

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LIVINGSTON,

APPELLANT

APPELLATE CASE NO. 2013-000071

RECORD ON APPEAL

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ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2012-GS-26-04383

THE STATE OF SOUTH)
CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

January 8, 2013

ROBERT LIVINGSTON,)

Defendant.)

B E F O R E:Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina**A P P E A R A N C E S:**Lauree Richardson, Esquire
Attorney for PlaintiffMelinda Knowles, Esquire
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Circuit Court Reporter

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VOIR DIRE

4

1 **(January 8, 2013)**

2 (REPORTER'S NOTE: The following takes place inside the
3 presence of the jury panel.)

4 **VOIR DIRE:**

5 THE COURT: Good morning, ladies and gentlemen of the
6 jury panel. By way of introduction, I'm Judge Cottingham from
7 Bennettsville, South Carolina. I have the privilege of being
8 the presiding judge this week in Horry County. I've been here
9 many, many times in the last twenty-nine years and always
10 enjoy holding court in Horry County. You have an excellent
11 Clerk of Court's office here, wonderful Sheriff's Department
12 and they just do an excellent job. This young man to my left,
13 Trey Jones, law clerk and my associate, a recent graduate of
14 the law school and now a member of the South Carolina Bar.
15 Trey renders invaluable service to me as presiding judge.

16 I want to join with the qualification judge of yesterday
17 in thanking all of you for your presence here today. I would
18 understand that all of you are here at considerable
19 inconvenience to your families, to your personal lives and to
20 your everyday pursuits. And to the extent possible, I will
21 attempt to inconvenience you as little as possible.

22 Under our system of criminal code, we say, and properly
23 so, that an individual shall not be deprived of his or her
24 liberties not for one day unless and until a jury of their
25 peers has found them guilty beyond a reasonable doubt. That

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VOIR DIRE

5

1 concept protects your liberty and with equal importance, it
2 protects mine. I concluded many years ago that other than in
3 times of war, a citizen of this magnificent country will never
4 be required to perform a higher duty than that of jurors,
5 particularly in a criminal case. You know, in our system of
6 government, unless you are appointed or elected, you very
7 seldom have an opportunity to participate in your government.
8 In your jury service today and this week, you have that
9 wonderful opportunity to actually participate in your
10 government. This Court is not Horry County's court, it's not
11 Judge Cottingham's court; it's the people's court. And we
12 deeply appreciate your presence here today.

13 Call your case, Solicitor.

14 MS. RICHARDSON: Thank you, Your Honor. At this time,
15 the State would call the State of South Carolina versus Robert
16 Livingston, indictment 2012-GS-26-4383.

17 THE COURT: Thank you. Is the Defendant ready for trial?

18 MS. KNOWLES: Yes, Your Honor, Defense is ready.

19 THE COURT: All right.

20 THE COURT: Ladies and gentlemen, I have several
21 questions to ask of you to make sure that this Defendant and
22 the State of South Carolina gets twelve numbers -- from your
23 number, twelve jurors, no friends to reward, no enemies to
24 punish. Both sides and this Court desires from your number
25 twelve folks who can say -- sit on this jury under oath and

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VOIR DIRE

6

1 say I will base my verdict on the law and evidence heard in
2 this courtroom and from no other source. Now, the Defendant,
3 as all defendants, comes into court upon a document known as
4 an indictment. This indictment is merely charging allegations
5 against the Defendant and, of course, is no evidence. It'll
6 be with you in the jury room but the language in this
7 indictment is not evidence. Evidence comes from this witness
8 stand under oath. This indictment alleges that Robert
9 Livingston entered the property of another without consent and
10 with intent to commit a crime therein, being the charge of
11 burglary upon the residence of Kenneth Cox. To this
12 indictment, this Defendant specifically pleads not guilty,
13 thereby placing the burden of proof upon the State of South
14 Carolina of proving him guilty if they can to your
15 satisfaction unanimously beyond a reasonable doubt.

16 Now, my first inquiry is, are any of you related by blood
17 or connected by marriage with Robert Livingston, please stand.
18 (REPORTER'S NOTE: No response.)

19 Do any of you have any close connections with Mr.
20 Livingston such as a neighbor, coworker, church member?
21 (REPORTER'S NOTE: No response.)

22 Do any of you know Robert Livingston in any capacity
23 whatsoever? Please stand.
24 (REPORTER'S NOTE: No response.)

25 It is alleged, as I've indicated, that the Defendant

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VOIR DIRE

7

1 burglarized the home of Kenneth Cox. Any of you related by
2 blood or connected by marriage with Kenneth Cox?

3 (REPORTER'S NOTE: No response.)

4 Do any of you have any special connections with Mr. Cox
5 such as church members, neighbor?

6 (REPORTER'S NOTE: No response.)

7 How many of you know Kenneth Cox in any capacity
8 whatsoever? Please stand.

9 (REPORTER'S NOTE: No response.)

10 Now, you know, we develop sometimes biases or prejudice
11 based on former experiences that we may've had in our
12 lifetime. This case involves allegations of burglary of a
13 home. Have any of you experienced a burglary of your
14 residence? If so, please stand.

15 Come forward, please.

16 Those two who stand, come forward, please.

17 THE COURT: Yes, ma'am; may I have your name?

18 JUROR 226: Tammy Linen.

19 THE COURT: Your jury number?

20 JUROR 226: 226.

21 THE COURT: And what is your response?

22 JUROR 226: I was burglarized in 2008.

23 THE COURT: 2008.

24 JUROR 226: In Columbia.

25 THE COURT: All right. This is an allegation of

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VOIR DIRE

8

1 burglary. Would that affect your jury to be fair to this
2 Defendant given the fact that your home was burglarized?

3 JUROR 226: Yes, sir.

4 THE COURT: I think it would, too, and we'll excuse you.

5 JUROR 226: Okay. Thank you.

6 THE COURT: Please call in after 6 o'clock tonight.

7 JUROR 226: Okay. Thank you.

8 THE COURT: Next. Good morning.

9 JUROR 112: Good morning.

10 THE COURT: May I have your name and jury number?

11 JUROR 112: Roberta Fries, 112.

12 THE COURT: Thank you. And what is your response?

13 JUROR 112: I had my home broke into, that was in '07,
14 and had ---

15 THE COURT: When?

16 JUROR 112: 2007. And had basically, actually that was
17 -- I have had it happen more than once.

18 THE COURT: Would that affect your ---

19 JUROR 112: Yes, I would say that it would.

20 THE COURT: I think it would. I'm gonna excuse you. You
21 may be called for the next case, so call in after 6:00
22 tonight.

23 Come forward, please, ma'am. I like that striped jacket.
24 Your name, please?

25 JUROR 258: Chiquita Miller.

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VOIR DIRE

9

1 THE COURT: And your jury number?

2 JUROR 258: 258.

3 THE COURT: And what is your response, please?

4 JUROR 258: My cousin's house ---

5 THE COURT: Ma'am?

6 JUROR 258: My cousin's house was broke in last year.

7 THE COURT: When was it broke in?

8 JUROR 258: Last year, in December.

9 MS. RICHARDSON: Her cousin's house was broken into last
10 year.

11 THE COURT: Your cousin's house?

12 JUROR 258: Uh-huh (affirmative response).

13 THE COURT: It wasn't your house?

14 JUROR 258: Huh-uh (negative response)

15 THE COURT: Pardon me?

16 JUROR 258: No -- no, sir.

17 THE COURT: I want to know about your house.

18 JUROR 258: Oh ---

19 THE COURT: Well, the fact that your cousin's house was
20 broke into shouldn't affect you in this case, should it?

21 JUROR 258: No.

22 THE COURT: Pardon me?

23 JUROR 258: No, sir.

24 THE COURT: You will base your verdict on the law in this
25 case?

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VOIR DIRE

10

1 JUROR 258: Uh-huh (affirmative response).

2 THE COURT: Pardon me?

3 JUROR 258: Yes, sir.

4 THE COURT: I just want to make sure that even though
5 your cousin's house was broken into, not yours, can you give
6 this Defendant a fair trial based on the law and evidence in
7 this case?

8 JUROR 258: Yes, sir.

9 THE COURT: I think you can; thank you, you're qualified.
10 Okay. What is the witness list?

11 Do you have any witness list, Ms. Melinda?

12 MS. KNOWLES: No, we don't have any witnesses, Your
13 Honor.

14 THE COURT: All right. And you have the one witness?

15 MS. RICHARDSON: Two, Your Honor, Mr. Cox and then
16 Officer Manjarrez.

17 THE COURT: All right. Officer Manjarrez, any of you
18 have any close particular connection with Officer Manjarrez?
19 Anybody?

20 (REPORTER'S NOTE: No response.)

21 And I've already addressed the issue with Mr. Cox.

22 All right. There's been a motion for sequestration which
23 is appropriate. Your victim and the investigating officer
24 will remain in the courtroom. The Defendant will remain in
25 the courtroom. Have all your witnesses outside sequestered,

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11

JURY SELECTION

1 please, go ahead.

2 MS. RICHARDSON: Your Honor, that would be my only two
3 witnesses, my investigating officer and my victim.

4 THE COURT: All right. Ms. Melinda, how about you?

5 MS. KNOWLES: Your Honor, I'm sorry?

6 THE COURT: You have any other witnesses to be ---

7 MS. KNOWLES: No, sir.

8 THE COURT: All right. So, you don't have to worry about
9 sequestration.

10 JURY SELECTION:

11 All right. For the State, are we now ready to select the
12 jury?

13 MS. RICHARDSON: State's ready, Your Honor.

14 THE COURT: Is the Defendant ready?

15 MS. KNOWLES: Yes, sir, we are.

16 THE COURT: We will have twelve jurors and two
17 alternates.

18 For those of you who are not selected, I will ask that
19 you call in after 6 o'clock tonight for further instructions.

20 Do they need to pick another jury for any judge today?

21 CLERK: No, sir.

22 THE COURT: So, 6 o'clock tonight is appropriate?

23 All right. Begin the jury process, please.

24 CLERK: When I call your name, if you will please come to
25 the front of the courtroom, bring any belongings that you have

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JURY SELECTION

12

1 with you, stand right in front of our court reporter here and
2 turn around and face the back of the courtroom.
3 Juror Number 207, Nicole Kocot.
4 What say the State?
5 MS. RICHARDSON: Please present the juror.
6 CLERK: Defense?
7 MS. KNOWLES: Please seat this juror.
8 CLERK: Please be seated in the jury box.
9 343, Adam Smith.
10 What say the State?
11 MS. RICHARDSON: Please present this juror.
12 CLERK: Defense?
13 MS. KNOWLES: Please seat this juror.
14 CLERK: Please be seated in the jury box.
15 258, Chiquita Miller.
16 What say the State?
17 MS. RICHARDSON: Please present this juror.
18 CLERK: Defense?
19 MS. KNOWLES: Please excuse this juror.
20 CLERK: You are excused from this particular case.
21 361, Edgar Tabuno.
22 What say the State?
23 MS. RICHARDSON: Please present the juror.
24 CLERK: Defense?
25 MS. KNOWLES: Please excuse this juror.

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JURY SELECTION

13

1 CLERK: You are excused from this particular case.

2 THE COURT: The strikes are five and five -- no, five and
3 ten, are they not, for burglary, five and ten.

4 CLERK: 243, Russell McDonald.

5 MS. RICHARDSON: What was his number, I'm sorry.

6 CLERK: 243.

7 What say the State?

8 MS. RICHARDSON: Please present this juror.

9 CLERK: Defense?

10 MS. KNOWLES: Please excuse this juror.

11 CLERK: You are excused from this particular case.

12 232, Lisa Lose.

13 What say the State?

14 MS. RICHARDSON: Please present this juror.

15 CLERK: Defense?

16 MS. KNOWLES: Please seat this juror.

17 CLERK: Please be seated in the jury box.

18 339, Rosemarie Shupp.

19 What say the State?

20 MS. RICHARDSON: Please present the juror.

21 CLERK: Defense?

22 MS. KNOWLES: Please excuse this juror.

23 CLERK: You are excused from this particular case.

24 355, Evan Stanley.

25 What say the State?

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JURY SELECTION

14

1 MS. RICHARDSON: Please present this juror.

2 CLERK: Defense?

3 MS. KNOWLES: May I inquire as to what he does for a
4 living?

5 JUROR 355: I work third shift at a hotel.

6 MS. KNOWLES: Okay. Please seat this juror.

7 CLERK: Please be seated in the jury box.

8 215, Paula Lawrimore.

9 What say the State?

10 MS. RICHARDSON: Please present the juror.

11 CLERK: Defense?

12 MS. KNOWLES: Please excuse this juror.

13 CLERK: You are excused from this particular case.

14 162, Brenda Herring.

15 What say the State?

16 MS. RICHARDSON: Please present the juror.

17 CLERK: Defense?

18 MS. KNOWLES: Please seat this juror.

19 CLERK: Please be seated in the jury box.

20 376, Bethann Urban.

21 What say the State?

22 MS. RICHARDSON: Please present the juror.

23 CLERK: Defense?

24 MS. KNOWLES: Please excuse this juror.

25 CLERK: You are excused from this particular case.

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JURY SELECTION

15

1 189, Sharon Jewell.
2 What say the State?
3 MS. RICHARDSON: Please present the juror.
4 CLERK: Defense?
5 MS. KNOWLES: Please excuse this juror.
6 CLERK: You are excused from this particular case.
7 247, Thomas McIntyre.
8 What say the State?
9 MS. RICHARDSON: Please excuse this juror.
10 CLERK: You are excused from this particular case.
11 284, Jackson Parker.
12 What say the State?
13 MS. RICHARDSON: Please present the juror.
14 CLERK: Defense?
15 MS. KNOWLES: Please seat this juror.
16 CLERK: Please be seated in the jury box.
17 91, Andrea Dowdy.
18 What say the State?
19 MS. RICHARDSON: Present the juror.
20 CLERK: Defense?
21 MS. KNOWLES: Please seat this juror.
22 CLERK: Please be seated in the jury box.
23 90, Sandra Douglas.
24 What say the State?
25 MS. RICHARDSON: Please present the juror.

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JURY SELECTION

16

1 CLERK: Defense?

2 MS. KNOWLES: Please excuse this juror.

3 CLERK: You are excused from this particular case.

4 291, Uthumporn Perras. Sorry.

5 What say the State?

6 MS. RICHARDSON: Please excuse this juror.

7 CLERK: You are excused from this particular case.

8 268, Anthony Morreale.

9 What say the State?

10 MS. RICHARDSON: Please excuse this particular juror.

11 CLERK: You are excused from this particular case.

12 213, Cortney Lascola.

