

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge

MICHAEL A. MANIGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001597

APPENDIX

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

The State,)
-vs-) TRANSCRIPT OF RECORD
Michael Anderson Manigan,) 2011-GS-42-3015, -3016
Defendant.) January 14, 15 and 16, 2013
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury

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

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Attorney for the State

RICHARD H. WHELCHER, ESQUIRE
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

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JURY QUALIFICATION

1 (Proceedings January 14, 2013)

2 THE COURT: Alright, the State vs. Michael Anderson
3 Manigan is the first case up. Any matters we need to address
4 before the jury panel is brought around?

5 MS. POULOS: None from the State, Your Honor.

6 MR. WHELCHER: No, sir.

7 THE COURT: Alright, bring 'em around, please. For the
8 benefit of the interns, once the jury's selected ya'll can go
9 back and have a seat in the audience anywhere you want to.

10 UNIDENTIFIED MAN: Yes, sir.

11 (Pause.)

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

14 THE COURT: Ladies and gentlemen, thank you for your
15 patience. We are ready to begin with jury selection in the
16 first case that's going to require some of your participation.
17 The title of that case is the State vs. Michael Anderson
18 Manigan. Mr. Manigan has been accused by the State through
19 the prosecutor of having committed the crimes of burglary in
20 the first degree and grand larceny. When charges are brought
21 into this court, they're brought by way of documents that are
22 referred to as "indictments". The indictments are simply the
23 charging paper, they set forth the charge brought against the
24 defendant. In this case as I've stated the defendant is
25 accused of having committed the crimes of burglary in the

JURY QUALIFICATION

1 first degree and grand larceny. The State alleges by way of
2 this indictments that Michael Anderson Manigan did here in
3 Spartanburg County on or about December the 11th of 2010
4 wilfully and intentionally enter a dwelling that belonged to
5 Elizabeth Ann Vandahm located on Carlisle Street here in the
6 City of Spartanburg, that he entered that dwelling without
7 consent and with the intent to commit a crime therein. They
8 also allege that after entering the dwelling he did take,
9 steal and carry away the personal property of Elizabeth Ann
10 Vandahm valued at more than \$2,000, the property being
11 described as jewelry, a computer and a printer. Now as to
12 those charges and and as to those allegations, the defendant
13 has entered a plea of not guilty. A plea of not guilty places
14 upon the State because they brought the charges against the
15 defendant to establish the allegations they've set forth in
16 the indictments, to establish each of the essential elements
17 of the crimes that have been alleged against the defendant
18 and, therefore, the burden is upon the State to establish his
19 guilt to the satisfaction of twelve jurors beyond a reasonable
20 doubt before any verdict of guilty could be returned, we're
21 therefore gonna be selecting the thirteen of you, there'll be
22 twelve primary jurors and one additional juror to serve as an
23 alternate, and by way of your participation you're simply
24 gonna be called upon to consider all of the testimony and
25 evidence received durin' the trial of the case, upon

JURY QUALIFICATION

1 consideration of that evidence you'll decide what you believe
2 to be the true facts as they relate to these allegations, once
3 you decide those facts you'll apply the law that I will have
4 provided ya and you twelve jurors will then determine whether
5 or not the defendant's guilt has been proven beyond a
6 reasonable doubt. Now if it has been proven then your verdict
7 would be guilty, if it has not been proven then your verdict
8 would be not guilty.

9 Before we begin with the jury selection I've got some
10 questions to ask ya, the purpose of the questions is to
11 determine whether or not you have some reason why you should
12 not be selected to participate in the trial of this particular
13 case and so as these questions are asked should you need to
14 respond to them I'll ask that you please stand and I'll
15 address those matters with you individually in the event that
16 should become necessary. The first thing I will do is to
17 introduce some people to ya, those people will include the
18 defendant, the persons alleged to be the victim, the lawyers
19 and any potential witness that might be called to testify
20 durin' the course of the trial and the reason I'm introducin'
21 these people to ya is because I need to find out if you're
22 connected by way of blood or marriage to any person involved
23 in the trial of this case in any capacity and to find out if
24 you are if that would affect your judgment in any way, so as
25 these people are identified if you are related to them by

JURY QUALIFICATION

1 blood or marriage or you have any close, personal or social
2 relationship, do ya work with 'em, do ya socialize with 'em,
3 do ya go to school with 'em, do you go to church with 'em or
4 do you have any connection with 'em whatsoever I'll ask you
5 that indicate that by standing and I'll address that
6 connection and determine whether or not it would affect your
7 judgment in the case.

8 First of all, as I've told ya the defendant, the person
9 who is accused of having committed the crime of burglary and
10 larceny, is Michael Anderson Manigan. Mr. Manigan, if you'll
11 stand and face the jury panel please, sir.

12 (Whereupon, the defendant complied.)

13 THE COURT: Thank you, be seated. Mr. Manigan is
14 represented in this case by Richard Whelchel (stood), he's his
15 lawyer, he'll be assisting him durin' the course of the trial.
16 The persons who are alleged to be the victims of the burglary
17 and the larceny are Richard Vandahm and Elizabeth Ann Vandahm
18 so I'll ask each of those to please stand and face the jury
19 panel so that they may see who you are.

20 (Whereupon, the victims complied.)

21 THE COURT: Thank you, be seated. The State is
22 represented by Timi Poulos (stood), she's an assistant circuit
23 solicitor of the Seventh Judicial Circuit. In addition to
24 those who have already been identified or introduced,
25 potential witnesses in this case include Christy Holcombe, a

JURY QUALIFICATION

1 resident of Duncan, South Carolina, if you'll stand and face
2 the jury panel if you're present (stood); Charles Edward Hair,
3 Spartanburg Public Safety Department (stood), Louis Nelson,
4 Spartanburg Public Safety Department (stood), Lou Jones,
5 Spartanburg Public Safety Department; Courtney Westfall
6 Burgess, Spartanburg Public Safety Department; Kimberly
7 Ashley, Spartanburg Detention Facility; and Gail Moffitt or
8 some other person employed as a clerk in the Spartanburg
9 County Clerk of Court's office. In addition to those we have
10 Johnnie Williams, what's Mr. Williams connection with your
11 case?

12 MR. WHELCHER: He's a potential witness for the defense,
13 Your Honor. He works for E-Z Pawn, Your Honor.

14 THE COURT: Okay, and Johnnie Williams who's employed at
15 E-Z Pawn. Does any member of the jury panel know anybody
16 who's been introduced to ya, do ya have any connection with
17 'em and also as I ask that question I want to include in your
18 knowledge of any witness or person connected with the case any
19 person employed in the Seventh Judicial Circuit Solicitor's
20 office or the Seventh Judicial Circuit Public Defender's
21 office, I need to know if you know anybody who's been
22 introduced as well as any other person that's employed in
23 either of those two offices, if so please stand.

24 THE COURT: Alright, I've got, uh, alright, I need
25 everybody to stand that needs to respond to that question.

JURY QUALIFICATION

1 Alright, I'll start on this row closest to me and work my way
2 back. I'll start to my right, working my way up. If you'll
3 give me your name, your juror number please, ma'am.

4 JUROR NUMBER 89: Patricia Lee, Juror Number 89. My
5 niece Christy Bell Lindsey works for the solicitor's office.

6 THE COURT: Alright, would that have any bearing upon
7 your decision in the case?

8 JUROR NUMBER 89: No.

9 THE COURT: Thank you, be seated. Yes, sir.

10 JUROR NUMBER 151: Tommy Stribble, 151. I know Solicitor
11 Barry Barnette. I used to officiate football and basketball
12 with him.

13 THE COURT: Would that have any bearing upon your
14 decision ---

15 JUROR NUMBER 151: No, sir. No, sir.

16 THE COURT: Thank you, be seated. Yes, sir.

17 JUROR NUMBER 75: Lee Jeffcoat -- sorry, Ashley Jeffcoat,
18 Juror 75. Uh, Mr. Whelchel there handled, uh, my will and
19 child support calculation about a decade ago.

20 THE COURT: And would that have any bearing upon your
21 decision?

22 JUROR NUMBER 75: No, sir.

23 THE COURT: Thank you, be seated. Yes, ma'am.

24 JUROR NUMBER 91: Luann Lester, Juror 91. Um, I take
25 care of, uh, I'm a nurse at the Spartanburg County Weight

JURY QUALIFICATION

1 Health Clinic and have taken care of some of the, uh, police
2 here.

3 THE COURT: Would that have any bearing upon your
4 decision in this case?

5 JUROR NUMBER 91: No.

6 THE COURT: Thank you, be seated. Now these are events
7 which the State alleges occurred back on December the 11th
8 2010 and they are alleged to have occurred at the Vandahm
9 residence located on Carlisle Street here in the City of
10 Spartanburg. Carlisle Street is about two blocks south of the
11 main post office, it's on, uh, on Church Street. Does any
12 member of the jury panel believe that you may have heard, seen
13 or read some facts that might relate to this particular case?
14 In other words, have you been exposed to any information that
15 relates to this particular case from any person or any other
16 source, if so please stand?

17 (No response.)

18 THE COURT: Is there anything about the nature of the
19 charge itself, that is, what the allegations are that have
20 been made against the defendant that would affect any juror's
21 ability to be fair and impartial if you were called upon to
22 serve as a juror in the case, if so please stand?

23 (No response.)

24 THE COURT: Has any member of the jury panel or any
25 member of your immediate family, and I'm going to define an

JURY QUALIFICATION

1 immediate family member as a parent, a spouse, a child or a
2 sibling, a parent, spouse child or a sibling, I need to know
3 if you or any members of your immediate family have ever been
4 the victim of or have ever been accused of committing any type
5 of similar criminal offense as alleged in this case. I need
6 to know if you've been the victim of or you or a family member
7 has ever been accused of having committed any type of crime
8 that will be akin to burglary or larceny or stealing, if so
9 please stand. Alright, I'll work to my right, I'll work to
10 my -- I'll work to my left; I'll start on the first row, work
11 back to the back row. If you'll give me your name and juror
12 number again, 151.

