03/2011)

Presiding Judge: *William De*
 Judge Code:
 Sentence Date: August 28, 2012

WITNESSES

Spartanburg County Sheriff's Office

Spartanburg County Sheriff's Office

ARREST WARRANT NUMBER

1757491

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

140

DOCKET NO. **12-GS-42-0731**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2012

TERM

THE STATE

vs.

Christopher Paul Mahaffey

Indictment for

PETIT LARCENY

SC Code: 16-13-0030 (A); 16-1-57

CDR Code: 3419

Class FEL/E

FILED
CLERK OF COURT
2012 FEB 29 PM 1:45
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 23 2012

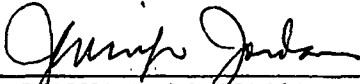
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

PETIT LARCENY

That Defendant, Christopher Paul Mahaffey, did in Spartanburg County on or about January 14, 2012, feloniously take and carry away the goods belonging to Andrew Sustare, valued at less than Two Thousand Dollars, described as follows: Money and/or a Smith and Wesson 375 and/or a blackberry phone and/or gold necklace, with the intent to deprive the owner permanently of such property, further, that the Defendant has at least (2) two or more prior convictions for property crimes, in violation of §16-13-30 (A) and §16-1-57, *THE CODE OF LAWS OF SOUTH CAROLINA*. (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. STATE

INDICTMENT/CASE#: 2012GS4200731

Christopher Paul Mahaffey

A/W#: M757491

AKA:

Date of Offense: 1/14/2012

Race: W Sex: M Age: 39

S.C. Code §: 16-13-0030(A)/16-1-57

DOB: SS#:

CDR Code #: 3596

Address:

City, State, Zip: Woodruff, SC 29388-8842

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Larceny / Petit or Simple Larceny - \$2,000 or less 3rd or sub 0-10 years

CONVICTED OF or PLEADS

in violation of § 16-13-0030(A)/16-1-57 of the S.C. Code of Laws, bearing CDR Code # 3596

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

TEST: JORDAN, JENNIFER A 69423 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$390, TOTAL \$13390

days/hours Public Service Employment

Obtain GED Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Handwritten signature and date: August 28, 2012

WITNESSES

PTBG CO SHERIFF'S OFFICE

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

[Handwritten Signature]

True Bill

Foreperson of Grand Jury JUN 14 2012
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

12-GS-42-2836

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 23 2012

TERM

THE STATE

vs.

CHRISTOPHER MAHAFFEY

Indictment for

POSSESSION OF COCAINE BASE

SC Code: 44-53-375

FILED
CLERK OF COURT
2012 JUN 20 AM 10:09
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 STATE VS.)
 Christopher Paul Mahaffey)
 AKA:)
 Race: W Sex: M Age: 39)
 DOB: SS#:)
 Address:)
 City, State, Zip: Woodruff, SC 29388-8842)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4202836
 A/W#: 2012GS4202836
 Date of Offense: 1/14/2012
 S.C. Code § : 44-53-0375 (A)
 CDR Code #: 3009

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Drugs / Possession of less than one gram of cocaine base, 1st offense 0-3 years and/or fine up to \$5000

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3009
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Jordan Jennifer A 69423 SC Bar# Cl Mahaffey Defendant McCall Attorney for Defendant 78229 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 2 days/months/years or under the Youthful Offender Act not to exceed — years
 and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
 of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ — plus 20% fee: \$ —
 Payment Terms: —
 Set by SCDPPPS —

PTUP — days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. —
 May serve W/E beginning —
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 prmts. of \$ — beginning —
 \$ — paid to Public Defender Fund
 Other: —

Recipient: —

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: [Signature]
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2053
 Sentence Date: August 28, 2012

WITNESSES

SPTBG CO SHERIFF'S OFFICE

[Handwritten Signature]

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

[Handwritten Signature]
The Bill

JUN 14 2012

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

12-GS-42-2837

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 23 2012

TERM

THE STATE
vs.

CHRISTOPHER MAHFFFEY

Indictment for

POSSESSION OF OXYCODONE

SC Code: 44-53-370

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2012 JUN 20 AM 10:09

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 14 2012, the

Grand Jurors of Spartanburg County present upon their oath:

POSSESSION OF OXYCODONE

That Christopher Mahaffey did in Spartanburg County on or about January 14, 2012, knowingly or intentionally possess a quantity of Oxycodone, a Schedule II controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

INDICTMENT/CASE#: 2012GS4202837

Christopher Paul Mahaffey

A/W#: 2012GS4202837

AKA:

Date of Offense: 1/14/2012

Race: W Sex: M Age: 39

S.C. Code §: 44-53-0370(d)

DOB: 1

CDR Code #: 0179

City, State, Zip: Woodruff, SC 29388-8842

SENTENCE SHEET

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Possession of Oxycodone 1st 0-6 months and/or fine up to \$1000

in violation of § 44-53-0370(d) of the S.C. Code of Laws, bearing CDR Code # 0179
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: JORDAN, JENNIFER A SC Bar# 69423 Defendant Al Mahaffey Attorney for Defendant SC Bar# 78239

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 2 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$8.40, TOTAL \$288.40

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

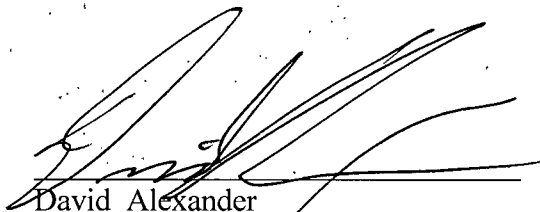
Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: August 28, 2012

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 12th, 2013



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED
DEC 12 2013
SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

CHRISTOPHER PAUL MAHAFFEY,

APPELLANT

APPELLATE CASE NO. 2012-213062

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of December, 2013.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 12th day of December, 2013.

Wang

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.