13 What say the State?

14 MS. RICHARDSON: Please present the juror.

15 CLERK: Defense?

16 MS. KNOWLES: Please seat this juror.

17 CLERK: Please be seated in the jury box.

18 77, John Danford.

19 What say the State?

20 MS. RICHARDSON: Please present the juror.

21 CLERK: Defense?

22 MS. KNOWLES: Please seat this juror.

23 CLERK: Please be seated in the jury box.

24 179, William Hunt.

25 What say the State?

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JURY SELECTION

17

1 MS. RICHARDSON: Please excuse this particular juror.
2 CLERK: You are excused from this particular case.
3 59, Christopher Clark.
4 What say the State?
5 MS. RICHARDSON: Please present the juror.
6 CLERK: Defense?
7 MS. KNOWLES: Please excuse this juror.
8 CLERK: You are excused from this particular case.
9 308, George Redmond.
10 What say the State?
11 MS. RICHARDSON: Please present the juror.
12 CLERK: Defense?
13 MS. KNOWLES: Please excuse this juror.
14 CLERK: You are excused from this particular case.
15 THE COURT: That would be ten strikes.
16 CLERK: 248, Betsy McLeod.
17 What say the State?
18 MS. RICHARDSON: Please present him.
19 CLERK: Any challenges?
20 MS. KNOWLES: (Indicates negatively.)
21 CLERK: Please be seated in the jury box.
22 108, William Foster.
23 What say the State?
24 MS. RICHARDSON: Please present him.
25 CLERK: Any challenges?

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JURY SELECTION

18

1 MS. KNOWLES: Seat this juror.
2 CLERK: Please be seated in the jury box.
3 194, Willier Johnson.
4 What say the State?
5 MS. RICHARDSON: Please present the juror.
6 CLERK: Any challenges?
7 MS. KNOWLES: Seat this juror.
8 CLERK: Please be seated in the jury box.
9 THE COURT: That will constitute the jury. We will now
10 select two alternates. The strikes as to each alternate
11 separately will be one and two.
12 CLERK: 18, Paul Behrendt.
13 What say the State?
14 MS. RICHARDSON: Present him.
15 CLERK: Defense?
16 MS. KNOWLES: Please excuse this juror.
17 CLERK: You are excused from this particular case.
18 164, Stephanie Herth.
19 What say the State?
20 MS. RICHARDSON: Please present her.
21 CLERK: Defense?
22 MS. KNOWLES: Please seat the juror.
23 CLERK: Please be seated in the jury box.
24 358, Timothy Strickland.
25 What say the State?

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JURY SELECTION

19

1 MS. RICHARDSON: Please present the juror.

2 CLERK: Defense?

3 MS. KNOWLES: Please excuse this juror.

4 CLERK: You are excused from this particular case.

5 385, James Whitted.

6 What say the State?

7 MS. RICHARDSON: Seat the juror.

8 CLERK: Defense?

9 MS. KNOWLES: Please seat this juror.

10 CLERK: Please be seated in the jury box.

11 THE COURT: All right. Ms. Margol, take this jury to the
12 jury room and I'll be bringing them back in just a minute.

13 Come here, Margol.

14 (REPORTER'S NOTE: The following takes place outside the
15 presence of the jury for this particular case.)

16 THE COURT: Is there any motions regarding the
17 composition of the jury?

18 MS. RICHARDSON: Not from the State, Your Honor.

19 THE COURT: For the Defense?

20 MS. KNOWLES: None, Your Honor.

21 THE COURT: The jury then will stand as selected.

22 Ladies and gentlemen, for those of you who are not
23 selected, I respectfully request that you call in after 6

24 o'clock tonight for further instructions. This case I

25 anticipate will end today so we'll be selecting another jury

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JURY SELECTION

20

1 for my court and then as I understand it -- isn't there some
2 civil judges working too?

3 CLERK: I'm not sure, Judge.

4 THE COURT: Judge John may need one. So, please call in.
5 You are excused for the day and I thank you for your presence
6 and call in after 6 o'clock tonight.

7 (REPORTER'S NOTE: Remaining jury panel is released and exits
8 the courtroom.)

9 *****OFF THE RECORD*****

10 (On the Record.)

11 THE COURT: Bring the jury back when they're ready,
12 please.

13 Have y'all exchanged exhibits now?

14 MS. RICHARDSON: Yes, sir.

15 THE COURT: So, we won't have to stop and show everybody
16 everything.

17 MS. RICHARDSON: No, sir.

18 THE COURT: All right. How many exhibits were there?

19 MS. RICHARDSON: Just four, Your Honor, just four
20 pictures.

21 THE COURT: All right. And there was no exceptions to
22 the exhibits?

23 Ms. Melinda, was there any exceptions to the exhibits?

24 Ms. Melinda?

25 MS. KNOWLES: Yes, sir.

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COURT TO JURY

21

1 THE COURT: Was there any exceptions to the exhibits?

2 MS. KNOWLES: No, sir.

3 THE COURT: All right.

4 MS. KNOWLES: Your Honor, may we approach?

5 THE COURT: Yes.

6 (REPORTER'S NOTE: A bench conference was held off the record
7 out of the presence of the jury.)

8 (REPORTER'S NOTE: The following takes place inside the
9 presence of the jury.)

10 THE COURT: Swear the jury, please.

11 (REPORTER'S NOTE: Jury is duly sworn.)

12 THE COURT: Ms. Kocot, I have appointed you as foreperson
13 of this jury. I will keep you fully advised of your duties as
14 the case proceeds. Generally, your duties will be to preside
15 in the jury room during the deliberations and to be the jury's
16 spokesman in the courtroom but be assured that I will keep you
17 fully advised.

18 Under our rules, the foreperson at all times will occupy
19 that chair. The alternates at all times will occupy those two
20 chairs. The rest of you may sit as you please.

21 COURT TO JURY:

22 THE COURT: Let me make a few introductory remarks
23 concerning this case with the understanding that that will be
24 not a substitute for the concluding questions of law that I
25 will give you at the end of the testimony.

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COURT TO JURY

22

1 This case comes before you upon an indictment charging
2 Mr. Livingston with the offense of grand larceny. I'll
3 explain the definitions at the appropriate time. To this
4 indictment, this Defendant specifically pleads not guilty;
5 thereby placing the burden of proof upon the State of South
6 Carolina of proving him guilty if they can to your
7 satisfaction unanimously beyond a reasonable doubt.

8 Recognizing that for many of you this is the first time
9 that you've served as a juror, let me tell you briefly how we
10 will proceed. The State of South Carolina, as I've indicated,
11 has the burden of proof and she will make a short opening
12 statement to you as to what her position is and as to what she
13 says she can prove. Now, what the lawyers tell you is not
14 evidence, evidence comes from this witness stand. Ms. Melinda
15 representing the Defendant will follow with a statement as to
16 her position. These are kind of the guidelines to help you
17 follow the introduction of evidence. Following these short
18 opening statements, there will be various witnesses under oath
19 called to testify, examined and cross examined. Other
20 documents may be introduced into the trial of this case.

21 Now, as we go forward, there are several things I need to
22 tell you. First, you and you alone are the sole and only
23 finders of the facts in this case. From this moment on,
24 there's nobody in this wide world that can tell you twelve
25 what the facts are. In that connection, I say to you, if

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COURT TO JURY

23

1 during the trial, any ruling, mannerism of mine might tend to
2 indicate to any of you how I feel about anything factually,
3 please disregard that. I'm not entitled to a factual opinion
4 and I have none.

5 You may properly ask, well, Judge, we just got here, we
6 don't know a thing in the world about this case. How do we
7 determine what the facts are? And that's an appropriate
8 question. Well, the answer is this, various witnesses will be
9 testifying on each side of this issue. Documents may be
10 introduced in the trial and these documents will be with you,
11 Madame Foreman, during your deliberations. You as factual
12 finders will judge the credibility, meaning the believability
13 of every witness who testifies. You didn't leave your common
14 sense on the streets of Conway, South Carolina when you came
15 into this courtroom. And we all know that in everyday lives,
16 raising our children, at work or whatever, when folks tell us
17 things, we use certain tools to size it up. Sometimes, we
18 say, how did they come to know about what they're telling me?
19 You might ask, Hey, does this person have a reason or bias
20 that wants me to believe one way or the other? You may say,
21 Is this witness' testimony consistent or not. There are other
22 tools that you use but the basic fact is this, you judge the
23 credibility of every witness. And in doing so, you may
24 believe all of what a witness says or none; you may believe a
25 small portion, disregard the larger; you may, if you choose,

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OPENING STATEMENT BY MS. RICHARDSON

24

1 believe one witness against that of many. That's your
2 decision as finders of the facts.

3 Whatever your decision is, it must be the unanimous
4 decision of all twelve. It cannot be a decision of the
5 majority; obviously, would not be the one of the minority.
6 But is -- several things are important for you to understand.
7 This Defendant is presumed innocent and the State's got to
8 prove guilt beyond a reasonable doubt. You are the judges,
9 the sole judges, of the finders of the facts. You and you
10 alone are the sole judges of the credibility of the witnesses.

11 You may proceed with opening statements.

12 MS. RICHARDSON: Thank you, Your Honor.

13 OPENING STATEMENT OF THE PLAINTIFF:

14 MS. RICHARDSON: Burglary 2nd, nonviolent, that's what
15 the Defendant is charged with. It's the breaking and entering
16 of a dwelling, your home, where you live and you sleep, of
17 another, you can't break into your own house, with the intent
18 to commit a crime therein. Okay?

19 I'm gonna try not to talk to you as long as the witnesses
20 are gonna talk to you. It's gonna be a fairly short trial.
21 Okay? It doesn't take away from the seriousness of the trial
22 at all. The State's gonna put up two witnesses. You're gonna
23 hear from the victim in this case and you're gonna hear from
24 the responding officer in this case.

25 The story goes something like this. It's July 7th. It's

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OPENING STATEMENT BY MS. RICHARDSON

25

1 Mr. Cox's birthday of all days. He's having hotdogs at a
2 neighbor's house. He sees the Defendant. There is a little
3 exchange between them, he sees him and the Defendant sees him.
4 He eats two hotdogs and he goes back home. Enters his front
5 door, his front door is locked. As soon as he gets in the
6 door, he sees this Defendant coming from his master bedroom.
7 He's known him, he's known him for years. He knows exactly
8 who he is. What are you doing in my house? I was looking for
9 you. I just saw you down the street. What are you doing in
10 my house? There's a little more exchange between the two of
11 them. The victim says he's gonna call the cops. When he says
12 he's gonna call the cops, the Defendant takes off and runs.

13 He -- the police respond and he looks immediately for big
14 ticket items, his guns, his weapons, looks to see if anything
15 was taken. He doesn't see that anything was taken. His
16 wife's not home at the time. She comes home later. A few days
17 later, she's getting ready, she goes to put on some of her
18 jewelry and she realizes some items are missing.

19 Ladies and gentlemen, that's our case. Like I said, it
20 won't take very long. It doesn't take away from the
21 seriousness of it. We appreciate your time and your attention
22 in this matter and I'll talk to you a lot more at the end
23 about what you actually did hear from the stand. I don't want
24 to get into too much of that because I'll get them to tell you
25 the story.

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OPENING STATEMENT BY MS. KNOWLES

26

1 Okay. So, we appreciate your time and your attention and
2 I'll talk to you again later.

3 THE COURT: Ms. Knowles, for the Defense.

4 OPENING STATEMENT OF THE DEFENDANT:

5 MS. KNOWLES: Good morning, ladies and gentlemen. My
6 name is Melinda Knowles and I represent the accused, Mr.
7 Robert Livingston.

8 And you just heard the Assistant Solicitor, Lauree
9 Richardson, get up here and make several accusations and
10 several claims against my client. And she done so in such a
11 way that one would think what she has spoken is the Gospel
12 truth but I'm here to tell you that it's not. What you heard
13 is just nothing more than claims of what she intends to prove,
14 what she expects the evidence to prove. I ask that you not
15 make any hasty decisions here today, that you review
16 everything in an unbiased fashion. You are the finders of
17 fact and fact is this case cannot be determined until all of
18 the evidence is presented.

19 This brings me to my next point, the burden of proof.
20 The burden of proof here is proof beyond a reasonable doubt.
21 It is the greatest of all of the burdens and for a very good
22 reason. Someone's liberty is at stake, someone's freedom and
23 it rests on the shoulders of the State and it never moves.
24 The State has the burden of proof to prove beyond a reasonable
25 doubt that my client is guilty of this offense. And I ,

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KENNETH COX - DIRCT BY MS. RICHARDSON

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1 challenge you, I tell you that they cannot do that based on
2 the evidence that they've presented and you will hear it
3 today.

4 I thank you for your time and Mr. Livingston thanks you
5 for your time.

6 THE COURT: Thank you.

7 The State may call its first witness.

8 MS. RICHARDSON: Thank you, Your Honor. We would call
9 Mr. Kenneth Cox.

10 KENNETH COX, HAVING BEEN SWORN,
11 TESTIFIED AS FOLLOWS:

12 CLERK: State your full name and spell your last name.

13 MR. COX: Kenneth Cox, C-O-X, last name.

14 DIRECT EXAMINATION OF KENNETH COX BY MS. RICHARDSON:

15 Q: Good morning, Mr. Cox. I'm over here.

16 A: Morning.

17 Q: I know your soft-spoken so I'm gonna stand back here to
18 encourage you to speak up. Okay?

19 A: Okay.

20 Q: Where are you employed?

21 A: SunCruz.

22 Q: Okay. And how long have you been employed there?

23 A: Seven months, now.

24 Q: Are you married?

25 A: Yes.

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KENNETH COX - DIRCT BY MS. RICHARDSON

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- 1 Q: And what's your wife do?
- 2 A: She's a payroll clerk at North Myrtle Beach City Hall,
3 yeah, she's a payroll clerk.
- 4 Q: Do you have any children?
- 5 A: Yes, two, two girls and two granddaughters and one
6 grandson.
- 7 Q: Where do you live, Mr. Cox?
- 8 A: Little River, Road.
- 9 Q: Lincoln Heights Road?
- 10 A: Yes.
- 11 Q: Okay. What county is that located in?
- 12 A: In Horry County.
- 13 Q: Tell us about July 7th, 2012.
- 14 A: Okay.
- 15 Q: Well, before you get into all of that, what were you doing
16 that day?
- 17 A: I was just -- went to my neighbor house, a friend of
18 mine's down the street, we had some hotdogs and stuff, right,
19 and just hanging out on the porch. I walked to his house
20 because my truck was broke.
- 21 Q: You walked to your neighbor's house?
- 22 A: Yes.
- 23 Q: Okay.
- 24 A: And ---
- 25 Q: How long were you at your neighbor's?