13 JUROR NUMBER 151: Tommy Stribble, 151. Uh, my house was
14 burglarized, I live in Cross Anchor, about fifteen years
15 ago.

16 THE COURT: And would that personal experience have any
17 bearing upon your decision in this case?

18 JUROR NUMBER 151: No, sir.

19 THE COURT: Thank you, be seated. Yes, ma'am?

20 JUROR NUMBER 148: I'm Juror 148, Marander Spencer. Um,
21 my husband was, uh, found guilty I guess. It's -- it was
22 prior to me meeting him of I think burglary burglary and, uh,
23 larceny.

24 THE COURT: Alright, and would that fact have any bearing
25 upon your decision in this case?

JURY QUALIFICATION

1 JUROR NUMBER 148: No, sir.

2 THE COURT: Thank you, be seated. Yes, sir?

3 JUROR NUMBER 94: Number 94, I had personal property
4 stolen outta my barn 'bout eight years ago.

5 THE COURT: Would that have any bearing upon your
6 decision in this case?

7 JUROR NUMBER 94: No, sir.

8 THE COURT: Thank you, be seated. Next.

9 JUROR NUMBER 116: Thad Thad Owens, 116. Uh, my son has
10 been charged with third burglary.

11 THE COURT: And would that have any bearing upon your
12 decision in this case?

13 JUROR NUMBER 116: No, sir.

14 THE COURT: Thank you, be seated. Yes, sir?

15 JUROR NUMBER 159: Dave Tschappat, Juror 159. About
16 twenty years ago, uh, my wife and I had our belongings stolen
17 from a locker and a police report.

18 THE COURT: And would that have any bearing upon your
19 decision in this case?

20 JUROR NUMBER 159: No.

21 THE COURT: Thank you, be seated. First row.

22 JUROR NUMBER 21: Wendy Burch, Number 21. My
23 son...larceny.

24 THE COURT: A a victim or accused?

25 JUROR NUMBER 21: Accused.

JURY QUALIFICATION

1 THE COURT: Alright, would that have any bearing upon
2 your decision?

3 JUROR NUMBER 21: No, sir.

4 THE COURT: Thank you, be seated. Next row.

5 JUROR NUMBER 63: Uh, Number 63, David Hill. My, uh,
6 sister's house was actually broken into not too long ago ---

7 THE COURT: Okay.

8 JUROR NUMBER 63: --- and had things stolen.

9 THE COURT: And would that have any bearing upon your
10 decision?

11 JUROR NUMBER 63: Yes, yes, it would.

12 THE COURT: Alright, we'll excuse you from service in the
13 trial of this case but don't leave yet. Next.

14 JUROR NUMBER 113: Sue Nguyen, Jurior [sic] 113. I had a
15 daughter to serve time in prison for a shoplifting along with
16 some other charges.

17 THE COURT: And would that have any bearing upon your
18 decision?

19 JUROR NUMBER 113: No, sir.

20 THE COURT: Thank you, be seated. Yes, ma'am?

21 JUROR NUMBER 147: Number 147, Deborah Sparrow. About
22 ten years ago I had an acquaintance that stole from me.

23 THE COURT: And would that have any bearing upon your
24 decision in this case?

25 JUROR NUMBER 147: No, sir.

JURY QUALIFICATION

1 THE COURT: Thank you, be seated. Yes, sir?

2 JUROR NUMBER 51: James Gibert, uh, family's had multiple
3 break-ins and whatnot in in the family farm and other places,
4 uh, um, that we know and it would have a -- my opinions are
5 are affected by it.

6 THE COURT: Alright, well what's your juror number?

7 JUROR NUMBER 51: Fifty-one.

8 THE COURT: Alright, we'll excuse you from service in the
9 trial of the case. Next.

10 JUROR NUMBER 130: Um, Juror 130, Dawn Richards. Uh,
11 'bout eight years ago my family member broke in my house, um,
12 kicked the doors in and stole quite a bitta stuff but that
13 would ---

14 THE COURT: That ---

15 JUROR NUMBER 130: --- not affect my ---

16 THE COURT: --- that experience with not affect your
17 judgment?

18 JUROR NUMBER 130: (Nodded in the negative.)

19 THE COURT: Okay, thank you, you may be seated. Anyone
20 else need to respond to that question? Does any member of the
21 jury panel belong or are you a member of any type of
22 organization that might be classified as law enforcement
23 support or victim's support or victim's rights or advocacy
24 groups for victim's rights? I need to know if you belong to
25 any such organizations or you contribute time or money to any

JURY QUALIFICATION

1 of those types of organizations and those organizations might
2 include associations such as Mothers Against Drunk Drivers,
3 Citizens Against Violent Crime, the South Carolina Trooper's
4 Association, the Honorary Sheriff's Association, the Fraternal
5 Order of Police, the Police Benevolent Society, the, uh, or
6 any other similar type of organization. Do you belong to any
7 or do you contribute time or money to any of those
8 organizations, if so please stand?

9 (No response.)

10 THE COURT: Has any member of the jury panel ever been
11 called to testify as a witness in the trial of a criminal case
12 whether you were called by the State or the prosecution or
13 whether you were called by a defendant or defense counsel,
14 have ya ever been called to testify as a witness in the trial
15 of a criminal case, if so please stand? Alright, and you're
16 Juror Number 75?

17 JUROR NUMBER 75: Yes, sir.

18 THE COURT: And were you called by the State or by a
19 defendant?

20 JUROR NUMBER 75: I have served twenty-eight years in the
21 fire service and I've been called a couple a times on fire-
22 related incidents.

23 THE COURT: Okay.

24 JUROR NUMBER 75: I was a witness called on the, uh,
25 4-day, um, Freedom Information, uh, trial that happened about

JURY QUALIFICATION

1 two or three years ago also.

2 THE COURT: Okay, thank you, sir, you may be seated. Has
3 any member of the jury panel or any member of your immediate
4 family as I've already defined that term for ya ever been
5 employed as any type of law enforcement officer whether it be
6 civilian or military? Have you or a family member ever been
7 employed as a law enforcement officer, that includes deputy
8 sheriffs, city police officers, town and municipal law
9 enforcement officers, probation officers, detention facility
10 officers, State Law Enforcement Division, Federal Bureau of
11 Investigation or any other Department of Pa -- Parole and
12 Pardon Services, any type of law enforcement officer, if so
13 please stand? Yes, ma'am, your name and number, please.

14 JUROR NUMBER 107: Kathy Miller, 107.

15 THE COURT: And how does that question relate to you?

16 JUROR NUMBER 107: I was a juvenile detention officer and
17 my father was a SLED agent.

18 THE COURT: Alright, would that have any bearing upon
19 your decision?

20 JUROR NUMBER 107: No, sir.

21 THE COURT: Thank you, be seated. Yes, sir?

22 JUROR NUMBER 102: Lonnie Mcmanus, Juror Number 102. My
23 father is retired from the State Department of Corrections.

24 THE COURT: Would that have any bearing upon your
25 decision?

JURY QUALIFICATION

1 JUROR NUMBER 102: No, sir.

2 THE COURT: Thank you, be seated. Has any member of the
3 jury panel already formed an opinion as to how you think the
4 case oughta be decided based upon what you've heard up to this
5 point or based upon any other consideration, have you --
6 simply put have you already made up your mind as to the
7 outcome, if so please stand?

8 (No response.)

9 THE COURT: Does any juror know of any reason whatsoever
10 why you believe you could not be fair and impartial if called
11 upon to serve as a juror in this particular case, if so please
12 stand?

13 (No response.)

14 THE COURT: Any other question requested by the State?

15 MS. POULOS: No, sir, Your Honor.

16 THE COURT: By the defendant?

17 MR. WHELCHER: None, Your Honor.

18 THE COURT: Alright. We're gonna select a jury. Now the
19 computer draws the names and juries are selected differently
20 in civil court than they are in criminal court. In civil
21 court your names are on a list and the lawyers strike from the
22 list and then those who are selected are called out and have a
23 seat in the jury box; in criminal court your names will be
24 called out one at a time, you'll be asked to come forward.
25 You see the desk where the lawyers are seated, if you'll just

JURY QUALIFICATION

1 take about two paces towards me from those desks, turn and
2 face your fellow jurors, each side has the opportunity to
3 excuse you from serving in the case or to have you seated for
4 service in the case. If either ask that you be excused, just
5 go back and have a seat where you are now. If both agree to
6 have you seated for service in the case then you'll be having
7 a seat in that jury box to my left and to your right so please
8 come forward as your name is called and you'll be instructed
9 if you're to be seated for service in the case or excused from
10 service. If you're closer to the middle aisle, you can just
11 come up the mid -- middle aisle. If you're closer to the
12 wall, you can come around the desk where the lawyers are
13 seated but take your stance in the same place I've asked.

14 THE CLERK: Juror 78, Elizabeth Jones.

15 (Elizabeth Jones, a white female came forward.)

16 THE CLERK: What say the State?

17 MS. POULOS: Please present the juror.

18 THE CLERK: What say the defense?

19 MR. WHELCHEL: Please seat the juror.

20 THE BAILIFF: Right this way, please.

21 THE CLERK: Juror 145, Renee Smith.

22 (Renee Smith, a white female came forward.)

23 (Whereupon, a discussion was held off the record.)

24 THE CLERK: What say the State?

25 MS. POULOS: Please present the juror.

JURY QUALIFICATION

1 THE CLERK: What say the defense?
2 MR. WHELCHER: Please seat the juror.
3 THE BAILIFF: This way, please. Front row, please.
4 THE CLERK: Juror 14, Jeremy Blain.
5 (Jeremy Blain, a white male came forward.)
6 THE CLERK: What say the State?
7 MS. POULOS: Please present the juror.
8 THE CLERK: What say the defense?
9 MR. WHELCHER: Please excuse the juror from the trial of
10 this case.
11 THE BAILIFF: Go back there.
12 THE CLERK: Juror 49, Marilyn Gregory.
13 (Marilyn Gregory, a white female came forward.)
14 THE CLERK: What say the State?
15 MS. POULOS: Please present the juror.
16 THE CLERK: What say the defense?
17 MR. WHELCHER: Please seat the juror.
18 THE BAILIFF: Right this way, please. Front row.
19 THE CLERK: Juror 82, Kinange [sic] Kemp.
20 (Kiang Kemp, a black female came forward.)
21 THE CLERK: What say the State?
22 MS. POULOS: Please present the juror.
23 THE CLERK: What say the defense?
24 MR. WHELCHER: Please seat the juror.
25 THE BAILIFF: Right this way, please. Down in the front

JURY QUALIFICATION

1 row, please.