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KENNETH COX - DIRECT BY MS. RICHARDSON

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1 A: About an hour.

2 Q: And did you see the Defendant while you were at your
3 neighbor's?

4 A: Yes, yes.

5 Q: Was he at this get-together or cooking?

6 A: No, no, ma'am.

7 Q: Okay.

8 A: He was coming across the street towards David's house -- I
9 saw him, I was on the back porch. So, went and had my hotdog,
10 got -- walked back to the house. I got to my house, opened
11 the front door, he was coming from my master bedroom, walking
12 down the hallway. I asked him, what you doing in my house?
13 I'm looking for you. I said, How you get in my house? The
14 front door is open. Big conjunction [sic] -- no, we don't
15 leave the front door open, we always lock it. Okay, then.
16 But I confronted him and asked him what he was doing in my
17 house, he said looking for me. I said you not looking for me;
18 I just saw you. And then I said, hold on a second, I went and
19 checked my bedroom, right, I didn't see nothing missing. I --
20 the main thing, the guns -- I like my guns, right. Then, I
21 said, hold up, I said, hold on. I said, you ain't did
22 nothing, I'm gonna call the cops. Soon as I picked the phone
23 up, he dash.

24 Q: Okay. So, he ---

25 A: Yeah, and then ---

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- 1 Q: Did he say anything to you when he ---
2 A: No, he said, I was looking for you. He was looking for
3 me.
4 Q: And when you told him you were gonna call the cops, what
5 was his reaction?
6 A: He left.
7 Q: Okay.
8 A: Don't, don't, man, I ain't do nothing. He left.
9 Q: He told you, don't, don't ---
10 A: Don't.
11 Q: Man, I didn't do nothing.
12 A: Nothing and he left.
13 Q: Okay. I'm gonna stop you because we're -- let's back up a
14 little bit, okay?
15 A: Okay.
16 Q: Did you know the Defendant prior to this?
17 A: Yes, I know him.
18 Q: How do you know him?
19 A: Cause we would be smoking cigarettes together, cigarettes
20 and stuff like that but he'd never been in my house.
21 Q: Okay. And why would you not let him in your house?
22 A: I don't trust him. He's a crook.
23 Q: Okay. Let's stop there. How long would you say that
24 you've known him?
25 A: About five years.

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1 Q: And during that time, he's never been in your house?

2 A: Nope. He ain't been on the front porch.

3 Q: Okay. You say when you got home, you walked in the front
4 door, was that door locked or unlocked?

5 A: It was locked.

6 Q: And how do you know that?

7 A: Because I unlocked it.

8 Q: And you had to use your key?

9 A: To get in the house.

10 Q: At some point, did you -- were you able to determine how
11 the Defendant entered your home?

12 A: A friend of mine, he just get from church and I had call
13 the officer, right, he said, come back here. My back lock on
14 my door jimmied, like that. He broke in the back door. He
15 say he come through the front door, that's wrong, because the
16 front door was locked.

17 Q: Okay. I'm gonna show you some pictures, okay, and see if
18 you can ID these for me, referring to State's ---

19 THE COURT: Ms. Knowles, the record will reflect that
20 you've seen these exhibits.

21 MS. KNOWLES: I have.

22 Q: What is that?

23 A: That's my back door.

24 Q: Okay.

25 A: Right here.

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1 Q: And is that they way it appeared on July 7th?

2 A: Yes. He broke in right here.

3 MS. RICHARDSON: State would request to admit State's
4 Exhibit One at this time.

5 THE COURT: It is admitted and you may publish it at this
6 time if you care to.

7 MS. KNOWLES: Your Honor ---

8 THE COURT: Ma'am?

9 MS. KNOWLES: The only thing that I would object to is
10 that he did not take these photographs.

11 THE COURT: No, sir. He's identified them. You want to
12 examine him on that question.

13 MS. RICHARDSON: Your Honor, it doesn't matter whether he
14 took them or not. He can identify pictures if it's ---

15 THE COURT: Sure, he's identified them as a true
16 representation. They are admissible. Do you care to pass
17 them around to the jury?

18 MS. RICHARDSON: Yes, sir, I will.

19 THE COURT: And Ms. -- Madame Foreman, these documents
20 will be with you in the jury room also during your
21 deliberations. No, I would submit the record; it makes no
22 difference who takes them as long as he's identified them.
23 And I leave that to the jury to determine as finders of the
24 facts.

25 Proceed.

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1 STATE'S EXHIBIT NUMBER ONE

2 ADMITTED INTO EVIDENCE

3 BY MS. RICHARDSON:

4 Q: I'm gonna show you now what's been marked as State's
5 Exhibit Two, what is that?

6 A: A lock on the front. That's at the back.

7 Q: Okay. And if you can't identify it, you can say you don't
8 know what it is. It's okay if you don't know.

9 A: I don't know about that one. The other one ---

10 Q: Referring to State's Exhibit Three, what is that?

11 A: Oh, that's the back of my door.

12 Q: Okay.

13 A: That's my deck. That's where -- right where he pull it.

14 Q: Okay. And was your door like this prior to July 7th?

15 A: No, no, no. Matter of fact, I just painted my door.

16 MS. RICHARDSON: State would request to admit State's
17 Exhibit Three.

18 THE COURT: All right.

19 STATE'S EXHIBIT NUMBER THREE

20 ADMITTED INTO EVIDENCE

21 BY MS. RICHARDSON:

22 Q: And I'm gonna show you what's ---

23 A: Yes, yes, yes, yes.

24 Q: What is that? And I'm referring to State's Exhibit Four.

25 A: Right here, where you pull the lock right here.

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1 Q: Okay.

2 THE COURT: Is that as to the front or back door?

3 A: Back door.

4 THE COURT: Make sure he identifies which door now,
5 counsel.

6 A: It's the back door. That's where he broke in at, that
7 back door.

8 Q: Okay. And was it like that prior to July 7th?

9 A: No.

10 Q: State would request to admit State's Exhibit Four.

11 THE COURT: It is admitted and you may publish if you
12 care to. Pass them around Madame Foreman.

13 STATE'S EXHIBIT NUMBER FOUR

14 ADMITTED INTO EVIDENCE

15 Q: Now, when you saw Mr. Livingston in your home, where was
16 he coming from?

17 A: My master bedroom.

18 Q: And what was he doing?

19 A: Walking back there, putting stuff in his pockets it looked
20 like to me, but I didn't see nothing. I said, Boy, what you
21 doing in my house? I'm looking for you. Looking for me? The
22 front door was open. The front door is open. I got a
23 neighbor across the street, like this, if the month door open,
24 he have to tell me my door was open. My door was not -- my
25 front door was not open. He'd broke into the back of my house

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1 and I caught him in the house, walking down my hallway.

2 Q: Okay. You gave a statement to the police officer when he
3 arrived, correct?

4 A: Uh-huh (affirmative response).

5 Q: Who did you tell had broke into your home?

6 A: Bobby Can-Good.

7 Q: Okay. And is that the same person that's here today?

8 A: Yes.

9 Q: The only thing he didn't have was the goatee thing, down
10 like this, dreads.

11 Q: Okay. So, at that time he had dreads and a goatee?

12 A: Yeah, things like that.

13 Q: But no doubt in your mind that this is the person who
14 broke into your house?

15 A: Yes, yes, I know Bobby. He broke in my house, standing in
16 my hallway. God of Mercy. Can I say this ---

17 Q: No. You have to respond to my questions.

18 A: Okay.

19 Q: I'm sorry. Court's indulgence just a moment.

20 What if anything did you notice was taken from your
21 house?

22 A: Just my necklace, my Gucci chain that was on my dresser.

23 Q: At what point did you determine that that was missing?

24 A: Well, after the officers left, I went back to check,
25 right. Only thing I see was missing was my chain and then my

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1 wife came back, all her jewelry was gone. Now, she's -- he
2 must've pocketed it -- ask your next question.

3 Q: Did Mr. Livingston have permission to be in your home?

4 A: No, ma'am.

5 Q: Has he ever been in your home?

6 A: No, ma'am.

7 Q: I have nothing further for Mr. Cox.

8 THE COURT: You may examine, Ms. Knowles.

9 CROSS EXAMINATION OF KENNETH COX BY MS. KNOWLES:

10 Q: Mr. Cox, how long have you known Mr. Livingston?

11 A: I'd say about five years.

12 Q: About five years. And in that five years, have you ever
13 hung out with him?

14 A: We'd sit around and drink a couple of beers and stuff like
15 that, not at my house, at David's house.

16 Q: So, he's never been to your house?

17 A: Nope.

18 Q: In the five years that you've known him, he's never been
19 to your house?

20 A: Never been in my house, never.

21 Q: Okay. And you said that you saw him initially whenever --
22 you passed him as you were going home, is that what I heard
23 you say?

24 A: No, no, no, no. I saw him coming up to David's house; we
25 was eating hotdogs. He went behind David's house. And then I

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1 left David's house, went to my house and that's when I saw him
2 in my house, standing in the hallway.

3 Q: So, you were on your way home whenever you saw him going
4 to someone else's ---

5 A: No, no, no, no. I saw him coming up the street, across
6 the little bridge, Amber Lane walking by David's house, right
7 -- I was at David's house right then, right. And then I left
8 from David's house and walked back to my house, then I caught
9 him in my house walking down the hallway coming from my master
10 bedroom.

11 Q: All right. Now, how long have you lived at this
12 residence?

13 A: Since 1980, 1980.

14 Q: And is this a safe neighborhood you would say?

15 A: Yes, I would say so.

16 Q: Okay. And you said you had just painted, I believe you
17 were on direct examination you said you had just painted your
18 rear ---

19 A: I said I had painted -- I had just painted the door.

20 Q: Painted the rear door, correct?

21 A: Yeah, I painted most of my doors. When I do one of them,
22 I do both of them.

23 Q: Okay.

24 A: All right. I ---

25 Q: And what you've identified as State's Exhibits One through

- 1 Four is -- they're pictures of your rear door, correct?
- 2 A: What you talking about? That's mildew.
- 3 Q: But you said it had just been painted?
- 4 A: No, I said I painted it before. That's mildew. You know
- 5 mildews just a couple of days.
- 6 Q: But when did you paint it? You said you had just painted?
- 7 A: No, it'd been about a month ago.
- 8 Q: Okay.
- 9 A: That's mildew, it come from the air.
- 10 Q: Now, you said you entered through the front door of the
- 11 residence, correct?
- 12 A: Yes.
- 13 Q: And you knew that the only way that the suspect could've
- 14 entered your home was through the rear door because you knew
- 15 that the front door was locked.
- 16 A: Yes.
- 17 Q: How could you be so certain of that?
- 18 A: I know I locked it. I don't leave my front door unlocked,
- 19 no.
- 20 Q: So, every time you lock your ---
- 21 A: I lock it.
- 22 Q: Okay. Do you take any prescription medication?
- 23 A: Nope.
- 24 Q: Do you drink alcohol?
- 25 A: Yes.

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KENNETH COX - CROSS BY MS. KNOWLES

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- 1 Q: You do?
- 2 A: Yes.
- 3 Q: Had you been drinking on this day?
- 4 A: No.
- 5 Q: You hadn't. So, it was birthday party ---
- 6 A: No.
- 7 Q: You were celebrating but you hadn't had any alcohol?
- 8 A: No, no, nope. Two hotdogs.
- 9 Q: Okay. But you do drink?
- 10 A: Yes, sometimes. Do you?
- 11 Q: Let me ask the questions.
- 12 A: Okay.
- 13 Q: What time did you say you left your home to go the party?
- 14 A: Oh, that was Sunday, I'd say about 12:00, 12:00 and I got
- 15 back about 1:15, that's when I saw Tyrone, my neighbor across
- 16 the street because he come up -- walking up when Bobby run
- 17 across my yard when I call the cops.
- 18 Q: Were you back home at 1:15?
- 19 A: I say around 1:15.
- 20 Q: Okay. Around 1:15. Do you remember what time you called
- 21 police?
- 22 A: Look at -- I think it got the time, yes.
- 23 Q: Let me ask you this, How far is the neighbor's home from
- 24 your home?
- 25 A: I can get there from my house to his house in eight

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1 minutes.
2 Q: So, it's a distance, then, it's not like three houses
3 down?
4 A: No, no, no, no. It's not a distance -- I can walk it like
5 in five minutes if I wanted to, it's just around the corner.
6 Q: Okay. Do you own vehicle? Do you own a vehicle?
7 A: Yes.
8 Q: And where was the vehicle?
9 A: In the yard.
10 Q: In the yard.
11 A: My truck was broken so I walked.
12 Q: Do you occasionally have friends stop over when they
13 notice -- just to check on you?
14 A: No.
15 Q: You never have ---
16 A: No, I'm a loner.
17 Q: So, you don't have any friends that ever stop ---
18 A: Yeah, every once in a while a few friends, my brother, my
19 cousin might come by every once in a while, not no frequent --
20 I didn't have a whole lot of people around my house.
21 Q: And every time that you have been around my client, you've
22 been at someone else's home, correct?
23 A: Well, they could be at David's house, David's -- everybody
24 goes there, that's the David who I was telling you I had
25 hotdogs at.

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- 1 Q: Uh-huh (affirmative response).
- 2 A: I see him over there.
- 3 Q: So, the two of you have never like drank together?
- 4 A: Had a couple of beers together, but that's it.
- 5 Q: Okay. Now, whenever you saw who you claim was my client
- 6 in the home ---
- 7 A: Who I claim -- who I claim -- that's him.
- 8 Q: Hold on, let me finish. You said you immediately
- 9 recognized him, right?
- 10 A: Yes, ma'am.
- 11 Q: And what did you do when you immediately recognized him?
- 12 What did you ---
- 13 A: Asked him what he was doing in my house.
- 14 Q: And what did he say?
- 15 A: Looking for me.
- 16 Q: Looking for you?
- 17 A: Yes.
- 18 Q: Okay.
- 19 A: He ain't never been in my house before.
- 20 Q: And then what did you do?
- 21 A: Asked him what he was doing in my house.
- 22 Q: Uh-huh (affirmative response).
- 23 A: I said, I'm calling the cops. He said, no, no, no, no.
- 24 Q: Did you give him any opportunity to explain?
- 25 A: Yeah, he ran.

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1 Q: Because you said you were calling the cops.

2 A: Yes. What he doing in my house? I ain't give him
3 permission to get in my house.

4 Q: You claim that he was in your home, yes.

5 A: I know he was in my house.

6 MS. RICHARDSON: Your Honor, we've kind of lost the
7 question and answer format.

8 Q: Let me redirect your attention. Now, when was the last
9 time that you had used that rear door?

10 A: That rear door?

11 Q: Yes. The one that was damaged.

12 A: I hadn't used it like for two days. I go in the front
13 when I get off work at night, I go to the front door.

14 Q: So, you would say that you normally use the front door ---

15 A: Yes.

16 Q: --- when you go to enter and exit?

17 A: Yes, unless I go put the trash in the dumpster in the
18 back, trash on the back of the porch, I do that but ---

19 Q: But before this happened, it'd been a couple of days or
20 ---

21 A: No, you trying to say that I left my door open.

22 Q: No, no, I'm not trying to say anything. I just want you
23 to answer my questions.

24 A: What is it?

25 Q: My question is, When do you believe was the last time that

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1 you used that door?

2 A: Two days.

3 Q: It had been two days?

4 A: (Indicates affirmatively.)

5 Q: So, there is a chance then that that damage could have
6 been there for forty-eight hours?

7 A: No, no, no, no, no, ma'am.

8 Q: Okay.

9 A: No.

10 Q: You said you checked all the doors before you left to make
11 sure they were locked?

12 A: You didn't ask that question.

13 Q: Did you?

14 A: All my doors locked.

15 Q: You checked the windows?

16 A: My windows barred; I got nails in my windows.

17 Q: Okay. Why do you have nails in your windows?

18 A: Keep anybody from coming in. What you think?

19 Q: Didn't you say it was a safe neighborhood?

20 A: Yeah, it safe neighborhood -- okay. It's a safe
21 neighborhood if criminals not in the neighborhood. Okay?

22 Question, why -- I ask you one question ---

23 Q: No, hold on. Now, when officers responded, they asked you
24 to check your home to see if anything was missing, correct?

25 A: Uh-huh (affirmative response).

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- 1 Q: And what did you tell them was missing at that time?
- 2 A: I couldn't find nothing missing.
- 3 Q: Nothing?
- 4 A: I couldn't find nothing missing till I checked ---
- 5 Q: Hold on. I thought that you just said that you did check?
- 6 A: I said I didn't check until he left. I said -- if
- 7 somebody in your house, you panic, only thing I checked was to
- 8 see if my guns was there that I keep in my closet, that's the
- 9 only thing I checked. I didn't check no jewelry, none of
- 10 that.
- 11 Q: And nothing was missing?
- 12 A: Except that necklace -- when I went back in the house, my
- 13 Gucci necklace missing.
- 14 Q: When did you tell law enforcement this was missing?
- 15 A: I didn't. My wife called.
- 16 Q: When was that?
- 17 A: They got a report ---
- 18 Q: It's not in the report that I have; that's why I'm asking.
- 19 A: What day was it? Tuesday -- Sunday -- Tuesday, was it
- 20 Tuesday? Was it?
- 21 Q: Let's again go back. Do you recall what it was exactly
- 22 that you told officers had happened?
- 23 A: Say what?
- 24 Q: We'll use your statement. Do you recall making a
- 25 statement, a written statement?

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1 A: Uh-huh (affirmative response).

2 Q: Okay. It's not on there. But initially, nothing was
3 missing correct?

4 A: Not at the time. I couldn't find nothing missing at the
5 time.

6 Q: And then something was discovered missing -- how long
7 after the fact?

8 A: I don't know day that was my wife called and reported it.

9 Q: It's nowhere in the reports that I have, so I can't help
10 you. Did you know where Mr. Livingston lived?

11 A: I don't think he got no place to live.

12 Q: Okay. But you knew who he was and you gave that name to
13 law enforcement?

14 A: Yep. Bobby Can-Good.

15 Q: No question.

16 A: He was in my house.

17 Q: Okay. Last question. How long have you known my client?

18 A: About five years.

19 Q: About five years?

20 A: Uh-huh (affirmative response).

21 Q: Okay. Thank you.

22 THE COURT: Anything in reply, Solicitor?

23 MS. RICHARDSON: No, sir, Your Honor.

24 THE COURT: You may come down. Call your next witness.

25 MS. RICHARDSON: Thank you, Your Honor. The State would

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1 call Officer Joseph Manjarrez.

2 JOSEPH GABRIEL MANJARREZ, HAVING BEEN

3 SWORN, TESTIFIED AS FOLLOWS:

4 CLERK: Please state your full name and spell your last
5 name.

6 MR. MANJARREZ: Joseph Gabriel Manjarrez, M-A-N-J-A-R-R-
7 E-Z.

8 DIRECT EXAMINATION OF JOSEPH GABRIEL MANJARREZ BY MS.

9 RICHARDSON:

10 Q: Mr. Manjarrez, I apologize for mispronouncing that. It's
11 kind of obvious, but where are you employed?

12 A: Horry County Police Department.

13 Q: And how long have you been employed there?

14 A: Three years, five months.

15 Q: Did you have an occasion to respond to Mr. Kenneth Cox's
16 house on July 7, 2012?

17 A: I did.

18 Q: What was the nature of that call?

19 A: First, it came in as a suspicious call that he had found
20 somebody in his house and he had known the person and then
21 when I got there, I realized that it had -- it was actually a
22 burglary call.

23 Q: What did you do when you arrived on scene?

24 A: I met with Mr. Cox. I got his story and then we walked
25 through the house to see if it had been ransacked or anything

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JOSEPH GABRIEL MANJARREZ - DIRECT BY MS. RICHARDSON

1 looked like had been taken.

2 Q: What was the appearance of the house?

3 A: The house was clean, did not look like it had been tossed
4 about like a typical burglary. Everything seemed to be in
5 place.

6 Q: Were you able to determine the point of entry?

7 A: I was. Mr. Cox took me around to the back side of the
8 house, where the back door was and showed me the back door and
9 that's how I was able to determine that's where the entry was
10 made.

11 Q: And describe that back door to us, please.

12 A: It's a typical back door of a -- or a front door of a
13 mobile home, so it's -- it's -- it's metal, it's not a -- it
14 wouldn't be like your typical wooden front door, very easy to
15 get into, very easy to pry open.

16 Q: I'm gonna show you what's been marked as State's Exhibit
17 Two. Let me back up, I'm sorry. Did you process the scene at
18 all?

19 A: No, I did not process the scene other than the photographs
20 due to the texture of the back door, it -- there would be my
21 way of lifting any prints.

22 Q: I'm going to show you what's been marked as State's
23 Exhibit Two. Did you take that picture?

24 A: I did.

25 Q: And what is that?

1 A: That's the door jamb of the back door and those marks
2 right there are fresh marks of somebody prying open the door.

3 Q: And how do you know they're fresh marks?

4 A: It's bare metal, there's no -- there's no discoloration
5 typical of oxidation from rust or being out in the elements.

6 MS. RICHARDSON: State would request to admit State's
7 Exhibit Two, Your Honor, and publish to the jury.

8 THE COURT: Granted. And you may publish.

9 MS. RICHARDSON: Thank you, Your Honor.

10 STATES'S EXHIBIT NUMBER TWO

11 ADMITTED INTO EVIDENCE

12 BY MS. RICHARDSON:

13 Q: Was the victim able to tell you who was in his house?

14 A: He was.

15 Q: And who was that?

16 A: He said that it was Bobby and gave him -- did not know his
17 last name at the time but was able to tell me that his
18 nickname was Can-Good.

19 Q: And were you able to determine who that was?

20 A: I was after investigating it further after I'd already
21 left the scene.

22 Q: Okay. And that person was Robert Livingston?

23 A: Correct.

24 Q: What, if anything, was reported stolen that day?

25 A: Nothing was reported stolen that day.

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JOSEPH GABRIEL MANJARREZ - DIRECT BY MS. RICHARDSON

1 Q: Okay. At some later point, what if anything was reported
2 stolen?

3 A: Mr. Cox's wife, she had called me and told me that they
4 had found some jewelry that was -- they were unable to locate
5 some jewelry but that at that time, they weren't able to
6 determine what was missing and I had asked them, when they
7 were able to, to call me back and I would add it to the
8 report.

9 Q: Did you do a supplemental report regarding the initial
10 phone call, that second phone call that she told you she was
11 missing some jewelry?

12 A: No, I did not.

13 Q: And why is that?

14 A: Because I didn't have much to go on. I didn't have a
15 description, I didn't have any value of any property.

16 Q: So nothing that you could follow-up for that?

17 A: Correct. Usually what we do is when we add something like
18 that to a report, it goes into where the -- it gets looked at
19 by detectives to see if anything is turned into a pawnshop and
20 that would've just been too vague. It probably wouldn't have
21 gotten picked up for that.

22 Q: Were you able to make contact with Mr. Livingston on July
23 7th, 2012?

24 A: I was not.

25 Q: And why is that?

1 A: I was unable to locate him. He'd already left the scene.
2 I had called in a second officer, my backup partner. He and I
3 both drove around the area for about forty-five minutes to an
4 hour looking for Mr. Livingston.

5 Q: When was he arrested?

6 A: That I'm not sure. It was by another officer.

7 Q: What county was this located in?

8 A: Horry County.

9 MS. RICHARDSON: Nothing further from the State, Your
10 Honor.

11 CROSS EXAMINATION OF JOSEPH GABRIEL MANJARREZ BY MS. KNOWLES:

12 Q: Good morning, officer.

13 A: Good morning.

14 Q: Upon arrival, tell the jury again what it was that the
15 alleged victim told you had happened?

16 A: That he was at a party down the street visiting with some
17 friends and he expressed to me that he had seen Mr. Livingston
18 on the same street as he was, had walked passed him, they had
19 made some kind of -- some sort of greeting between the two of
20 them. And then a short time later when Mr. Cox returned home
21 he told me that he unlocked his front door, entered his house
22 and inside the house, you've got the entry area and then off
23 to the right is a hallway and he said that's where he
24 confronted Mr. Livingston.

25 Q: Now, do you normally put everything, at least the

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1 specifics, the major parts, that you learn from a victim in
2 your reports?

3 A: Such as?

4 Q: Such as the -- what you began your story with that he was
5 at a neighbors and saw my client, they passed each other,
6 engaged with some sort of conversation ---

7 A: Sometimes we do, yes.

8 Q: Okay, because none of that was in the report originally.

9 A: Okay.

10 Q: And what did the victim tell you that the suspect said to
11 him when he was asked what he was doing in the home?

12 A: That he was looking for Mr. Cox.

13 Q: Okay. And then do you recall what he said next?

14 A: Yes, that Mr. Livingston said that he was looking for Mr.
15 Cox. Mr. Cox asked him again what he was doing there and I
16 believe -- if I recall correctly, Mr. Cox told me that he
17 didn't really give Mr. Livingston a chance to explain again,
18 he just told him he was calling the police.

19 Q: Okay. Thank you. And Mr. Cox told you that he entered
20 through the front door, correct?

21 A: Correct.

22 Q: But he believed that the suspect entered through the rear
23 door, correct?

24 A: Correct.

25 Q: And he told you that the suspect was inside of this

1 residence, correct?

2 A: Yes, ma'am.

3 Q: But yet you didn't process the scene at all for any
4 fingerprints, why is that?

5 A: It's not like -- it's not as easy to do as T.V. makes it
6 appear to be. For one thing, their house was very clean. In
7 order to dust for prints, our print powder is volcanic ash.
8 So, typically, if I see somebody has got a nice clean home, I'
9 not gonna mess it up on a chance that there may be a print
10 when it doesn't appear that there's going to be any prints.

11 Q: But you would agree that a burglary is a pretty serious
12 offense, correct?

13 A: Correct.

14 Q: So, wouldn't the victim then want to find, you would
15 think, the perpetrator?

16 A: Yes, ma'am. But like I said, it's volcanic ash and also a
17 lot of times, the objects that are touched, they're -- in
18 order to get a good print, you have to have a nice, clean,
19 smooth surface. If you have -- if I were to dust this wood,
20 for instance, it's gonna pick up the grain of the wood before
21 it would pick up the print.

22 Q: But you didn't even make any effort?

23 A: I looked around. I looked around to see if there was any
24 indication that I might get a print. If I believe I'm gonna
25 get a print, then yes, I'll pull out a tarp, I'll put it on

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JOSEPH GABRIEL MANJARREZ - CROSS BY MS. KNOWLES

1 the carpet, floor, whatever, and I'll go ahead and dust. But
2 if I don't see anything that looks like I'm gonna lift
3 anything, then, no, ma'am.

4 Q: So, entry by way of the front and the rear door and
5 someone alleged to have been inside of the home, you would
6 think touching things, and you did not take any prints
7 whatsoever?

8 A: No, ma'am, because like I further stated also, it didn't
9 look like it had been tossed around.

10 Q: Okay. And that was my next question. The condition of
11 the place was not immaculate but pretty clean?

12 A: It was clean, yes, ma'am.

13 Q: Okay. And in your experience, most burglaries, the scene
14 is pretty ransacked, wouldn't you say?

15 A: Yes.

16 Q: Or what -- describe the scene of most burglaries.

17 A: Most burglaries, you'll see things that are either moved,
18 tossed around, drawers would be open. In a situation like
19 that, I would've dusted for prints because I would've thought
20 that yes, they would've touched something and I would get a
21 print.

22 Q: But nothing had been ransacked, nothing had been
23 rearranged in this home?

24 A: No, ma'am.

25 Q: And when you asked the victim what had been taken, what

1 did he tell you?

2 A: At that time, nothing.

3 Q: And you gave him an opportunity to look ---

4 A: Yes, ma'am.

5 Q: --- for any valuables that he thought may be missing?

6 A: I had walked to the back part of the house with him and
7 walked into two of the bedrooms. We'd looked around and we
8 didn't see anything that looked like it had been taken.

9 Q: But you were looking for valuables or anything -- high
10 dollar items, right?

11 A: No, ma'am. No, ma'am, we were just looking to see if
12 anything was out of place that would've indicated something
13 was taken.

14 Q: Okay. But my question to you is that you gave him an
15 opportunity to look for those items, right?

16 A: Yes, ma'am.

17 Q: Okay. When was this damage to rear door noticed by the
18 victim to your knowledge?

19 A: Immediately after returning home and ---

20 Q: So, before you arrived you noticed this?

21 A: Yes, ma'am.

22 Q: Okay. And the victim gave you a name, he claims my
23 client, and what did you do with that information?

24 A: We have two resources available to us besides putting it
25 out to other officers that might know somebody by nickname.

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JOSEPH GABRIEL MANJARREZ - CROSS BY MS. KNOWLES

1 We've got a database where we can put in nicknames and, you
2 know, pull up any information, any affiliation with that
3 nickname. And the other one is the -- we've got a database
4 that's not easily accessible by the public through J. Reuben's
5 website.