2 THE CLERK: Juror 163, Mark Van.

3 (Mark Van, a white male came forward.)

4 THE CLERK: What say the State?

5 MS. POULOS: Please present the juror.

6 THE CLERK: What say the defense?

7 MR. WHELCHER: Please excuse the juror from the trial of
8 this case.

9 THE CLERK: Juror 86, David Kuhn.

10 (David Kuhn, a white male came forward.)

11 THE CLERK: What say the State?

12 MS. POULOS: Please present the juror.

13 THE CLERK: What say the defense?

14 MS. POULOS: Please seat the juror.

15 THE CLERK: Juror 17, Gary Braja.

16 (Gary Braja, a white male came forward)

17 THE CLERK: What say the State?

18 MS. POULOS: Please present the juror.

19 THE CLERK: What say the defense?

20 MR. WHELCHER: Please excuse the juror from the trial of
21 this case.

22 THE CLERK: Juror 59, Kathy Harper.

23 (Kathy Harper, a white female came forward.)

24 THE CLERK: What say the State?

25 MS. POULOS: Please present the juror.

JURY QUALIFICATION

1 THE CLERK: What say the defense?

2 MR. WHELCHER: Please seat Ms. Harper.

3 THE BAILIFF: Have a seat on the front row.

4 THE CLERK: Juror 134, Wilda Rolen.

5 MS. POULOS: I'm sorry, what number was that?

6 THE CLERK: Um, 134.

7 MS. POULOS: I'm sorry.

8 (Wilda Rolen, a white female came forward.)

9 THE CLERK: What say the State?

10 MS. POULOS: Please present the juror.

11 THE CLERK: What say the defense?

12 MR. WHELCHER: Please excuse Ms. Rolen from the trial of
13 this case.

14 THE CLERK: Juror 109, James Moore.

15 (James Moore, a white male came forward.)

16 THE CLERK: What say the State?

17 MS. POULOS: Please present the juror.

18 THE CLERK: What say the defense?

19 MR. WHELCHER: Please excuse Mr. Moore from the trial of
20 this case.

21 THE CLERK: Juror 28, Terry Childress.

22 (Terry Childress, a white male came forward.)

23 THE CLERK: What say the State?

24 MS. POULOS: Please excuse this juror.

25 THE CLERK: Juror 113, Sue Ann Nygen [sic].

JURY QUALIFICATION

1 (Sue Ann Nguyen, a white female came forward.)
2 THE CLERK: What say the State?
3 MS. POULOS: Please excuse this juror.
4 THE BAILIFF: Back there (indicating).
5 THE CLERK: Juror 175, Doffus Williams.
6 (Doffus Williams, a white male came forward.)
7 THE CLERK: What say the State?
8 MS. POULOS: Please present the juror.
9 THE CLERK: What say the defense?
10 MR. WHELCHER: Please seat Mr. Williams.
11 THE BAILIFF: Come this (indicating) way.
12 (Whereupon, a discussion was held off the record.)
13 THE CLERK: Juror 19, Dillon Bryant.
14 (Dillon Bryant, a white male came forward.)
15 THE CLERK: What say the State?
16 MS. POULOS: Please excuse the juror.
17 THE CLERK: Juror 171, Lisa Wheeler.
18 (Lisa Wheeler, a black female came forward.)
19 THE CLERK: What say the State?
20 MS. POULOS: Please excuse the juror.
21 THE CLERK: Juror 102, Lonnie Mcmanus.
22 (Lonnie Mcmanus, a white male came forward.)
23 THE CLERK: What say the State?
24 MS. POULOS: Please present the juror.
25 THE CLERK: What say the defense?

JURY QUALIFICATION

1 MR. WHELCHER: Please excuse Mr. Mcmanus from the trial
2 of this case.

3 THE CLERK: Juror 121, Deborah Pearson.

4 (Deborah Pearson, a white female came forward.)

5 THE CLERK: What say the State?

6 MS. POULOS: Please excuse this juror.

7 THE CLERK: Juror 72m Donna Jackson.

8 (Donna Jackson, a black female came forward.)

9 THE CLERK: What say the State?

10 MS. POULOS: Please present the juror.

11 THE CLERK: What say the defense?

12 MR. WHELCHER: Please seat Ms. Jackson.

13 THE BAILIFF: Right here (indicating). Not up here
14 (indicating). Down the second row, please.

15 THE CLERK: Juror 89, Patricia Lee.

16 (Patricia Lee, a white female came forward.)

17 THE CLERK: What say the State?

18 MS. POULOS: Please present the juror.

19 THE CLERK: What say the defense?

20 MR. WHELCHER: Please excuse the juror from the trial of
21 this case.

22 THE CLERK: Juror 38, Roddrick Durrah.

23 (Roddrick Durrah, a black male came forward.)

24 THE CLERK: What say the State?

25 MS. POULOS: Please present juror.

JURY QUALIFICATION

1 THE CLERK: What say the defense?

2 MR. WHELCHER: Please seat juror.

3 THE BAILIFF: Here (indicating), sir. Right here
4 (indicating). Down the second row, please.

5 THE CLERK: Juror 126, Candi Reece.

6 (Candi Reece, a black female came forward.)

7 THE CLERK: What say the State?

8 MS. POULOS: Please present the juror.

9 THE CLERK: What say the defense?

10 MR. WHELCHER: Please seat Ms. Reece.

11 THE BAILIFF: Down the second row, please.

12 THE CLERK: Juror 151, Tommy Stribble.

13 (Tommy Stribble, a white male came forward.)

14 THE CLERK: What say the State?

15 MS. POULOS: Please present the juror.

16 THE CLERK: What say the defense?

17 MR. WHELCHER: Please seat Mr. Stribble.

18 THE BAILIFF: Second row, please.

19 THE CLERK: Juror 124, John Prochak.

20 (John Prochak, a white male came forward.)

21 THE CLERK: What say the State?

22 MS. POULOS: Please present the juror.

23 THE CLERK: What say the defense?

24 MR. WHELCHER: Uh, please excuse the gentleman from the
25 trial of this case.

JURY QUALIFICATION

1 THE CLERK: Juror 160, Lewis Turner.

2 (Lewis Turner, a white male came forward.)

3 THE CLERK: What say the State?

4 MS. POULOS: Please present the juror.

5 THE CLERK: What say the defense?

6 MR. WHELCHER: Please seat Mr. Turner.

7 THE CLERK: And for the alternate, Juror 75, Ashley
8 Jeffcoat.

9 (Ashley Jeffcoat, a white male came forward.)

10 THE CLERK: What say the State?

11 MS. POULOS: Please excuse this juror.

12 THE BAILIFF: Go on back.

13 THE CLERK: Juror 115, James Osterfoss.

14 (James Osterfoss, a white male came forward.)

15 THE CLERK: What say the State?

16 MS. POULOS: Please present this juror.

17 THE CLERK: What say the defense?

18 MR. WHELCHER: Uh, please excuse the gentleman from the
19 trial of this case.

20 THE CLERK: Juror 157, Mary Thor.

21 (Mary Thor, an Asian female came forward.)

22 THE CLERK: What say the State?

23 MS. POULOS: Please present the juror.

24 THE CLERK: What say the defense?

25 MR. WHELCHER: Please seat the lady.

JURY QUALIFICATION

1 THE BAILIFF: Right here (indicating).

2 THE COURT: Let's have one more alternate.

3 THE CLERK: Yes, sir. For the second alternate, Juror
4 45, Jennifer Fowler.

5 (Jennifer Fowler, a black female came forward.)

6 THE CLERK: What say the State?

7 MS. POULOS: Please present the juror.

8 THE CLERK: What say the defense?

9 MR. WHELCHER: Please seat the lady.

10 (Whereupon, a discussion was held off the record.)

11 THE CLERK: Jury selection has been completed.

12 THE COURT: Alright, those who have been selected I'll
13 ask you to please go with the bailiff to a jury room and I'll
14 bring you back in just a few minutes.

15 THE BAILIFF: Follow me, please.

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

18 THE COURT: Are there any matters that need to be
19 addressed regarding jury selection by the State?

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

21 THE COURT: By the defendant?

22 MR. WHELCHER: No, sir.

23 THE COURT: Alright, those jurors who were not selected
24 you are excused for the balance of today. Please call back to
25 the number that you have, the 1-800 number on the front of

MOTIONS AND MATTERS

1 your juror information pamphlet. Call that number this
2 evening after six o'clock to receive further reporting
3 information. Have a good afternoon.

4 (Whereupon, the jury pool left the courtroom.)

5 THE COURT: Alright, bring the jury in please, sir.

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

7 THE COURT: Alright, ladies and gentlemen, we're gonna
8 break for lunch then we'll start with, uh, begin with the
9 trial this afternoon at 2:30. Let me caution ya as you leave
10 you're never permitted to talk about the case during any sort
11 of break, you're also never to allow anyone to try to discuss
12 the case with you, you also are never to permit yourself to be
13 exposed to any type of media coverage that might relate to the
14 case, you also are not permitted to conduct any sorta research
15 or do your own investigation into any issue that might relate
16 to the case. You always have to base a decision as a juror
17 upon what is presented durin' the trial of the case and the
18 law that I provide ya. You're not permitted to supplement
19 your knowledge by conducting any outside research or talking
20 to people outside of the the jury room and as I say you can't
21 even discuss the case among yourselves until it's time for
22 jury deliberations and that won't be until the end of the
23 trial after all of the evidence has been received, I've
24 instructed you on the law that's applicable and ask you to
25 begin with your deliberations so keep that in mind at any time

MOTIONS AND MATTERS

1 during any break no discussions of the case, no research, no
2 media exposure, no investigation. Do have a good lunch,
3 please report directly to your jury room, the r -- the room
4 that you've just been shown to, report to that jury room at
5 2:30 this afternoon, 2:30 this afternoon. Have a good lunch.
6 You're not sure how to get back to that room, talk to the
7 bailiff, they'll help you with those directions.

8 THE BAILIFF: Follow me, please.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Let me know when they've cleared the hallway.

12 THE CLERK: May I approach?

13 THE COURT: (No audible response.)

14 (Whereupon, a bench conference was held off the record.)

15 THE BAILIFF: They're gone.

16 THE COURT: Alright, court is in recess until 2:30.

17 (Whereupon, a recess was taken.)

18 (State's Exhibit Nos. 1 through 29 marked for
19 identification.)

20 THE COURT: Thank you, be seated.

21 THE BAILIFF: Thank you, be seated.

22 THE COURT: Alright, is there any matters that need to be
23 addressed before the jury is brought in?

24 MS. POULOS: Yes, sir, Your Honor. The State has a
25 motion to exclude third-party guilt, ---

MOTIONS AND MATTERS

1 THE COURT: Okay.

2 MS. POULOS: --- I placed a copy up front for Your Honor.
3 Your Honor, we believe that defendant's gonna try to introduce
4 evidence or will make reference to third party being Gary
5 Manigan who is the defendant's nephew I believe, Your Honor.
6 There are a couple things, Your Honor, that Mr. Whelchel
7 believes that may allude to thirdy-party guilt and I I believe
8 this time he would wish to proffer some testimony.

9 THE COURT: Alright, Mr. Whelchel.

10 MR. WHELCHER: Thank you, Your Honor. Call Elizabeth
11 Vandahm.

12 THE CLERK: Right over here (indicating). You come right
13 here (indicating).

14 (Whereupon, the witness came forward.)

15 (Whereupon, a discussion was held off the record.)

16 ELIZABETH VANDAHM, having been
17 first duly sworn, testified as follows:

18 THE CLERK: Thank you, you may be seated.

19 THE BAILIFF: Get up close to the mic, please.

20 (Whereupon, the witness complied.)

21 THE BAILIFF: Thank you, that may do.

22 MR. WHELCHER: May I, Your Honor?

23 THE COURT: Yes, sir.

24 MR. WHELCHER: Thank you, sir.

25 DIRECT EXAMINATION BY MR. WHELCHER:

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. Ms. Vandahm, we're here today because someone broke into
2 your home on December the 11th of 2010, is that correct,
3 ma'am?

4 A. Yes.

5 Q. And you found this when you came home from work?

6 A. Yes.

7 Q. Okay, and if you would please, there were two windows
8 that were broken in your house, is that correct, ma'am?

9 A. Um, actually there are three if you count the window in
10 the door.

11 Q. Okay, two windows and a small window in a door, is that
12 correct?

13 A. Yes.

14 Q. Which door would that have been, ma'am?

15 A. The back door.

16 Q. Okay, and that's on the backside a the house, not a side
17 door or anything like that.

18 A. No, it's on the back.

19 Q. And in order -- I'm handing you what's already been
20 marked as State's Exhibit No. 2, is that (indicating) the
21 door, ma'am?

22 A. Yes.

23 Q. Okay. And this door was broken, is that correct?

24 A. Um, yes, the doorknob had been popped off and the door
25 frame was all messed up and then the windows were on the

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 floor.

2 Q. And pry marks were found on the door, is that correct?

3 A. Yes.

4 Q. And the door was damaged in such, to such an extent that
5 the whole door frame had to be replaced, is that correct?

6 A. Yes, and the lock had to be cut to get it open.

7 Q. Okay, and these windows here (indicating) in State's
8 Exhibit No. 2, was one of those broken?

9 A. Yes.

10 Q. Okay. Uh, could you point out to the Court which one was
11 broken.

12 A. This one (indicating).

13 Q. Hold it up for the judge, please, so he can see.

14 A. This one (indicating).

15 Q. And that would be the one closest to the doorknob, is
16 that correct, ma'am?

17 A. Yes.

18 Q. Now how high are these windows up off the ground?

19 A. Um, they're pretty high.

20 Q. Okay.

21 A. Um, ---

22 Q. --- how tall are you, ma'am?

23 A. 5'10 1/2.

24 Q. Okay, would you step down, please.

25 (Whereupon, the witness left the stand.)

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. You're wearing high heels too.

2 A. I am.

3 Q. Would you mind taking those off for the purposes of this.

4 A. Um, ---

5 Q. Or they look like boots or something like that?

6 A. Uh, uh, ---

7 Q. No, don't bother, don't bother. But in order for you to
8 see in this window you have to stand on your tiptoes, is that
9 correct?

10 A. Yes.

11 Q. Okay. And you're 5'10?

12 A. 5'10 1/2, yes.

13 Q. Okay, anybody shorter than you would be unable to see in
14 that window, is that right?

15 A. Right, unless -- yeah.

16 Q. Okay, I'm sorry, go ahead, ma'am, have a seat.

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

18 Q. State's Exhibit No. 3 that's just a close, a closer up
19 picture of that same door, is that correct?

20 A. It looks like it's taken from the inside a the house.

21 Q. And this time that's (indicating) the window that's
22 broken?

23 A. Yes.

24 Q. Point that out for the judge, please.

25 (Whereupon, the witness complied.)

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. Now there was another door that attempted entry was made,
2 is that correct, ma'am?

3 A. No.

4 Q. Okay. Is this (indicating) the same door that we've seen
5 in the ---

6 A. Yes.

7 Q. --- first two? Okay, I was wondering. So that's the
8 same door you previously identified as the back door?

9 A. It is.

10 Q. Okay. And what is this State's Exhibit No. 4, ma'am?

11 A. It is a picture of a bucket and some bricks and rocks and
12 glass.

13 Q. Okay. This is a bucket that you kept on your back
14 porch?

15 A. Yes, there's a lot of debris from -- it's an old house
16 that we were cleaning out the backyard and I kinda used that
17 as a place to put everything that I found.

18 Q. Okay, but when you left that day what time was it when
19 you left for work?

20 A. Um, probably around noon.

21 Q. Okay, where was this bucket when you left, ma'am?

22 A. Um, sitting on the back porch.

23 Q. Okay, was it sitting in front of the door turned ---

24 A. No.

25 Q. --- upside down and everything dumped out like it is

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 here?

2 A. No.

3 Q. Okay. So where would it have been using this picture?
4 Would it have been that way (indicating) or that way
5 (indicating) on the porch?

6 A. It would've been this way (indicating) and over.

7 Q. Okay, but not right directly in front of the door ---

8 A. No.

9 Q. --- and not turned upside down.

10 A. No.

11 Q. Okay. I'm showing you State's Exhibit No. 8, can you
12 tell us what that is, ma'am?

13 A. It is a picture of my kitchen window.

14 Q. Okay, and when you left for work that day, was this table
15 and this (indicating), uh, icebox were they stacked in
16 that ---

17 A. No.

18 Q. --- that way before when you left, ma'am?

19 A. No.

20 Q. Where were they?

21 A. Um, the table was on the back porch and cooler was probly
22 on the back porch too.

23 Q. Okay, but somewhere other than this location.

24 A. Right.

25 Q. That way (indicating) or off this way (indicating)?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 A. This way (indicating).

2 Q. And those items have been stacked there in order for
3 somebody to get into this window it would appear.

4 A. Appears that way.

5 Q. Okay. When you're standing -- let me ask ya this: This
6 red down here (indicating) is that the -- what is that?

7 A. The foundation of the house.

8 Q. Okay. And how far -- how big a table is this
9 (indicating)? How high does it sit?

10 A. Not very high. I mean, probably ---

11 Q. Does it sit as high as this (indicating) bar?

12 A. No.

13 Q. Okay. Does it sit as high as that table right there
14 (indicating)?

15 A. No.

16 Q. Okay. When you're standing on the back porch, ma'am, ---

17 A. Um-hum.

18 Q. --- of your home, can you see in that (indicating)
19 window?

20 A. No.

21 Q. You can't see in that window?

22 A. On the back no one can see, it's -- the back porch is off
23 to the side.

24 Q. Oh, I'm sorry. This (indicating) is the foundation,
25 there's no porch underneath ---

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 A. No.

2 Q. --- that (indicating) window. Okay, so how far off the
3 ground is this (indicating) window to the ground, do you have
4 any idea?

5 A. Um, probably 7 feet, ---

6 Q. Okay.

7 A. --- 7 1/2 feet probably.

8 Q. Okay. And State's Exhibit No. 9 is that (indicating) the
9 cooler that's on top of the ---

10 A. It appears ---

11 Q. --- little table in ---

12 A. --- to be ---

13 Q. --- in ---

14 A. --- it.

15 Q. --- in that other picture? Okay, and State's Exhibit
16 No. 12, ma'am, can you tell us what that is. Let me move
17 these (indicating) out of the way.

18 A. It is the countertop inside the kitchen window.

19 Q. And this is the kitchen window that someone threw a brick
20 or a big piece of concrete through -- I forget which one.

21 A. Was a big piece of concrete, yes, that's ---

22 Q. Okay.

23 A. --- the window.

24 Q. And then somebody crawled through that (indicating)
25 window, is that correct?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 A. Yeah, someone actually open -- broke the window and then
2 unlatched the latch and pulled the window frame up ---

3 Q. Yeah, ---

4 A. --- then came through.

5 Q. --- and then crawled through the window.

6 A. Um-hum.

7 Q. Okay. After you got home, discovered that your home had
8 been burglarized, ma'am, you called -- you were on the phone
9 with your father, is that right?

10 A. I was.

11 Q. Okay. You told him and then you called 911, is that
12 correct?

13 A. Yes.

14 Q. Shortly thereafter an officer showed up and they started
15 the investigation.

16 A. Yes.

17 Q. At some point after all this commenced, you were told to
18 go to pawn shops to look for your jewelry because jewelry you
19 would be better able to identify your jewelry than the officer
20 would, is that correct, ma'am?