6 Q: Uh-huh (affirmative response).

7 A: And where we can search by name and any descriptors or
8 nicknames as well.

9 Q: Did he ever give you an address or anything as far as
10 where this person he thought lived?

11 A: No, ma'am. He -- I was told that he was homeless, that he
12 was just in the area and he stayed with people here and there.

13 Q: So, when did you believe that there was enough probable
14 cause to go and pursue a warrant for my client?

15 A: After I was able to get his full identifiers, name, last
16 name, height, weight, all of that through the database.

17 Q: And how long was that after this had happened?

18 A: I don't recall; maybe a day or two. It wouldn't have been
19 something that I would've just put aside and gone back to a
20 week later. It would've been done within the next shift.

21 Q: Okay. Do you recall if there was a photo lineup done in
22 this case?

23 A: Yes, there was.

24 Q: Do you recall when that was done?

25 A: I do not. I was off that day and Mr. Cox went to the

1 precinct to conduct that photo lineup.

2 Q: Why would a photo lineup be necessary if he was certain,
3 who the person was?

4 A: It's something that we -- that we typically do, just to
5 remove any reasonable doubt, make sure that we're pretty
6 certain we have the correct person.

7 Q: Okay. You are the author of the follow-up report, the
8 initial report that is included within the discovery in this
9 case?

10 A: Yes, ma'am.

11 Q: If I showed you what these reports indicated, you would be
12 able to recognize those?

13 A: Yes, ma'am.

14 Q: And better testify as to the dates?

15 A: Uh-huh (affirmative response).

16 Q: Okay. Can you tell the jury what the date was that that
17 photo lineup was done?

18 A: Tuesday, July 17th, 2012.

19 Q: And when did this crime occur?

20 A: July 7th, 2012.

21 Q: So, then ten days had passed whenever that photo lineup
22 was shown?

23 A: Yes, ma'am.

24 Q: Okay. And then speaking to the arrest warrant, can you
25 tell the jury what date he was arrested, on that piece of

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JOSEPH GABRIEL MANJARREZ - CROSS BY MS. KNOWLES

1 paper?

2 A: It was on July 21st, 2012 that the case was presented for
3 a warrant.

4 Q: So, at least three weeks?

5 A: Yes, ma'am. Sometimes, it takes time to -- through the
6 database to make sure that we've got the right person.

7 Q: Okay. And where did you -- where was this -- where was my
8 client located whenever the arrest was made? In Horry County?

9 A: I believe so. I wasn't the one that arrested him; I was
10 not there for that.

11 Q: Now, you testified earlier and your report also indicates
12 that these were fresh pry marks. How do you determine the
13 timeframe that has passed for something to be incorrect as far
14 as anything goes? How is that determination made?

15 A: Normally when you have a victim -- most people are aware
16 of what's going on around their house, especially on Lincoln
17 Heights. When you have somebody that says that their back
18 door has been opened or pried open, that's an indicator that's
19 it's a fresh -- and also with the bare metal ---

20 Q: Now, when you say fresh, could that be twenty-four hours,
21 hours, forty-eight hours; what's the timeframe that we're
22 talking about?

23 A: I would say within twenty-four hours, but -- give or take.

24 Q: But you don't know that to be certain as far as the
25 timeframe involved, right?

- 1 A: No, I do not.
- 2 Q: I mean it could've been there for a week?
- 3 A: I wouldn't say it would be there for a week.
- 4 Q: Days?
- 5 A: I would say twenty-four hours, if that.
- 6 Q: Okay. Are you familiar with this neighborhood?
- 7 A: I am.
- 8 Q: Is it a safe neighborhood?
- 9 A: The -- there's two sides to the neighborhood, there's two
- 10 ways to come in off of it, either Highway 90 or Highway 1008.
- 11 Mr. Cox lives on the Highway 90 side, so it's a little bit
- 12 safer than the other side.
- 13 Q: Let me ask you, do you respond to -- have you ever
- 14 responded -- are you aware of any incidents of burglary that
- 15 occurred or property crimes that occurred within that area?
- 16 A: Recently to that incident, no.
- 17 Q: As to this timeframe?
- 18 A: They -- there's all kinds of calls that go on out there.
- 19 Q: Property crimes?
- 20 A: There's property crimes, yes.
- 21 Q: Okay. Actually, a couple of more questions. When the
- 22 call came in, what was the call described as? Report of
- 23 burglary, I believe that you testified it was something else?
- 24 A: Correct. Our dispatch gave it to me as a suspicious
- 25 person call, that they were inside the house.

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JOSEPH GABRIEL MANJARREZ - CROSS BY MS. KNOWLES

1 Q: Okay. And nothing was missing?

2 A: At that time, no.

3 Q: And when was there a report of something missing?

4 A: I believe it was within a couple of days that I spoke to
5 Ms. Cox.

6 Q: Okay. Why is that information not in anything then, that
7 I've received?

8 A: I was waiting for a follow-up call with her to determine
9 what was taken.

10 Q: So, there wasn't enough information provided to you to
11 even bother with a supplemental report. So, therefore, you
12 didn't believe there was much there, correct?

13 A: I was waiting to hear back from Ms. Cox with descriptions
14 of what was taken and property value.

15 Q: Did she ever get back with you?

16 A: No, ma'am.

17 Q: And the house whenever you arrived was clean and not in
18 any manner of disarray at all?

19 A: Correct.

20 Q: Thank you very much.

21 THE COURT: Any further ---

22 MS. RICHARDSON: Very briefly, Your Honor.

23 THE COURT: All right.

24 REDIRECT EXAMINATION OF JOSEPH GABRIEL MANJARREZ BY MS.

25 RICHARDSON:

1 Q: We heard mention talk of the photo lineup, what did that
2 photo lineup confirm for your investigation?

3 A: That Mr. Cox was able to point out who was in his house.

4 Q: And who was that?

5 A: Bobby Livingston.

6 Q: Who was also known as Robert Livingston?

7 A: Yes.

8 MS. RICHARDSON: Nothing further, Your Honor.

9 THE COURT: All right. The jury has been out here very
10 patient here for -- it's nearly 11:30. Madame Foreman, I'll
11 let you go take a short break. Let me know when -- let the
12 Bailiff know when you're ready to come out. I want to come
13 back out as quick as we can. Thank you.

14 (REPORTER'S NOTE: The following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. Ms. Knowles, I want the record to
17 reflect now abundantly there's been some testimony about a
18 photo lineup. The record will reflect that the Defense
19 counsel never requested a hearing with regards to that issue.

20 MS. KNOWLES: Yes, sir.

21 THE COURT: And, of course, I don't see why they even had
22 a photo lineup -- this is outside the presence of the jury --
23 the Defendant was identified by the victim at the time in his
24 house. I don't see why they needed it anyway but the record
25 will reflect that there was no photo lineup procedure

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BY THE COURT

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1 requested.

2 You started to say something, Ms. Richardson?

3 MS. RICHARDSON: Yes, Your Honor, I was just gonna let
4 you know what's why we didn't request a hearing on the State's
5 behalf and we never intended to use the photo lineup but we
6 felt like it was -- we needed to respond to the Defense
7 counsel's questions.

8 THE COURT: I understand. And it was in response but at
9 the time it said -- the Defendant specifically identified the
10 victim as being in his house; it was unnecessary anyway. And
11 in fairness to Ms. Knowles, that's why she didn't request it,
12 I'm assuming.

13 MS. KNOWLES: I understand that that was not an issue
14 that the State intended to bring up. I understand that, Your
15 Honor.

16 THE COURT: I understand.

17 Let's take a very short break and come on back, please.

18 MS. RICHARDSON: Thank you, Your Honor.

19 *****OFF THE RECORD*****

20 (On the Record.)

21 (REPORTER'S NOTE: The following takes place outside the
22 presence of the jury.)

23 MS. RICHARDSON: Your Honor, I don't know if you want to
24 take it up now since the jury doesn't have to go back out.
25 The State intends to rest at this point in time. I don't know

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BY THE COURT

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1 if you wish to inquire now ---

2 THE COURT: Yeah, let's go -- let's go ahead and take any
3 -- I will permit you to rest in the presence of the jury when
4 they come out.

5 MS. RICHARDSON: Yes, sir.

6 THE COURT: No need in sending them back.

7 Ms. Knowles, any motions at this time?

8 MOTION:

9 MS. KNOWLES: Your Honor, I would make a motion for a
10 directed verdict.

11 THE COURT: Yes, I will -- I note your motion for
12 directed verdict upon the insufficient evidence all of which
13 is respectfully denied. There's a plethora of evidence, if
14 believed by the jury as finders of the facts.

15 Thank you.

16 You agree we won't have to send the jury back out just
17 to let -- now, is the Defendant going to testify?

18 MS. KNOWLES: You may want to inquire of him. It's my
19 understanding at the outset he didn't want to but he may've
20 changed his mind.

21 THE COURT: Well, now is the time for me to know. Have
22 him stand.

23 ROBERT LIVINGSTON HAVING BEEN SWORN,
24 TESTIFIED AS FOLLOWS:

25 THE COURT: Ms. Knowles, have you fully advised him of

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MOTION

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1 his rights to testify?

2 MS. KNOWLES: I have prior to today, Your Honor, but he
3 seems to be a bit confused.

4 THE COURT: What's he confused about?

5 MS. KNOWLES: What the State would be allowed to question
6 him on should he testify.

7 THE COURT: Cross examine on anything that he testifies
8 to, including a prior record, if any, and I'd want to get into
9 that.

10 Let me talk to him. You want to talk -- finish talking
11 to him first.

12 MS. KNOWLES: I'm finished.

13 THE COURT: Does he have a prior record?

14 MR. LIVINGSTON: Yes.

15 THE COURT: How about it, Solicitor?

16 MS. RICHARDSON: He does, Your Honor. He has a 2005
17 possession with intent to distribute cocaine; a 2006 unlawful
18 removing of airport facility, which is a three-year sentence,
19 Your Honor. I'm not exactly sure what the -- factually that
20 is but ---

21 THE COURT: What is the charge?

22 MS. RICHARDSON: Unlawful removing of an airport facility
23 with injury.

24 THE COURT: I'm not gonna permit that to come in.

25 MS. RICHARDSON: Okay. That's fine, Your Honor. 2007,

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ROBERT LIVINGSTON - BY THE COURT

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1 possession of marijuana and manufacturing -- possession with
2 intent to ---

3 THE COURT: Hadn't our Supreme Court ruled that they are
4 admissible?

5 MS. RICHARDSON: Yes, sir, Your Honor. My understanding
6 is that's -- if it's within ten years and it carries over a
7 year, I can question him on it.

8 THE COURT: And it's not -- it's not charged with drugs
9 in this charge so I will permit it.

10 Do you agree that's his record?

11 MS. KNOWLES: Your Honor, ---

12 THE COURT: Why should -- did the Court rule -- the coke,
13 it's not a crime of dishonesty but I believe they ruled
14 specifically that's admissible, isn't it?

15 MS. RICHARDSON: What's that, Your Honor? His prior
16 record is admissible, Your Honor, if it's within ten years and
17 the sentence carried over a year.

18 THE COURT: That's by the statute.

19 MS. RICHARDSON: Yes, sir, Your Honor.

20 THE COURT: Mr. Defendant, let me talk to you a minute
21 and then you can talk to Ms. Knowles.

22 MR. LIVINGSTON: Yes, sir.

23 THE COURT: How old are you?

24 MR. LIVINGSTON: Thirty-three.

25 THE COURT: Talk a little louder for me.

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ROBERT LIVINGSTON - BY THE COURT

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1 MR. LIVINGSTON: Thirty-three.

2 THE COURT: And how far did you go in school?

3 MR. LIVINGSTON: Twelfth grade.

4 THE COURT: And what kind of work have you done since
5 graduating from high school?

6 MR. LIVINGSTON: Upholstery.

7 THE COURT: Sir?

8 MR. LIVINGSTON: Upholstery.

9 THE COURT: Well, you're an intelligent -- you read and
10 write well, don't you?

11 MR. LIVINGSTON: No, sir.

12 THE COURT: Sir?

13 MR. LIVINGSTON: No, sir.

14 THE COURT: Do you read at all?

15 MR. LIVINGSTON: No, sir.

16 THE COURT: Did you finish -- where'd you finish the
17 twelfth grade?

18 MR. LIVINGSTON: I got a GED.

19 THE COURT: A what?

20 MR. LIVINGSTON: I got a certificate.

21 MS. KNOWLES: He's the equivalent of a high school
22 diploma.

23 THE COURT: You read some, don't you?

24 MR. LIVINGSTON: A little bit.

25 THE COURT: Well, you have to, you read your check when

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ROBERT LIVINGSTON - BY THE COURT

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1 you get it from your upholstery job, I bet you that.

2 MR. LIVINGSTON: I read the numbers.

3 THE COURT: Okay. Well, that's what you need to know.

4 You here are charged with burglary in the 2nd degree.

5 MR. LIVINGSTON: Yes, sir.

6 THE COURT: You are charged with entering the home of Mr.
7 Cox. And his testimony, if believed by the jury, that he
8 actually saw you in the house. I don't know whether he did or
9 did not but that's the testimony. And there is testimony from
10 the officers that a crime was alerted to them and they
11 investigated it. You heard the testimony. There's also
12 testimony that, if believed, that the culprit entered by that
13 back door.

14 Now, we are at that stage where several things occur.
15 First, you are presumed innocent; you don't have to prove a
16 thing and I'll charge the jury that. And if you elected not
17 to testify, I would charge the jury that that fact could not
18 be used against you. I would charge the jury further that the
19 fact that you didn't testify could not even be used against
20 you. In the event that you did not testify or put up any
21 evidence, you would have -- your lawyer would have the last
22 argument to the jury. Now, you have the absolute right to
23 testify. If you get on that stand, the State can cross
24 examine you as to any issues involving this case. They can
25 also cross examine you as to your prior record. I would

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1 charge the jury that that's no evidence of your guilt in this
2 case but they may consider the believability and credibility.
3 Now, you would discuss it with your lawyer but the decision to
4 testify rests solely with you. Do you understand that?

5 MR. LIVINGSTON: Yes, sir.

6 THE COURT: All right. In fairness to you, do -- you
7 would not offend me, sir, if you have any questions, this is a
8 serious matter as to whether you want to testify or not. What
9 is your decision? Do you have any questions about what I've
10 said to you first?

11 MR. LIVINGSTON: No, I understand.

12 THE COURT: Okay. And what is your decision?

13 MR. LIVINGSTON: I don't want to testify.

14 THE COURT: You do not want to testify?

15 MR. LIVINGSTON: No, sir.

16 THE COURT: Then you are entitled -- is there any other
17 witnesses on behalf of Defense?

18 MS. KNOWLES: No other witnesses.

19 THE COURT: Then you would be entitled to the last talk
20 to the jury.

21 MS. KNOWLES: Thank you.

22 THE COURT: Do you have any questions about the -- my
23 inquiry to him?

24 MR. LIVINGSTON: No.

25 THE COURT: Do you, Ms. Knowles?

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1 MS. KNOWLES: No, sir.

2 THE COURT: All right. The record will reflect that Ms.
3 Knowles has made a motion for a directed verdict based on
4 insufficient evidence which is respectfully denied.

5 The record will further reflect that I've examined this
6 Defendant in detail as to his rights to testify or not to
7 testify. He has said to me that it is his decision not to
8 testify and he's entitled to that. And I will explain to the
9 jury that that cannot be used against you; is that correct?

10 MR. LIVINGSTON: Yes, sir.

11 THE COURT: Okay. Ms. Knowles, you agree with that?

12 MS. KNOWLES: Yes, sir.

13 THE COURT: All right. As is my policy, I'm gonna charge
14 the jury even before you argue. Is that okay, Ms. Knowles?

15 MS. KNOWLES: Yes, sir.

16 THE COURT: Okay. Let's wait just a minute. He's
17 getting my -- printing my charge and we'll be ready to go in
18 just a minute.

19 Ms. Bailiff ---

20 DEPUTY: Yes, Your Honor?

21 THE COURT: Tell the jury now to get ready. I'm getting
22 ready to bring them out in the next three or four minutes.
23 So, if they need to go to restroom, do it now.

24 DEPUTY: Yes, sir, Your Honor.

25 MS. KNOWLES: Your Honor ---

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ROBERT LIVINGSTON - BY THE COURT

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1 THE COURT: Ma'am?

2 MS. KNOWLES: Is there any way we could break for lunch
3 first. It's already almost 12:00.

4 THE COURT: Yes, we can do that. That's a good
5 suggestion. Let's break for lunch and be back at 2:00. Okay?

6 *****OFF THE RECORD*****

7 **(On the Record.)**

8 (REPORTER'S NOTE: The following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Bring my jury in, please. Let's
11 go ahead and finish this case here.

12 MS. RICHARDSON: The State is ready, Your Honor.

13 THE COURT: We've got an hour. It's a short charge.
14 Bring the jury in. I'm gonna finish it now.

15 (REPORTER'S NOTE: The following takes place inside the
16 presence of the jury.)

17 THE COURT: All right. What says the State?

18 MS. RICHARDSON: Your Honor, at this time, the State
19 would rest.

20 THE COURT: The State rests.

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

22 THE COURT: We now move to the Defendant. What is the
23 Defendant's position?

24 MS. KNOWLES: Your Honor, the Defense would not have any
25 testimony that we would present.

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ROBERT LIVINGSTON - BY THE COURT

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1 THE COURT: The record will then reflect that the Defense
2 rests. And it's his decision not to testify.

3 MS. KNOWLES: Yes, sir.

4 CHARGE OF THE COURT:

5 THE COURT: Ladies and gentlemen, you have now heard all
6 of the testimony in the trial of this case.

7 As I told you earlier, this Defendant and all defendants
8 who come into court are presumed innocent. And that
9 presumption of innocence remains with this Defendant and all
10 defendants throughout the trial until the jury has found him
11 guilty if at all by evidence beyond a reasonable doubt. It
12 has been said that the presumption of innocence is like a robe
13 of righteousness around this Defendant and remains with him
14 until the jury in their deliberations, if at all, does find
15 him guilty beyond a reasonable doubt.

16 Now, I charge you in words as strongly as I can, that
17 this Defendant is presumed innocent. He doesn't have to prove
18 a thing. The State's got to prove him guilty beyond a
19 reasonable doubt. This Defendant as is his constitutional
20 right, it is yours and it is mine, has elected not to testify.
21 Now, I charge you as a matter of law, that the fact that he
22 did not chose to testify raises absolutely no inferences
23 against him whatsoever. It is his constitutional right, it is
24 yours and it is mine.

25 Now, your decision will be based on the law and evidence,

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CHARGE OF THE COURT

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1 Madame Foreman, in this courtroom, but the fact that this
2 Defendant elected not to testify cannot even be entered in
3 your discussion in the jury room. Let no discussion be in the
4 jury room in your deliberations regarding the fact that he did
5 not testify. He doesn't have to testify. It's his absolute
6 constitutional right.

7 Now, ordinarily, we charge the jury after summation with
8 counsel but jurors in the past years have said to me, Judge, I
9 wish you would've told me what the law was before they argued.
10 I believe I could've listened to them more attentively and
11 understood what they said.

12 This Defendant is charged with the offense of burglary in
13 the 2nd degree. Burglary in the 2nd degree is defined in the
14 law as the entering of the premises of another without consent
15 and with the intent to commit a crime therein. And so it is
16 the burden of proof is upon the State to prove the following:
17 One, that this Defendant entered the premises of Mr. Cox
18 without consent and they got to prove it beyond a reasonable
19 doubt, that he entered the premises of another and they've to
20 prove that it was the home of Mr. Cox. And then they've got
21 to prove that the entry without consent of the premises of
22 another was with the intent to commit a crime therein. That
23 too, as all the others, must be proven to your satisfaction
24 beyond a reasonable doubt. That is the definition of
25 burglary.

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CHARGE OF THE COURT

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1 Now, Madame Foreman, there will be pencil and paper
2 provided in the jury room for your consideration and if you or
3 any member of your distinguished jury has any questions about
4 the law, write it down and I'll be glad to answer it for you.

5 Now, as you understand and we've discussed, this
6 indictment charges this Defendant with burglary in the 2nd
7 degree. I again remind you that the fact that the Defendant
8 was arrested, charged in the indictment is not evidence in
9 this case. This indictment is simply the allegations of the
10 State and is in no sense any evidence as to his guilt.

11 I want to remind you again that it is important and vital
12 rule of law that this Defendant having pled not guilty and
13 that puts the State upon the burden of proving him guilty if
14 they can by evidence to your satisfaction beyond a reasonable
15 doubt. A person charged in a crime in South Carolina is never
16 ever required to prove himself innocent. The State must prove
17 him guilty beyond a reasonable doubt.

18 I charge you that it is important rule of law that the
19 Defendant in a criminal case, no matter what the serious
20 charges may be must always been presumed innocent of the
21 charge of the indictment until proven guilty beyond a
22 reasonable doubt. As I've indicated, this presumption of
23 innocence remains with this Defendant throughout the trial
24 until you the jury have reached a verdict of guilty beyond a
25 reasonable doubt. I emphasize again that the presumption of

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CHARGE OF THE COURT

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1 innocence is similar to a robe of righteousness which the
2 State must remove from him by evidence beyond a reasonable
3 doubt.

4 In this connection, Madame Foreman, and ladies and
5 gentlemen, I charge you that the presumption of innocence is
6 not mere legal theory, it is not just a legal phrase, it is a
7 substantial right to which every Defendant and this Defendant
8 is entitled unless you the jury are satisfied from the
9 evidence of the Defendant's guilt beyond a reasonable doubt.

10 Let's discuss for a moment, the concept and definition of
11 reasonable doubt. The State, as indicated, has the burden of
12 proving the Defendant guilty beyond a reasonable doubt. Some
13 of you may have served in civil court where you were told that
14 it is only necessary to prove that a fact is more likely true
15 than not, such as the greater weight of the preponderance of
16 the evidence. In criminal cases, however, the State's proof
17 must be more powerful than that. It must be beyond a
18 reasonable doubt. Now, ladies and gentlemen, proof beyond a
19 reasonable doubt is proof that leaves you firmly convinced of
20 the Defendant's guilt. There are very few things in this
21 world that we know with absolute certainty. And in criminal
22 cases, the law does not require proof that overcomes every
23 possible doubt. If based on your consideration of the
24 evidence, you are firmly convinced that the Defendant is
25 guilty of the crime charged, you must find him guilty. If on

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CHARGE OF THE COURT

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1 the other hand, you think there is a real possibility that the
2 Defendant is not guilty, you must give the Defendant the
3 benefit of that doubt and find him not guilty. Now, I remind
4 you that during this trial, you and I both have certain duties
5 to perform.

6 As the Trial Judge, it is my responsibility to preside
7 over the trial of this case, as I have done. And also I have
8 the duty to rule on the admissibility of evidence offered
9 during the trial. I charge you now that you are to consider
10 only the competent evidence before you. If there was any
11 testimony ordered stricken, please disregard that. You must
12 base your verdict on the law and evidence heard in this
13 courtroom and from no other source. I remind you, too, that
14 if any ruling, mannerism of mine might tend to indicate to you
15 how I feel about any factual situation, please disregard that.
16 I have the additional duty to charge you the law applicable to
17 this case. As the presiding judge, I am the sole judge of the
18 law of the case. And under your duty and oath as jurors, you
19 are required to accept the law as I give it to you, even
20 though you or I might disagree with what the law is or ought
21 to be. Please accept the law as I tell you to it.
22 Remembering, as finders of the facts, you take the facts as
23 you find them and apply those facts to the law as I have
24 charged it to you. As I've indicated to you in every case
25 tried in the courts of South Carolina, you the jury become the

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1 sole and only exclusive finder of the facts in the case. As I
2 have said, a trial judge is not entitled to a factual opinion
3 and I have none. As to this case, there is nobody in this
4 wide world that can tell you twelve what the facts are with
5 regards to this case. I've also indicated to you that you are
6 the judges, the sole judges of the credibility, the
7 believability of every witness who testifies. Some of the
8 things that you obviously would consider, Hey, how did you
9 come to know about the facts that they're telling me? Is this
10 witness' testimony consistent or inconsistent with other
11 testimony? Does this witness have some bias or prejudice that
12 would want me to believe one thing or the other? These are
13 tools that you use. You can believe all a witness' testimony
14 or none. You may believe a small portion and disregard the
15 larger. You may believe one witness against that of many.

16 Madame Foreman and ladies and gentlemen, in judging
17 credibility and believability, you have but one single
18 objective, just one. That is to seek the truth, to seek the
19 truth and write your verdict accordingly.

20 Now, I want to emphasize again to you as strong as I can,
21 this Defendant, as is his right, elected not to testify. That
22 raises absolutely no inferences against him and the fact that
23 he did not testify must not even be entered into your
24 discussions in your deliberations. It is not a fact for your
25 consideration at all.

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CHARGE OF THE COURT

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1 Now, as I've told you that burglary in the 2nd degree is
2 entering the premises of another, which is self-explanatory,
3 without consent and with intent to commit a crime therein. It
4 having been alleged that this Defendant entered without
5 consent the premises of Mr. Cox with intent to commit a crime
6 therein, the State having the burden of proving each of these
7 issues beyond a reasonable doubt. In order to establish
8 criminal liability, criminal intent is required. For example,
9 the mental state required to be proven by the State for a
10 particular crime might be purpose, intent, knowledge,
11 recklessness or criminal negligence. Criminal intent must be
12 proven by the State beyond a reasonable doubt. Criminal
13 intent is always a matter that must be determined by the jury
14 from the circumstances surrounding the situation. There is no
15 way to prove intent to a mathematical certainty. There is no
16 way medical science can dissect a person's brain and determine
17 what the person had in mind. So, the law says, Madame
18 Foreman, that criminal intent may be inferred from the
19 circumstances shown to have existed. This is how you make a
20 determination of whether or not the element requiring intent
21 was present. It is not necessary to establish intent by
22 direct and positive evidence. But intent may be established
23 by inferences in the same way as any other fact by taking into
24 consideration the acts of the parties and all of the facts and
25 circumstances of the case. Criminal intent is a mental state,

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CHARGE OF THE COURT

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1 a conscious wrongdoing. It is up to you to determine what the
2 Defendant intended to do based on the circumstances shown to
3 exist by the evidence presented. I charge you that criminal
4 intent can arise from actions or a failure to act. It may
5 arise from negligence, recklessness or indifference to duty or
6 to conscious -- or to consequences that is considered by the
7 law to be the equivalent of criminal intent. Now, as I've
8 indicated to you and I want to emphasize to you to prove
9 burglary in the 2nd degree, the State must prove that this
10 Defendant entered the premises of Mr. Cox without consent and
11 with the intent to commit a crime therein.

12 Now, whatever your verdict is, Madame Foreman, it must be
13 the unanimous verdict of all twelve; it cannot be a verdict of
14 the majority; obviously, would not be one of the minority.

15 Now, I charge you in order to prove that the Defendant
16 entered the dwelling, the State does not have to show that the
17 Defendant's entry -- body entered the building, just the
18 slightest entry at all is the entering if it be without
19 consent.

20 Now, as I've indicated to you, Madame Foreman, if there's
21 any questions of law that you need presented, I'll be glad to
22 call you back out and do it at this time. The indictment will
23 go with you in the jury room. On the back of the indictment
24 is the word verdict. There's only two possible verdicts,
25 either not guilty or guilty. Please put your verdict,

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CHARGE OF THE COURT

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1 whatever it is under verdict and write your name, Madame
2 Foreman, let the Bailiff know and we'll be glad to accept your
3 verdict. I'm sending a form in for you too which will help
4 you which designates the same thing. Please check this form
5 as to not guilty or guilty and whatever it is, write it on the
6 back of the verdict.

7 Was there any exceptions or additions to the charge?

8 MS. RICHARDSON: Not to the charge, Your Honor.

9 MS. KNOWLES: No, sir.

10 THE COURT: All right. Let's -- now under the rules, the
11 Defendant will have the last argument. You may proceed.

12 MS. RICHARDSON: Thank you, Your Honor.

13 CLOSING STATEMENT OF THE PLAINTIFF:

14 MS. RICHARDSON: Breaking and entering the dwelling, or
15 as the Judge said, the premises of another without consent
16 with the intent to commit a crime therein. He was inside --
17 he was inside, that's the testimony that's before you today.
18 He was in that home. You're looking ---

19 THE COURT: Talk a little louder for my court reporter,
20 please.

21 MS. RICHARDSON: I'm sorry, Your Honor.

22 You're looking for without consent and with intent to
23 commit a crime therein. That's what you're focusing on.

24 Let's talk about that; let's talk about what you heard.

25 Without consent, Mr. Cox told you, known him for five years,

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CLOSING STATEMENT BY MS. RICHARDSON

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1 known him around the neighborhood. He's never been in my
2 house before. Why is that? I don't trust him like that.
3 I'll sit at a friend's house, might have a beer with him,
4 might have a cigarette with him, but I don't trust him like
5 that to have him in my house. There was no consent in this
6 case. He did not have permission to be in Mr. Cox's house.
7 With intent to commit a crime therein, now -- with intent to
8 commit crime therein -- let me just explain to you. He
9 doesn't have to go forward with that intent. If he gets
10 stopped in the middle of that intent, if that burglary is
11 stopped somehow by Mr. Cox walking in and catching him, it's
12 still a burglary. He still had intent to commit a crime
13 therein. Whether or not that intent was carried out or
14 whether or not the police arrived or the victim arrived in
15 time to stop the actual breaking and entering, okay, the
16 actual stealing of the property. You're looking for intent to
17 commit a crime. There are pry marks on this back door. Mr.
18 Cox has told you it wasn't like this before. This door was
19 not like this before. I know, I lock my doors. It wasn't
20 like that. Ladies and gentlemen, if there wasn't an intent to
21 commit a crime therein, we wouldn't have a broken door. He
22 said, I know the front door was locked, there's no other way
23 he could've entered. The front door was locked. He had to
24 unlock it when he got home to get in. This is the point of
25 entry. There's your intent.