21 A. No, I wasn't told to go visit the pawnshop, I did ---

22 Q. Okay.

23 A. --- it on my own.

24 Q. You just did it on your own then? Okay. And how many
25 pawn shops did you go to, ma'am?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 A. Um, I probably went to, I don't even remember, three or
2 four, five.

3 Q. Okay. And did you talk to Mr. Williams? Would you stand
4 up, sir? Did you talk to this (indicating) gentleman at E-Z
5 Money Pawn Shop?

6 A. Um, very, very briefly.

7 Q. Okay. Now what you found out when you went to E-Z Money
8 Pawn Shop you identified your earrings that had been taken in
9 the burglary, is that right, ma'am?

10 A. Yes.

11 Q. Okay, and Mr. Williams or his employees there showed you
12 the person who had brought those items in and pawned them at
13 the pawn shop, is that right?

14 A. Um, they just told me the name.

15 Q. And what name did they tell ya?

16 A. Um, Gary Manigan.

17 Q. Okay. Alright, had you seen Gary Manigan before that
18 particular day when you were told that he's the one who pawned
19 your earrings?

20 A. I at that time di -- could not have placed a face to the
21 name. I didn't know who -- I mean, I knew ---

22 Q. You didn't have any idea who Gary Manigan was.

23 A. I knew the name, I didn't know the face.

24 Q. Okay. Alright, ma'am.

25 MR. WHELCHER: Your Honor wanna see these?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHEL

1 THE COURT: (No audible response.)

2 (Whereupon, defense counsel handed the exhibits to the
3 Court.)

4 (Pause.)

5 BY MR. WHELCHEL:

6 Q. Do you remember what day it was that you went to this
7 pawn shop, ma'am?

8 A. I don't and it was the beginning of the next week, it was
9 probably Tuesday.

10 Q. The following Monday would that be right, ma'am?

11 A. If -- I think it was the Tuesday, I don't know when.

12 Q. Okay. The burglary or the break-in at your ho -- your
13 home happened on a Saturday night?

14 A. It did.

15 Q. Okay. You had left your home at what time, ma'am?

16 A. Uh, around noon.

17 Q. Okay, and your father comes over and feeds your dog, is
18 that correct?

19 A. He comes over and lets the dog out.

20 Q. Okay, I'm sorry, uh, lets the dog out, the dog runs in
21 the backyard or or whatever. Is there a set time for him to
22 come over?

23 A. Um, it depends on what time I work. If like that night
24 that I was working late he came around 5:30, ---

25 Q. Okay.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MR. WHELCHER

1 A. --- 6:00 sometimes.

2 Q. And your father was the last person in your home that
3 evening with your permission.

4 A. Yes.

5 Q. Okay. And Gary Manigan had your earrings, this was on a
6 Saturday that the burglary took place, correct, ---

7 A. (The witness nodded in the affirmative.)

8 Q. --- and he had your earrings at a pawn shop on Monday or
9 Tuesday of the following week.

10 A. That's -- yeah, I guess so.

11 Q. Okay. Answer any questions Ms. Poulos might have.

12 MS. POULOS: No questions from the State, Your Honor.

13 THE COURT: You may step down.

14 THE BAILIFF: Go ahead.

15 (Whereupon, the witness left the stand.)

16 MR. WHELCHER: Call Johnnie Williams.

17 (Whereupon, the witness came forward.)

18 (Whereupon, a discussion was held off the record.)

19 JOHNIE WILLIAMS, having been
20 first duly sworn, testified as follows:

21 THE CLERK: Thank you, you may be seated.

22 THE BAILIFF: Slide up a little bit.

23 (Whereupon, the witness complied.)

24 THE BAILIFF: There you go.

25 DIRECT EXAMINATION BY MR. WHELCHER:

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHER

- 1 Q. Would you state your name, please.
- 2 A. My name is Johnnie Williams.
- 3 Q. Alright, Mr. Williams, where are you employed or where do
- 4 you work, sir?
- 5 A. At E-Z Money Pawn Shop on ---
- 6 Q. Is that your business?
- 7 A. It is my ant's businesses.
- 8 Q. Okay, and how long have you worked there, sir?
- 9 A. Twenty-three years.
- 10 Q. Okay, were you working there in December of two
- 11 thousand --- well twenty-three years, I'm sorry.
- 12 A. Yes.
- 13 Q. Did you have an occasion in December to receive property
- 14 from Gary Manigan?
- 15 A. I did.
- 16 Q. Alright, and do you have the the property ticket with you
- 17 or what do you call those?
- 18 A. It's a, it's a pawn ticket but I do have where he signed
- 19 his name and ---
- 20 Q. Okay.
- 21 A. --- where he pawned the merchandise.
- 22 Q. Okay. When did Mr. Manigan pawn that merchandise, sir?
- 23 A. On December the 13th of 2010.
- 24 Q. Okay. Do you remember if that was a Monday or what day
- 25 of the week that was?

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHEL

1 A. No, sir, I do not.

2 Q. Okay. What time did Mr. Manigan pawn that property?

3 A. If the time on the ticket is correct and I assume it is,
4 it says 10:22.

5 Q. A.M.?

6 A. Yes, sir.

7 Q. Okay, what are your hours of operation?

8 A. 9:30 until 5:30.

9 Q. Saturdays too?

10 A. Yes, sir.

11 Q. How 'bout Sunday?

12 A. No, every day but Sunday.

13 Q. Okay. And this i -- what what are the items that were
14 pawned, sir?

15 A. It is, um, it's a pair a 14-karat white gold, 3/4 karat
16 total weight diamond earrings.

17 Q. Okay. He received money for that?

18 A. He did.

19 Q. How much?

20 A. Fifty.

21 Q. Fifty dollars?

22 A. Um-hum.

23 Q. Okay. After Mr. Manigan shows up on Monday morning with
24 these earrings, when was the next time that anybody talked to
25 you about those specific earrings, sir?

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHER

1 A. About -- to be honest with ya I don't remember.

2 Q. Okay, do you remember talking to -- where'd she go?

3 Ms. Vandahm stand up please, ma'am.

4 (Whereupon, Ms. Vandahm stood.)

5 A. I I vaguely yes do remember her comin' in, ---

6 Q. Okay.

7 A. --- yes. I don't remember how far along after when he
8 brought these in that she came in though.

9 Q. Okay, but after she came in Investigator Nelson came in,
10 is that right?

11 A. Yes, sir.

12 Q. Okay, and this Investigator Nelson ---

13 A. Yes, sir.

14 Q. --- here (indicating)? And you remember that?

15 A. I do.

16 Q. Okay, and you made a copy of this pawn ticket ---

17 A. Right.

18 Q. --- and everything, all of your records and you gave it
19 to Investigator Nelson.

20 A. That is correct.

21 Q. And they gave it to me in part a my discovery.

22 A. Right.

23 Q. Alright, sir, and when Mr. Manigan came in, did he have a
24 ID with him?

25 A. Yes, sir.

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. Okay, that's where you get the address and everything ---

2 A. That is ---

3 Q. --- on there?

4 A. He has to have a South Carolina Highway Department ID or
5 driver's license ---

6 Q. Okay.

7 A. --- or not South Carolina but ---

8 Q. A valid ---

9 A. --- state ---

10 Q. --- I ---

11 A. A valid ID, yeah.

12 Q. Okay. And does it list a a height for Mr. Manigan?

13 A. It says that he is 5'8.

14 Q. And weight?

15 A. 130.

16 Q. Okay. And you made a copy a that and gave it to
17 Investigator Nelson?

18 A. Yes.

19 Q. And I think you gave the earrings to Investigator Nelson,
20 is that correct?

21 A. I don't remember. Either I held 'em for him or I gave it
22 to him at that time, one or the other.

23 Q. Okay. Either way you don't have the earrings ---

24 A. No, sir.

25 Q. --- and they were given to the city police department at

JOHNNIE WILLIAMS - CROSS-EXAMINATION BY MS. POULOS

1 some point is that correct, ---

2 A. Yes.

3 Q. --- sir? Answer any questions Ms. Poulos might have.

4 CROSS-EXAMINATION BY MS. POULOS:

5 Q. Mr. Williams, just briefly, um, you ---

6 MR. WHELCHEL: I'm sorry, ---

7 Q. --- that ---

8 MR. WHELCHEL: --- hang on one sec.

9 MS. POULOS: Sorry.

10 BY MS. POULOS:

11 Q. You said that you have listed for Gary Manigan that he's
12 5 feet 8 inches, is that just based on what he told you or did
13 you have ---

14 A. No, ---

15 Q. --- a tape ---

16 A. --- that is gi -- that is that off of his ID.

17 Q. Off of his ID, okay. And the same thing as to the
18 weight?

19 A. Yes, ma'am.

20 Q. Okay, and you said that you looked at his ID and and
21 matched the photograph when he came in and you found that to
22 be who he said he was?

23 A. That is always the case, yes.

24 Q. Alright, thank you.

25 THE COURT: You can step down.

LOUIS NELSON - DIRECT EXAMINATION BY MR. WHELCHEL

1 THE WITNESS: Thank you.

2 (Whereupon, the witness left the stand.)

3 MR. WHELCHEL: Call Investigator Nelson, Your Honor.

4 (Whereupon, the witness came forward.)

5 (Whereupon, a discussion was held off the record.)

6 LOUIS NELSON, having been first
7 duly sworn, testified as follows:

8 THE CLERK: Thank you, you may be seated.

9 THE WITNESS: Thanks.

10 MR. WHELCHEL: Uh, may Mr. Williams be excused, Your
11 Honor, at this time?

12 THE COURT: He may.

13 MR. WHELCHEL: Thank you, Your Honor.

14 (Arrest warrants marked Court's Exhibit Nos. 1 and 2 for
15 identification.)

16 DIRECT EXAMINATION BY MR. WHELCHEL:

17 Q. You're the investigator in this case, is that correct,
18 sir?

19 A. Yes, sir, I am.

20 Q. Okay, and on -- when did you -- you get a call from
21 Ms. Vandahm concerning her finding her earrings?

22 A. Yes, sir, I did.

23 Q. When was that, sir? You got that?

24 A. Would have been, accordin' to my notes, on December the
25 14th 2010 at 14:56 hours so just before three, right around

LOUIS NELSON - DIRECT EXAMINATION BY MR. WHELCHER

1 three o'clock.

2 Q. Had you spoken with her earlier in the day about 1:20,
3 sir?

4 A. Yes, I did.

5 Q. Okay. And you suggested she go to the pawn shop because
6 she would recognize her jewelry better than you would, is that
7 right?

8 A. Yes, sir, you can describe jewelry but it's hard to
9 vision.

10 Q. Oh, I know. And once she went to the E-Z Money Pawn Shop
11 she contacted you, is that right, sir?

12 A. Yes, sir.

13 Q. Okay, and you went from the city police department or
14 wherever you were down to E-Z Money Pawn Shop that same day?

15 A. Yes, sir, that's correct.

16 Q. Okay, and did you retain or receive property from
17 Mr. Williams?

18 A. Yes, sir, I did.

19 Q. What was that, sir?

20 A. It woulda been a set of 14-karat white gold 3/4 cut
21 diamond earring studs.

22 Q. Okay. You get a copy of that pawn ticket that
23 Mr. Williams testified about?

24 A. Yes, sir, pawn ticket number 140285.

25 Q. Okay, sir. You have one in your file there?

LOUIS NELSON - DIRECT EXAMINATION BY MR. WHELCHEL

1 A. I have a copy, I don't have the original one.

2 Q. Okay. And it came in on the 13th, is that right,
3 according to the pawn ticket?

4 A. According to the pawn ticket the item was pawned on
5 December 13th 2010.

6 Q. Burglary took place on Saturday the 11th?

7 A. Yes, sir.

8 Q. Okay, so 13th would be that following Monday morning,
9 correct?

10 A. Yes, sir.

11 Q. Okay. Subsequent to receiving the earrings and the pawn
12 ticket, did you get any -- I'm sorry. Did you get anything
13 from Mr. Williams other than the pawn ticket and the
14 earrings?

15 A. Just the clasp envelope that he sealed the merchandise
16 in.

17 Q. Okay, and you returned the earrings to Ms. Vandahm?

18 A. Yes, sir.

19 Q. Okay. I guess she identified them to being her earrings
20 at some point.

21 A. Yes, sir, based on the description that she provided they
22 were pretty accurate.

23 Q. And after you obtained this property that had been pawned
24 by Mr. Gary Manigan, you obtained arrest warrants for Gary
25 Manigan ---

LOUIS NELSON - DIRECT EXAMINATION BY MR. WHELCHER

1 A. Yes, sir.

2 Q. --- for burglary and grand larceny?

3 A. I did at -- I I also obtained a possession of stolen
4 goods, a burglary and a petty larceny.

5 Q. Okay. And the burglary warrant that would be M124282?

6 A. Is that what you have? It's in here some place.

7 Q. Here, why don't you look at these (indicating).

8 (Whereupon, the witness complied.)

9 A. Yes, that's correct.

10 Q. Okay. And this is a grand larceny warrant for Gary L.
11 Manigan that you obtained from this -- from the magistrate, is
12 that correct?

13 A. Yes, that's correct.

14 Q. That's M124283?

15 A. Yes.

16 Q. Okay. Did you arrest Mr. Gary Manigan or did somebody
17 else do it?

18 A. Sir?

19 Q. Did you arrest Gary Manigan or did somebody else do it?

20 A. I never arrested uh, Gary Manigan for those two warrants,
21 I did arrest him for possession of stolen goods which were the
22 earrings.

23 Q. Okay. You obtained burglary and grand larceny warrants
24 for Gary Manigan based on the fact that he was in possession
25 of earrings stole -- he was in possession on Monday morning of

LOUIS NELSON - CROSS-EXAMINATION BY MS. POULOS

1 earrings that were stolen sometime between five and ten on
2 Saturday night, is that correct?

3 A. There were other factors involved that I considered.

4 Q. Oh, okay, but you obtained arrest warrants for
5 Mr. Manigan ---

6 A. Yes, sir, I did.

7 Q. --- for the burglary and grand larceny of Ms. Vandahm's
8 home.

9 A. Yes, sir, I did.

10 Q. Okay. Answer any questions Ms. Poulos may have.

11 CROSS-EXAMINATION BY MS. POULOS:

12 Q. Investigator Nelson, during your investigation did you
13 have the opportunity to speak with Mr. Gary Manigan at any
14 point?

15 A. Yes, I did, spoke with him on several occasions.

16 Q. Okay, and what did he tell you specifically about this
17 incident?

18 MR. WHELCHER: Objection, Your Honor, be hearsay.

19 Mr. Manigan's not here and I can't cross-examine him.

20 THE COURT: Sustained.

21 BY MS. POULOS:

22 Q. Investigator Nelson, was there any evidence linking Gary
23 Manigan to the burglary of this home?

24 A. No -- only indirectly, nothing direct.

25 Q. Did you find any of his fingerprints anywhere inside the

LOUIS NELSON - REDIRECT EXAMINATION BY MR. WHELCHER

1 home?

2 A. No, I didn't.

3 Q. Did you find his fingerprints on the computer equipment
4 that was found outside of the home?

5 A. No, I didn't.

6 Q. Whose fingerprints did you find?

7 A. Michael Manigan.

8 Q. And that is the defendant in this case?

9 A. Yes, it is.

10 Q. Thank you.

11 REDIRECT EXAMINATION BY MR. WHELCHER:

12 Q. You didn't find any fingerprints anywhere, did ya, sir?

13 A. Were those fing -- fingerprints that were lifted from ---

14 Q. Okay, and the fingerprints that were lifted were lifted
15 from the computer and the printer, whatever all that was that
16 was in the black bag, is that right?

17 A. Yes, sir, inside the ---

18 Q. Okay, ---

19 A. --- the trash ---

20 Q. --- and that that black bag was si -- found on the
21 outside of Ms. Vandahm's property.

22 A. I think it was, I'm not sure it was ---

23 Q. You didn't ---

24 A. --- in the ---

25 Q. --- you didn't recover the bag.

LOUIS NELSON - REDIRECT EXAMINATION BY MR. WHELCHER

1 A. Sir?

2 Q. You didn't recover the bag.

3 A. No, sir, I wasn't ---

4 Q. Okay.

5 A. --- there when the bag was recovered.

6 Q. Okay, and there were no prints recovered inside the home.

7 A. No, sir, not that I'm aware of.

8 Q. Okay, and there no prints recovered at the point of
9 entry, wherever that may be, with all these broken windows,
10 there were no prints recovered at the point of entry, was
11 there -- were there?

12 A. None that I, none that I recall. I don't know if they
13 were good enough to identify someone.

14 Q. Well if they're not good enough to identify 'em, they're
15 not prints.

16 A. Um-hum.

17 Q. No prints were recovered at those windows and doors that
18 somebody attempt break into.

19 A. No, sir, not not that ---

20 Q. Okay.

21 A. --- I'm aware of.

22 Q. You arrested or signed an arrest warrant for Mr. Manigan,
23 Mr. Mike Manigan in April of 2011, is that right?

24 A. Yes, sir, I believe that is correct.

25 Q. Okay, after being told told by Ms. Jones, is it, that

CHARLES HAIR - DIRECT EXAMINATION BY MR. WHELCHER

1 there was a match.

2 A. That's correct.

3 Q. Okay, and the match was off the computer equipment that
4 was found on the property adjacent to the victim's if you
5 know.

6 A. It was found located right off, right on the property or
7 right just outside. I I can't remember exactly where the the
8 bag was recovered from.

9 Q. Okay. Thank you, sir. Answer any questions Ms. Poulos
10 may have.

11 MS. POULOS: I have nothing further, Your Honor.

12 THE COURT: Okay, you can step down.

13 (Whereupon, the witness left the stand.)

14 MR. WHELCHER: Call Charles Hair, Your Honor.

15 (Whereupon, the witness came forward.)

16 (Whereupon, a discussion was held off the record.)

17 CHARLES HAIR, having been
18 first duly sworn, testified as follows:

19 THE CLERK: Thank you, you may be seated.

20 DIRECT EXAMINATION BY MR. WHELCHER:

21 Q. Officer Hair, you were the first officer on the scene
22 when Ms. Vandahm called the Spartanburg City Police
23 Department, is that correct?

24 A. That's correct.

25 Q. Okay. And you, uh, I believe took photographs at that

CHARLES HAIR - DIRECT EXAMINATION BY MR. WHELCHER

1 location.

2 A. Yes, I did.

3 Q. All of these photographs that I've displayed before you:
4 State's Exhibits No. 8, 12, 5, 3, 2, 4 and a 9 are photographs
5 that you took in addition to other photographs at the scene,
6 is that correct, sir?

7 A. That's correct.

8 Q. Okay. While you're -- you also dusted the house, is that
9 correct?

10 A. Yeah, that's correct yes, sir.

11 Q. Okay, and I'm assumin' that you dusted these (indicating)
12 doors.

13 A. Yes, sir, I attempted ---

14 Q. A -- okay.

15 A. --- given the condition of the seal.

16 Q. Well it's an old house.

17 A. Yeah.

18 Q. Okay. And the window above the kitchen sink you dusted
19 all of that too, sir?

20 A. Um, no, sir, I don't recall doin' that.

21 Q. Okay, and you made an incident report, is that right,
22 sir?

23 A. Yes.

24 Q. And at some point a black bag was found outside of the
25 home, is that right, sir?

CHARLES HAIR - DIRECT EXAMINATION BY MR. WHELCHER

1 A. That's correct.

2 Q. And that black bag was initially found by Ms. Vandahm and
3 her father, is that right?

4 A. That's correct.

5 Q. They came and told you about the bag?

6 A. That's correct.

7 Q. They didn't bring the bag to you.

8 A. No.

9 Q. They left it where they they had found it.

10 A. Yes, sir.

11 Q. Okay. Let me get these outta your way, sir. I'm showing
12 you an item, sir, that's -- I'm gonna let you take a look at
13 it.