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CLOSING STATEMENT BY MS. RICHARDSON

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1 When Mr. Cox confronts him, What are you doing in my
2 home? I was looking for you. Ladies and gentlemen, he just
3 saw him down the street. He just saw him at David's house, I
4 believe his name was. He knew he wasn't home. He knew he
5 wasn't home; he wasn't looking for him. Hold on a minute, I'm
6 gonna call the police. And then he jets. There's your
7 intent; there's your intent. That shows you he's up to no
8 good. Mr. Cox doesn't realize anything is stolen. He's under
9 excitement, he doesn't realize, the officer is there. A few
10 days later, you heard from him, his wife comes home and says,
11 no, wait, I'm missing some jewelry. I think he even testified
12 he was missing a necklace; he didn't realize it that point.
13 He was concerned with his guns, his weapons.

14 Ladies and gentlemen, we submit to you that jewelry was
15 taken that night. Remember what he said, remember what Mr.
16 Cox told you when he noticed him, when he saw him coming from
17 his master bedroom, he wasn't hanging out in his living room
18 waiting for him, he was coming from the bedroom and what was
19 he doing? (Indicating.) That's was told you on stand,
20 fumbling with his pockets. He didn't catch it then, didn't
21 make sense to him, but after the jewelry goes missing -- what
22 was he putting in his pockets?

23 Ladies and gentlemen, again, we submit to you that he is
24 guilty, he is guilty of breaking and entering the dwelling
25 without the consent and with the intent to commit a crime

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CLOSING STATEMENT BY MS. RICHARDSON

1 therein. Thank you for your time and thank you for your
2 attention.

3 THE COURT: Ms. Knowles.

4 CLOSING STATEMENT OF THE DEFENDANT:

5 MS. KNOWLES: Ladies and gentlemen, you've been told that
6 for a person to be guilty of burglary 2nd degree, they have to
7 enter a dwelling without consent with the intent to commit a
8 crime therein. The State has to convince you of this. This
9 is a hefty burden that the State must meet. I told you in my
10 opening statement why I believe the burden of proof in this
11 case, as it is in the most criminal cases, all criminal cases,
12 is such a large burden and that is because someone's liberty
13 is at stake. You need to be certain about the decision that
14 you're making. The State has produced evidence in this case
15 that consisted of an officer's testimony and the victim's
16 testimony. You heard the victim testify that he knew my
17 client for about five years, for at least five years I believe
18 was the testimony. He testified that the two had hung out
19 over that five-year period. On several occasions, they drank
20 together. He stated that he was actually at a birthday party
21 prior to returning home and finding my client in the home.
22 Now, he testified that it was his birthday; he consumed
23 alcohol occasionally but yet, reason to celebrate, but did not
24 consume any alcohol on this occasion. Not a very big issue
25 but throwing that out there.

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CLOSING STATEMENT BY MS. KNOWLES

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1 Now, he testified that whenever he confronted the suspect
2 inside the home and said, What are you doing in here? He was
3 told, Looking for you. We weren't there. We don't know what
4 the mindset of either was at the time. He certainly didn't
5 allow for any time for explanation, no conversation, he
6 immediately picks up the phone and dials 911. So, what would
7 you do, given the situation, but run?

8 Testimony has been presented and I believe it has been
9 substantiated, nothing was taken. No burglary I know ever
10 occurs without something, at least being touched inside a
11 home. We don't even have any evidence, no fingerprints, no
12 proof that anything was even touched. The officer testified
13 that whenever he arrived, that the house was clean, nothing
14 appeared to be out of order.

15 Now, the State would have to believe that this is an
16 open-and-shut case, if you take their account. Victim
17 identified my client, knew his name, realized that he was a
18 victim of a crime. So, I ask you, why did it take twenty-six
19 days then for an arrest to be made? If the police were so
20 certain, why did it take twenty-six days. I suggest to you
21 that the delay was because they weren't even certain that a
22 crime had been committed. I just ask that you keep in mind
23 who has the burden here. My client doesn't have to prove
24 anything to you. He certainly doesn't have to prove his
25 innocence.

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CLOSING STATEMENT BY MS. KNOWLES

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1 I thank you for your time and I thank you for your
2 patience.

3 THE COURT: Thank you, ma'am.

4 Ladies and gentlemen, you've heard all of the testimony
5 in the trial of this case. You've heard summation of
6 distinguished counsel. I've given you the instructions in the
7 law. It now becomes your duty to deliberate. I'm going to
8 send you to the jury room. Do not begin your deliberations
9 until this indictment comes in along with the other evidence.
10 It'll be in in just a moment. As soon as it comes in, please
11 begin your deliberations and when you've reached a verdict,
12 let me know.

13 Proceed.

14 (REPORTER'S NOTE: The following takes place outside the
15 presence of the jury.)

16 THE COURT: The record will reflect that the jury has
17 departed the courtroom. In accordance with the rules, I am
18 required to inquire outside the presence of the jury was there
19 any additional exceptions or differences in the charge? You
20 said no but I give you that opportunity again outside the
21 presence of the jury.

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

23 THE COURT: What say the Defendant?

24 MS. KNOWLES: No, sir.

25 THE COURT: The record will reflect that outside the

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BY THE COURT

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1 presence of the jury there's been no request or differences,
2 exceptions to the jury; it will stand.

3 Come forward now and agree on what's going into evidence.
4 And this is the verdict form for them to be guided by and --
5 here's that.

6 Y'all handled it very efficiently. I congratulate you.
7 Have y'all agreed on what's going in the jury room?

8 MS. RICHARDSON: Yes, sir, Your Honor. We're okay with
9 all of that.

10 THE COURT: Tell them to begin the deliberations. I'll
11 be sending the indictment in to them in just a moment but
12 begin the deliberations.

13 (REPORTER'S NOTE: Deliberations begin at 12:29 P.M.)

14 *****OFF THE RECORD*****

15 (On the Record.)

16 (REPORTER'S NOTE: The following takes place outside the
17 presence of the jury.)

18 QUESTION FROM THE JURY:

19 THE COURT: When the jury was out less than forty-five
20 minutes, they sent the following communication to me ---

21 CLERK: Jury question: What if we cannot reach a
22 unanimous decision?

23 THE COURT: My reply was we will continue deliberations
24 this afternoon and if necessary in the morning. It's 1:30.
25 The jury at that time had deliberated less than forty-five

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QUESTION FROM THE JURY

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1 minutes. Obviously, that was not sufficient time.

2 Bring in the jury and I'm gonna send them to lunch.

3 (REPORTER'S NOTE: The following takes place inside the
4 presence of the jury.)

5 THE COURT: Madame Foreman, you are continuing your
6 deliberations which is appropriate but I know it's time for
7 lunch. And so I'm going to ask that you go to lunch and be
8 back in the jury room at 3 o'clock.

9 Madame Foreman, do not begin your deliberations until all
10 your jury is present.

11 Now, this is important. Do not discuss this case with
12 anyone, let no one discuss it with you. During lunch hour, do
13 not discuss it with other jurors. And it's important for this
14 reason, if during lunch two or three of you are discussing
15 some issue in the case, you are depriving your fellow jurors
16 of your thought process and they entitled to it particularly
17 since the verdict must be the unanimous verdict of all twelve.
18 And so, do not even discuss the case among yourselves under
19 any circumstances unless it be in the presence of all twelve
20 of you in the jury room.

21 Be back, please, at 3 o'clock. Thank you.

22 You are excused.

23 (REPORTER'S NOTE: The following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. We're in recess till 3 o'clock.

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QUESTION FROM THE JURY

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1 Thank you.

2 MS. KNOWLES: Thank you, Your Honor.

3 *****OFF THE RECORD*****

4 (On the Record.)

5 (REPORTER'S NOTE: The following takes place outside the
6 presence of the jury.)

7 THE COURT: Thank you. Good afternoon. I understand we
8 have a verdict.

9 Bring the jury in.

10 (REPORTER'S NOTE: The following takes place inside the
11 presence of the jury.)

12 THE COURT: Good afternoon, Madame Foreman, ladies and
13 gentlemen. It is my understanding that you have reached a
14 unanimous verdict. Is that so?

15 FOREMAN: Yes, sir.

16 THE COURT: If this be the unanimous verdict of all
17 jurors, please signify by raising your right hand.

18 (REPORTER'S NOTE: Jury unanimously raises right hands.)

19 THE COURT: The jury has so signified.

20 Madame Clerk, accept the verdict form.

21 Let me hold the indictment. Is the verdict written on
22 the back of the indictment?

23 FOREMAN: I wrote it back -- on the back of the same
24 page. I'm sorry; I misunderstood.

25 THE COURT: Have the Foreman write the verdict on the

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BY THE COURT AND MOTION

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1 back under the word "Verdict" and sign her name, please.

2 FOREMAN: (Complies with Court's request.)

3 THE COURT: Publish the verdict.

4 VERDICT OF THE JURY:

5 CLERK: Indictment Number 2012-GS-26-4383, State of South
6 Carolina, County of Horry, versus Robert D. Livingston. As to
7 Indictment 2012-GS-26-4383, burglary 2nd degree, We, the Jury,
8 unanimously find the Defendant Robert D. Livingston guilty of
9 burglary 2nd degree. Dated January 8th, 2013; signed by
10 foreperson Nicole Kocot.

11 Ladies and gentlemen of the Jury, if this is your verdict
12 so signify by raising your right hand.

13 (REPORTER'S NOTE: Jury unanimously raises right hands.)

14 CLERK: Thank you.

15 THE COURT: All right. Let me hear -- let the jury hear
16 any prior record of this Defendant.

17 MS. RICHARDSON: Yes, sir, Your Honor.

18 2005 possession with intent to distribute cocaine; 2006
19 unlawful removing of an airport facility with injury; 2007,
20 possession of marijuana, manufacturing, PWID, Schedule I, II,
21 III; 2010 possession of marijuana.

22 THE COURT: Thank you so much.

23 Madame Foreman, ladies and gentlemen, I have no comment
24 upon your verdict except to say that it was certainly
25 justified by the law and evidence in this case. I was

State v. Livingston - 2012-GS-26-04383
VERDICT OF THE JURY

88

1 thinking about it a moment ago, if I went home tonight to
2 Bennettsville, South Carolina, and as I entered my dwelling I
3 found that the door had been broken into and then as I entered
4 I saw someone who was in my house without permission and then
5 I learned that when I called the law he immediately ran, later
6 I learn that my wife's jewelry was stolen, I would be
7 concerned with law and order in Marlboro County if a jury did
8 not under that set of facts find him guilty. Your verdict was
9 obviously justified under these circumstances and it is my
10 sincere hope that a burglary shall never occur at your
11 dwelling.

12 I've found from my experience on the bench that once a
13 person's house has been burglarized, the lady of that house
14 never, ever again feels comfortable. So, burglary of a
15 residence is a serious, serious matter. None of you asked to
16 come to court this week and certainly you didn't ask to be on
17 this jury. Having done so, though, you have complied with
18 your oath of office to reach a verdict based on the law and
19 evidence in this case. This Court, this State and this
20 County, you have their gratitude for your help.

21 You are now dismissed to call in tonight after 6 o'clock
22 for further instructions but you're out for the day. It's
23 beautiful day outside, go out and enjoy it. Thank you.

24 Be sure and call in, though, tonight.

25 Thank you.

State v. Livingston - 2012-GS-26-04383
VERDICT OF THE JURY

89

1 (REPORTER'S NOTE: Jury is excused for the day and exits
2 courtroom.)

3 THE COURT: All right. Have the Defendant come around
4 for sentencing, please.

5 For the State, is there anything further?

6 MS. RICHARDSON: Your Honor, the only thing we would like
7 to put on record is that we initially offered Mr. Livingston
8 five years.

9 THE COURT: I'm not concerned with what you offered or
10 not offered. I'm concerned with the -- with what I have to do
11 but -- why do you tell me that?

12 MS. RICHARDSON: Your Honor, just that we arraigned him
13 on that and we told him that it wasn't gonna get any better
14 than that. That's all.

15 THE COURT: Okay. Well, that's fine. I was not part of
16 the arraignment.

17 MS. RICHARDSON: Yes, sir, Your Honor.

18 THE COURT: All right.

19 Ms. Knowles?

20 MS. KNOWLES: Your Honor, Mr. Livingston is thirty-three,
21 single and has one child who is eleven years old. He lives
22 with his grandmother and his mother and he works doing odd
23 jobs. This will be his first property offense. The last
24 conviction that he had of any significance was in 2006. I
25 would just ask that you take that into consideration and be as

State v. Livingston - 2012-GS-26-04383
BY THE COURT

90

1 lenient as possible. We would renew all motions that we made
2 previously.

3 THE COURT: I understand. Does he realize he's facing
4 fifteen years?

5 MS. KNOWLES: Ten years, Your Honor.

6 THE COURT: Pardon -- ten, rather.

7 MS. KNOWLES: I've explained that to him.

8 SENTENCE OF THE COURT:

9 THE COURT: Mr. Defendant, as you just heard me tell the
10 jury, when you invade the home of another person, they never
11 feel the same about the sanctity of their "castle"; they bear
12 that burden for the rest of their lives. And so it is, I tell
13 you and all of those who continue to rob residences, it's a
14 serious, serious charge.