14 A. Yes, be my incident report.

15 Q. That's your incident report from the burglary that took
16 place at Ms. Vandahm's location?

17 A. That's correct.

18 Q. Okay. Could you read this last sentence here
19 (indicating) starting with the address of the property.

20 A. Okay, "The address of the property behind Ms. Vandahm
21 where the black trash bag was found is [REDACTED]."

22 Q. Alright, sir. So when you photographed the bag, did you
23 photograph the bag where it's at?

24 A. Uh, no, I did not.

25 Q. Okay. But when they came to you and you went out to the

CHARLES HAIR - CROSS-EXAMINATION BY MS. POULOS

1 bag you found the bag to be at [REDACTED], is that
2 right?

3 A. Uh, further investigation now led me to see that it was
4 behind the house and a check on Oakdale Court led me to O --
5 [REDACTED].

6 Q. [REDACTED] is closest house.

7 A. That's correct.

8 Q. Okay, that's what I needed to know. Thank you, sir,
9 answer any questions Ms. Poulos may have.

10 CROSS-EXAMINATION BY MS. POULOS:

11 Q. Officer Hair, if you dust areas around the home, are
12 there potentially areas that no matter how many areas you dust
13 you may not be able to lift a print off of?

14 A. That's correct due to the type of, uh, dust that we
15 use.

16 Q. Okay, and as far as the black bag is concerned,
17 Mr. Whelchel asked you how you determined that it was at [REDACTED]
18 [REDACTED], can you explain a little, in a little more
19 detail how you were able to determine that address?

20 A. Uh, uh, the bag was located in the wood line so, uh, I
21 took that location that's because that was -- it was located
22 in between Ms. Vandahm's house and that location, that's what
23 I was referencing to that address because it was in between
24 those two houses.

25 Q. Did you ask Ms. Vandahm where her property line was?

CHARLES HAIR - REDIRECT EXAMINATION BY MR. WHELCHER

1 A. I can't recall.

2 Q. So you just assumed that because it was sort of in
3 between that it is ---

4 MR. WHELCHER: Objection, ---

5 Q. --- was ---

6 MR. WHELCHER: --- Your Honor, leading.

7 Q. Did you determine that because it was between the two
8 property lines that it was [REDACTED]?

9 MR. WHELCHER: Same objection, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: Could you repeat.

12 BY MS. POULOS:

13 Q. Did you determine that just because it was located in
14 between Ms. Vandahm's backyard and the next property that it
15 had to be [REDACTED]?

16 A. No, I just, I just based it off because it was, uh, the
17 next house that was directly behind her property.

18 Q. Okay, but you didn't ask her where her property line was
19 to to verify that.

20 A. I can't recall.

21 Q. Okay, thank you.

22 REDIRECT EXAMINATION BY MR. WHELCHER:

23 Q. You saw the fence, didn't ya?

24 A. Uh, it was a damaged fence, was, uh, low like chicken
25 wire I think, low-lyin' fence.

CHARLES HAIR - RECROSS-EXAMINATION BY MS. POULOS

1 Q. Uh-huh. Where was the bag in relation to the fence?

2 A. Uh, probly about maybe 12 to 15 feet behind it.

3 Q. On the outside of the fence?

4 A. Yes.

5 Q. Okay. Thank you, sir.

6 MS. POULOS: Just briefly, Your Honor.

7 RECROSS-EXAMINATION BY MS. POULOS:

8 Q. You don't -- you're not sure, Officer Hair, if that fence
9 was on the property line though, were you?

10 A. I'm not ---

11 Q. Okay, and in the area behind where the trash bag was
12 found was this a wooded area?

13 A. Yes.

14 Q. Okay. Was this a sidewalk, was there a sidewalk in that
15 area?

16 A. Uh, no, there wasn't.

17 Q. Was there a roadway in that area?

18 A. No.

19 Q. Was this an area that the public typically uses?

20 A. No.

21 Q. Is this woods and brush and trees?

22 A. That's correct.

23 Q. Thank you.

24 REDIRECT EXAMINATION BY MR. WHELCHER:

25 Q. I'm confused, sir. This is an area that's not publicly

CHRISTY HOLCOMBE - DIRECT EXAMINATION BY MR. WHELCHEL

1 used, that your testimony?

2 A. That's correct.

3 Q. Okay. Directly behind Ms. Vandahm's next door neighbor
4 is Oakdale Court, is that correct?

5 A. That's correct.

6 Q. And Oakdale Court if these are Ms. Vandahm's houses or
7 her house and her neighbor's house, they face that
8 (indicating) way, Oakdale Court dead ends into the backyard,
9 correct, ---

10 A. That's correct.

11 Q. --- Ms. Vandahm and her neighbors'?

12 A. That's correct.

13 Q. Okay. Thank you, sir.

14 THE COURT: Step down.

15 (Whereupon, the witness left the stand.)

16 MR. WHELCHEL: We call Christy Holcombe, Your Honor.

17 (Whereupon, a discussion was held off the record.)

18 CHRISTY HOLCOMBE, having been
19 first duly sworn, testified as follows:

20 THE CLERK: Thank you, you may be seated.

21 THE WITNESS: Thank you.

22 DIRECT EXAMINATION BY MR. WHELCHEL:

23 Q. Ms. Holcombe, ---

24 A. Yes.

25 Q. --- you at the time of December the 11th 2010 were a

CHRISTY HOLCOMBE - DIRECT EXAMINATION BY MR. WHELCHEL

1 neighbor of Ms. Vandahm, is that correct?

2 A. Correct.

3 Q. Okay, and on that particular Saturday afternoon you were
4 outside putting up Christmas decorations, is that right?

5 A. Yes.

6 Q. Okay, and doing yard work and things a that nature is
7 that ---

8 A. Yes.

9 Q. Okay, I I don't wanna put words in your mouth, I
10 just...okay. And while you were out in the yard -- where is
11 your house in relation to Ms. Vandahm's?

12 A. Facing her house would be to the left.

13 Q. Okay. So if you're sittin' on Ms. Vandahm's front porch
14 your house is over here (indicating)?

15 A. But looking at Carlisle?

16 Q. I'm lost, ma'am. Are you sittin' on her porch or you're
17 standing in the yard looking at her house?

18 A. If I'm standing in the yard looking at her house, it
19 would be to my left.

20 Q. Okay, alright. So Oakdale Court essentially dead ends
21 into your backyard, is that right?

22 A. No.

23 Q. The next door neighbor or the one on the other side of
24 Ms. Vandahm?

25 A. Just dead ends.

CHRISTY HOLCOMBE - DIRECT EXAMINATION BY MR. WHELCHEL

1 Q. Oakdale Court dead ends behind that row of houses that
2 you and Ms. Vandahm and everybody that lives on that side a
3 Carlisle Street, is that correct, ma'am?

4 A. Somewhat.

5 Q. Okay. Oakdale Court's back there, can we agree on
6 that?

7 A. Oh, yes.

8 Q. Okay. Now on this particular afternoon when you were
9 doing yard work, things of that nature, did you have a an
10 occasion to see Gary Manigan?

11 A. Yes.

12 Q. Okay. And Mr. Manigan came over to you -- how long were
13 you out in the yard, ma'am, that day?

14 A. Uh, at least five hours probably, ---

15 Q. Okay.

16 A. --- four or five at least.

17 Q. Okay. Mr. Manigan come up to you one or more times
18 during the time you were out in the yard doing the yard work.

19 A. Which Mr. Manigan?

20 Q. Gary Manigan.

21 A. Yes.

22 Q. How many times, ma'am?

23 A. Um, at least twice.

24 Q. Okay. Engaged you in conversation?

25 A. Yes.

CHRISTY HOLCOMBE - CROSS-EXAMINATION BY MS. POULOS

1 Q. Wanted to know who was home, who wasn't home, things of
2 that nature?

3 A. No.

4 Q. What was he asking you, ma'am?

5 A. He wanted money.

6 Q. He wanted money from you?

7 A. Um-hum.

8 Q. Okay. Did you give him money?

9 A. No.

10 Q. Okay. He tell you why he wanted money?

11 A. No.

12 Q. Okay. Did he ask anything other than money?

13 A. Why I was cutting grass.

14 Q. Why you were cuttin' grass?

15 A. Um-hum.

16 Q. Okay. Did he appear to you to be noseey?

17 A. No.

18 Q. Did not?

19 A. Nuh.

20 Q. Okay. Thank you, ma'am.

21 A. Um-hum.

22 CROSS-EXAMINATION BY MS. POULOS:

23 Q. Ms. Holcombe, when you said that Gary Manigan came over
24 to ask you couple questions, did you ever see him go inside
25 the victim's home?

CHRISTY HOLCOMBE - CROSS-EXAMINATION BY MS. POULOS

1 A. No.

2 Q. Did you ever see him go into her back yard?

3 A. No.

4 Q. In addition to him asking you questions, was the
5 defendant also asking you questions?

6 A. Correct.

7 Q. What questions was he asking you?

8 A. Some more questions as far as cutting the grass.

9 Q. Can you be a little bit more specific.

10 A. How long I planned to cut grass that day, how many
11 yards.

12 Q. And who asked you how long you planned to cut grass
13 Michael Manigan or Gary Manigan?

14 A. Michael.

15 Q. And if he wasn't talking to you and he wasn't on his
16 front porch, the other times he was gone, had driven off, or
17 was he there the entire time that you were out there?

18 MR. WHELCHEL: Objection, Your Honor. I don't know which
19 "he" we're talkin' about.

20 BY MS. POULOS:

21 Q. Oh, I'm sorry, Gary Manigan.

22 A. No, he would leave and come back.

23 Q. Okay, he would leave in his vehicle ---

24 A. Yes.

25 Q. --- and then come back?

CHRISTY HOLCOMBE - CROSS-EXAMINATION BY MS. POULOS

1 A. Yes.

2 MS. POULOS: Okay, thank you.

3 THE COURT: You may step down.

4 (Whereupon, the witness left the stand.)