15 The sentence of this Court is that you be confined for a
16 period of seven years.

17 Thank you.

18 MS. KNOWLES: Thank you very much, Your Honor. And he
19 will receive credit for any time served?

20 THE COURT: I'll give him credit for time served; he's
21 entitled to that.

22 MOTION:

23 MS. KNOWLES: And I would like to make a motion for a new
24 trial, just for the record.

25 THE COURT: I note your motion and respectfully deny it.

State v. Livingston - 2012-GS-26-04383
SENTENCE OF THE COURT

91

1 The evidence, Ms. Knowles, you handled it well considering but
2 as I indicated, given the situation, like in my county, in
3 this case it was an obvious breaking and entering. It was
4 obvious without consent. It was obvious that it was this
5 Defendant who was known, he ran when they started to call the
6 law and then there was some evidence that there was some
7 jewelry taken later. Whether it was taken or not is not
8 important with regards to intent because he may've been found
9 in there before he had the chance to steal, but the evidence
10 is just simply overwhelming. But I think you for your
11 services to the State.

12 MS. RICHARDSON: Thank you, Your Honor.

13 THE COURT: All right.

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15 (Adjourned.)

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State v. Livingston - 2012-GS-26-04383
MOTION

92

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2

State v. Livingston - 2012-GS-26-04383
CERTIFICATE OF COURT REPORTER

93

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the plea held in the case of The State versus Robert Livingston, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on January 8, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson, CVR
Official Reporter

February 27, 2013.

ARREST WARRANT

M-973598

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

against

Robert Dewayne Livingston

Address

Longs, SC 29568-7318

Phone _____ SSN _____

Sex. M Race _____ Height: 5 10 Weight 130DL State SC DL # _____DOB. _____ Agency ORI # SC0260400Prosecuting Agency Horry County Police DepartmentProsecuting Officer Gregory Camp - 2111Offense Burglary / Burglary (Non-Violent) - Second degreeOffense Code 0080Code/Ordinance Sec 16-11-0312

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law

(L.S.)

Signature of Judge

Date _____

RETURN

A copy of this arrest warrant was delivered to

defendant

on

8/2/12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

General Sessions

PO Box 677

1301 2nd Avenue

Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Gregory Campbeing duly sworn deposes and says that defendant Robert Dewayne Livingstondid violate the criminal laws of the State of South Carolina (or ordinance of 7/21/2012)in the following particulars: ☒ County/ ☐ Municipality of HorryDESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

On July 7, 2012 in the Little River section of Horry County the Defendant did pry open the back door and enter the victim's residence with the intent to burglarize. The Defendant quickly left after the victim returned home and confronted the Defendant.

R/O Manjarrez

Case # 12067921

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N Main StreetConway, SC 29526-Affiant's Telephone (843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY.

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/21/2012 defendant Robert Dewayne Livingston

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry) as set forth belowDESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

Having found probable cause and the above defendant is in violation of the law, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 7/21/2012

Signature of Issuing Judge

Bradley Dwyer Mayers

Judge Code 5081Judge's Address 1201 Third AvenueConway, SC 29526-5105Judge's Telephone (843)915-5290Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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AFFIDAVIT

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Form Approved by
U.S. Attorney General
April 21, 2005
60CA 518

2013 JAN 10 PM 2:29

CERTIFIED COPY

CLERK OF COURT
HORRY COUNTY2013 JAN 10 PM 2:28
MELANIE HUGGINS-WARD
CLERK OF COURT

U. S. DEPARTMENT OF JUSTICE
 FEDERAL BUREAU OF INVESTIGATION
 JAN 10 PM 5:58
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WITNESSES

Joseph Manjarrez Horry County Police
Department

DOCKET NO. 2012-GS-26- 04383

FILED
HORRY COUNTY
The State of South Carolina
2013 JAN 10 PM 2:28
County of Horry
MELANIE HUGGINS-WARD
Clerk of Court
Lauree Richardson
12H03620

CERTIFIED COPY
2013 JAN 10 PM 2:29
Melanie Huggins-ward
CLERK OF COURT
HORRY COUNTY

COURT OF GENERAL SESSIONS

October, 2012 TERM

ARREST WARRANT NUMBER

M973598
CDR 0080 16-11-0312
DOA 8/3/2012

THE STATE

vs.

Robert Dewayne Livingston
/ M

Longs, SC 29568-7318
DOB:
SSN:

ATTORNEY: Knowles, Melinda

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date OCT 25 2012

VERDICT

Guilty
Nicole King

Foreperson of Petit Jury
Date.

Indictment for

Burglary, Second Degree
(Non Violent)

J. Gregory Hembree, Solicitor

ORIGINAL

[illegible]

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Figure 1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

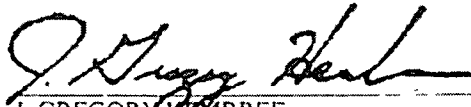
At a Court of General Sessions, convened on October 25, 2012, the Grand Jurors of Horry County present upon their oath:

BURGLARY, SECOND DEGREE
(NON-VIOLENT)

CDR: 0080 16-11-0312

That Robert Dewayne Livingston did in Horry County on or about July 7, 2012, enter without consent and with the intent to commit a crime therein, the dwelling of Kenneth Cox, located at _____ Rd., Little River, in violation of Section 16-11-0312, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

2013 JAN 10 PM 2:29
 CERTIFIED COPY
 Melanie Huggins
 CLERK OF COURT
 HORRY COUNTY

FILED
 HORRY COUNTY
 2013 JAN 10 PM 2:28
 MELANIE HUGGINS
 CLERK OF COURT

03 JAN 10 PM 5:50
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STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF HORRY)

INDICTMENT NO. 2012-GS-26-04383

State of South Carolina,)

v.)

Robert D. Livingston,)

VERDICT

Defendant.)
_____)FILED
HORRY COUNTY
2013 JAN 10 PM 2:28
MELANIE HUGGINS-WARD
CLERK OF COURT

AS TO INDICTMENT NUMBER 2012 – GS – 26 – 04383:

BURGLARY, SECOND DEGREE

(Check only ONE box of the two)

✓ We, the jury, unanimously find the defendant, Robert D. Livingston,
GUILTY of Burglary, Second Degree.

OR

_____ We, the jury, unanimously find the defendant, Robert D. Livingston,
NOT GUILTY of Burglary, Second Degree.Date 1/8/13
Conway, SCNicole [Signature]
Foreperson

2013 JAN 10 PM 2:29

CERTIFIED COPY

FILE
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 CLEVERLY C. 1841
 NEW YORK N. Y.

1037W10 645:58
 CLEVERLY C. 1841
 NEW YORK N. Y.

102 OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS

Robert Dewayne Livingston

AKA

Race

Sex M

Age

33

DOB

SS#

Address

City, State, Zip

Longs, SC 29568-7318

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 (Non-Violent) - Second degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2604383

A/W# M973598

Date of Offense 7/21/2012

S.C Code § 16-11-0312

CDR Code # 0080

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0312 of the S C Code of Laws bearing CDR Code # 0080

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant initials)

The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Richardson, Lauree

SCB76142

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 7 days/months/years or ☐ under the Youthful Offender Act not to exceed 7 years

and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on

☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def Prob)

§ 14-1-212 (Law Enforce Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

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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 \$ 25.00 beginning 02/08/2020

\$ _____ paid to Public Defender Fund

Other _____

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Melanie Huggins-Ward
Ray Richardson

Presiding Judge

Judge Code

Sentence Date

2011
01/08/13

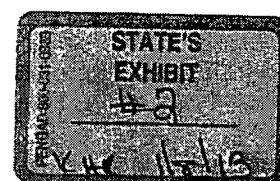
CLERK OF COURT
HORRY COUNTY

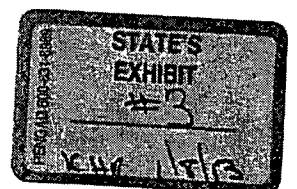
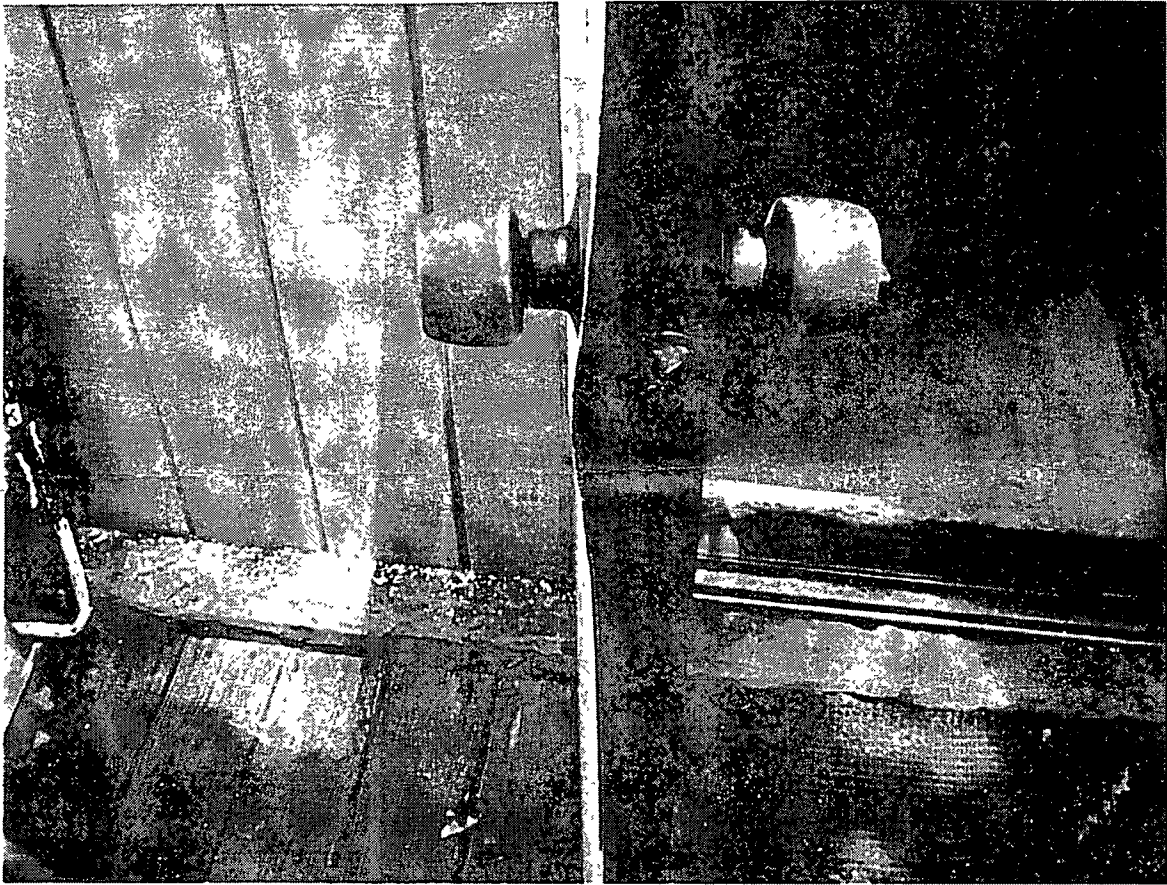
☐ Appointed PD or appointed other counsel
§ 47-12 requires \$500 be paid to Clerk during probation

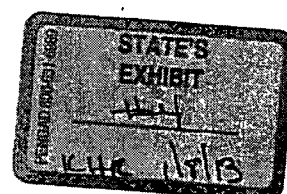
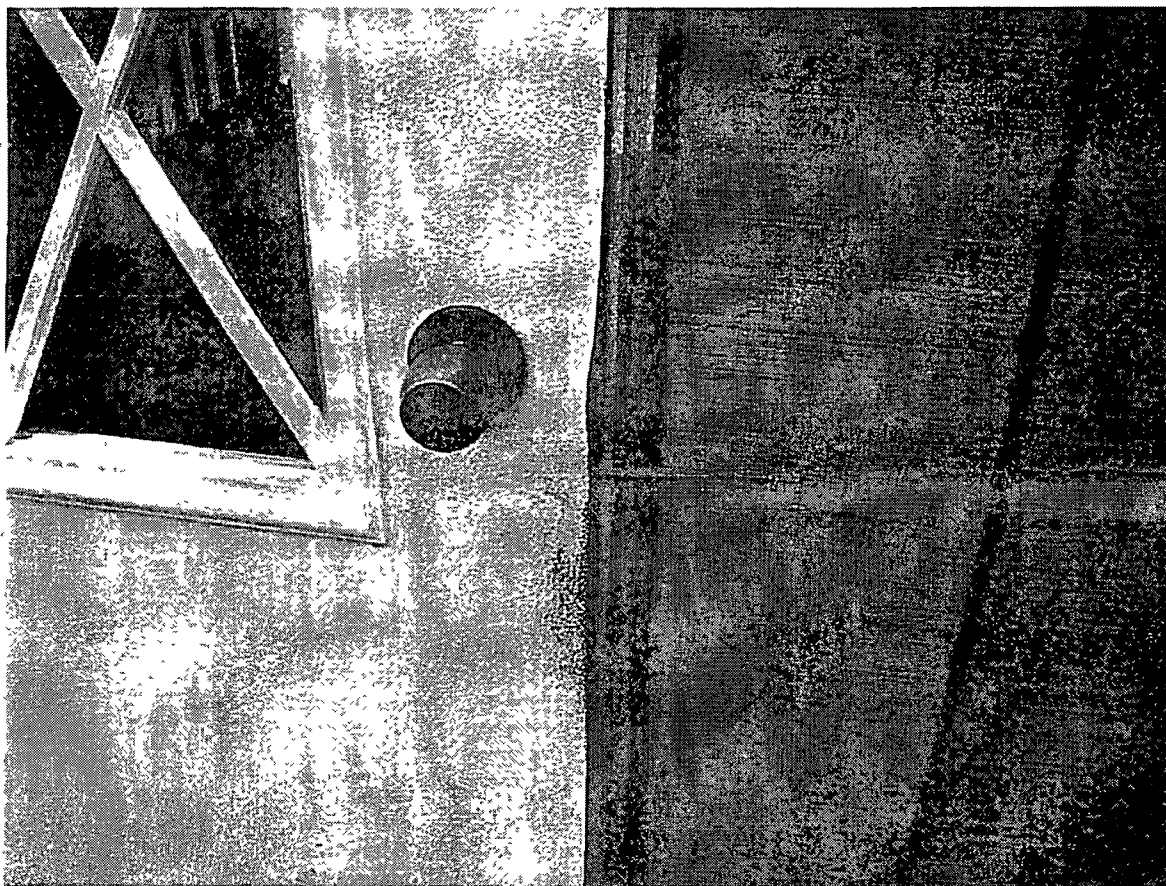
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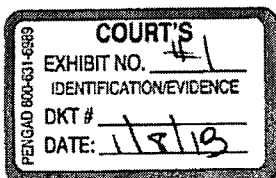
Jury Question:

What if we cannot reach a unanimous decision?

Nicola Kost.
(forelady)

We will continue deliberations this afternoon and tomorrow if necessary

Ernest Caputo
sche



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."

October 11th, 2013



Carmen V. Ganjehsani
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