5 MR. WHELCHEL: Be all we have, Your Honor.

6 THE COURT: Okay.

7 MR. WHELCHEL: Excuse me?

8 THE COURT: I said okay.

9 MR. WHELCHEL: I'm sorry.

10 THE COURT: Would you -- are you intending to make some
11 argument or no?

12 MR. WHELCHEL: I'm intending to call those witness or to
13 cross-examine those witnesses and to use their testimony in an
14 attempt to show third-party guilt, Your Honor, on ---

15 THE COURT: Okay.

16 MR. WHELCHEL: --- on the part of Gary Manigan.

17 THE COURT: Alright. Ms. Poulos.

18 MS. POULOS: Your Honor, obviously there is one piece of
19 evidence with Gary Manigan's name on it in this case and that
20 is the pawn ticket; however, we don't know how Gary Manigan
21 got the earrings, we don't know anything about that. The only
22 evidence that we have in this case links Michael Manigan, his
23 fingerprints were found at the scene, excuse me, on property
24 in the victim's backyard in a closed trash bag. Gary
25 Manigan's prints were not found anywhere, they weren't even

MOTIONS AND MATTERS

1 found on the stolen property, Your Honor. There's absolutely
2 no other evidence that ties Gary Manigan to this case and and
3 any evidence, Your Honor, according to cases that's cited in
4 our, in our, in our brief, um, specifically the Gregory ---

5 THE COURT: I don't, ---

6 MS. POULOS: --- ca ---

7 THE COURT: --- I don't have a brief.

8 MS. POULOS: I I I placed a copy up there for you, Your
9 Honor, but I have an extra ---

10 THE COURT: Uh, when did you do that?

11 MS. POULOS: Uh, right before the break. I have another,
12 Your Honor. Thank you.

13 THE COURT: You seen that?

14 (Whereupon, a discussion was held off the record.)

15 MR. POULOS: Here, that's ---

16 THE COURT: Oh, ---

17 MS. POULOS: --- it.

18 THE COURT: --- excuse me.

19 MS. POULOS: Okay.

20 (Whereupon, counsel handed the document to the Court.)

21 MS. POULOS: Your Honor, specifically we are looking to
22 this case on State vs. Gregory, which I'm sure Your Honor is
23 familiar with, that specifically states the, Evidence offered
24 by the accused as to the commission of the crime committed by
25 another person is limited to such facts as to raise a

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1 reasonable inference or presumption as to his own innocence,
2 evidence which would have no other effect than to cast a bare
3 suspicion on another, or to raise a conjectural inference as
4 to the commission of the crime is not admissible. Your Honor,
5 this case clearly this just creates a bare minimum inference,
6 a suspicion that may even more than likely would mislead and
7 confuse the jury, it does nothing to negate Michael Manigan's
8 guilt, Your Honor, does nothing to exculpate him at all.
9 There is evidence that clearly ties him to this case and, Your
10 Honor, for for those reasons and in citing all all the cases,
11 Your Honor, that we have cited in our memo, case I'm sure
12 Mr. Whelchel is familiar with, we're asking that this evidence
13 be excluded from trial of this case, Your Honor.

14 THE COURT: Would you like to respond?

15 MR. WHELCHER: I would, Your Honor. Probly comes as a
16 shock to the Court but I don't agree with Ms. Poulos. Your
17 Honor, Supreme Court di -- South Carolina cited in *Holmes* or
18 excuse me, federal Supreme Court decided *Holmes vs. South*
19 *Carolina* that a criminal defendant's federal constitutional
20 rights are violated by an evidence rule under which the
21 defendant may not introduce the evidence of third-party guilt
22 if the prosecution has introduced forensic evidence that if
23 believed strongly supports a guilty verdict, that describes
24 this particular case to a T, Your Honor. They have a
25 fingerprint that they believe is what makes my client guilty

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1 of this particular burglary, fingerprint found on property
2 outside the house. They also have and had before they had
3 this fingerprint the fingerprint or the arrest of my client
4 didn't take place for months after the incident took place but
5 within a matter of less than forty-eight hours after this
6 incident took place Gary Manigan was found in possession of
7 Ms. Vandahm's earrings. Probably the most valuable item that
8 was taken in the robbery, excuse me, Your Honor, in the
9 burglary were those earrings, there may have been some other
10 things that had sent -- sentimental value but I think these
11 earrings were the most valuable, Your Honor, and we believe
12 that that evidence, the fact that Gary Manigan is 5 foot 8
13 feet tall, this (indicating) lady testified that in order --
14 she couldn't see in those windows and that she could see in
15 those windows, excuse me, Your Honor, but somebody who was
16 5 foot 8 would be unable to see in the windows, we had the
17 evidence of somebody trying to stack a table and an ice chest
18 so that they could see in that door or actually gain access to
19 that door, Your Honor, and through those windows, I think the
20 State or I think the defense has made sufficient testimony
21 here and a proffer proper to allow to us use third-party guilt
22 as a defense in this case.

23 MS. POULOS: Your Honor, ---

24 MR. WHELCHER: The other cases, Your Honor, is the State
25 cites *State v. Beckham*, in that case the defendant was

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1 convicted of murder, kidnapping, conspiracy, the evidence
2 demonstrated that he had beaten his wife until she became
3 unconscious then he asked another person to try to break her
4 neck and tried to blame him and in *State v. Mansfield* a man by
5 the name of Guan Perry matched the physical description.
6 We're not doing anything like that, we're not tryin' to say
7 somebody else did it that didn't have anything to do with it,
8 we're talking about thirty-party guilt where the very first
9 person other than the victim to be in possession of property
10 stolen from her house in less than forty-eight hours is Gary
11 Manigan. Gary Manigan's seen at the home prior to it, Gary
12 Manigan is so short, he's 5 foot 8 as been testified Your
13 Honor, he would need to be able to do that, to climb up on
14 things in order to be able to crawl in those windows and to
15 look through those doors to see what was in there, Your Honor,
16 and he was in possession, again, of the stolen earrings in
17 less than forty-eight hours after the burglary.

18 MS. POULOS: Your Honor, just briefly with regard to
19 height it's gonna be our position that the table and the the
20 cooler were stacked up so that anybody, regardless of height,
21 could climb through. Regardless if you're 6 feet or if you're
22 5'7 you may be able to see through a a window but it's our --
23 gonna be our position that the defendant cli -- used that to
24 climb regardless of his height, Your Honor.

25 Your Honor, with regard to the *Holmes* case, it's our

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1 understanding that in that case the trial court focused
2 instead on the prosecution's case rather than looking and
3 weighing the potential third-party guilt that the defendant
4 had proffered. In that case, I don't believe in that case
5 they have done that that properly, Your Honor, and clearly I I
6 believe that the the main issue with regard to third-party
7 guilt is excluding evidence that would tend to mislead a jury,
8 that would tend to cause confusion, that is not relevant and
9 again, it's our position that that's very far-reaching on
10 behalf of the defense just because they're items that he
11 pawned. Again, we don't know how he got those items, there's
12 no evidence as to how they -- he got those items, um, that's
13 our position, Your Honor.

14 MR. WHELCHER: I can't believe that the State is arguing
15 that it's not relevant that a person is in possession of
16 stolen property less than forty-eight hours after a burglary
17 and that same person they, the State obtained arrest warrants
18 for burglary and larceny, later made those warr -- or got
19 another warrant for receiving stolen goods, it's obviously
20 relevant 'cuz he got arrested for it.

21 THE COURT: Well no no, I'm not gonna agree that it's
22 relevant because he got arrested for it, there's lots of
23 people get arrested for all kinda varying reasons but that's
24 got nothin' to do as what the solicitor's development of the
25 case and and her view of the validity or invalidity of.

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1 evidence but let me ask ya this, solicitor, are -- is there
2 gonna be testimony elicited that that some items such as these
3 earrings that that were stolen in this burglary were found and
4 recovered?

5 MS. POULOS: Your Honor, we don't intend to put that
6 evidence in. I I believe Mr. Whelchel was going to try to put
7 that in. Um, we we don't intend to to add that as part of our
8 case, um, ---

9 THE COURT: I see.

10 MS. POULOS: --- as far as the earrings go that were
11 pawned. Of course we do intend to introduce evidence of the
12 the black trash bag that was found in the victim's backyard
13 with that had some of the computer and printer and equipment
14 stolen which in turn had the defendant's fingerprints on them,
15 that's that's only, the only recovered property that we intend
16 to put in part of our case.

17 THE COURT: Well so there's not gonna be any testimony
18 that some earrings were stolen from the -- from Ms. Vandahm?

19 MS. POULOS: Yes, sir, that they were stolen but not the
20 fact that they were recovered because again, it would go into
21 the third-party guilt which is ---

22 THE COURT: Well I ---

23 MS. POULOS: --- what ---

24 THE COURT: --- I understand that.

25 MS. POULOS: Yes, sir, so...

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1 THE COURT: Okay, um, well as I understand Gregory and a
2 course you've read the the applicable passage from it but in
3 in Gregory the Court said, Evidence offered by an accused as
4 to the commission of a crime by another must be limited to
5 such facts as to raise a reasonable inference or presumption
6 of his own innocence, which these, the the evidence of
7 earrings doesn't necessarily do that, and evidence which can
8 have no other effect than to cast a bare suspicion upon
9 another, or to raise a conjectural inference as to the
10 commission of crime by another is not admissible. Excuse me.
11 Oh, I think as Mr. Whelchel has pointed out the fact that
12 Mr. Gary Manigan was in possession of recently stolen property
13 and he pawned it a day after or actually it was two days after
14 the property was stolen but it was only a day after the pawn
15 shop was open in order to so it could be pawned raises more
16 than a bare suspicion or conjectural inference as to the
17 commission of crime by another. Now that obviously does not,
18 does -- it does not exclude the defendant in this case Michael
19 Manigan from being a a participant in the, in the criminal
20 offense, it does not exclude him from being a a the the
21 participating with Gary Manigan for that matter but I I -- if
22 there's gonna be testimony that some earrings were stolen and
23 she's going to, uh, uh, obviously we know they were recovered,
24 we know where they were recovered, we know how they were
25 recovered, that's certainly relevant to the case I wo -- uh,

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1 it would seem to me. Um, I mean, I mean, I I can't imagine
2 excluding that information. If she testifies she had earrings
3 stolen, she has found where they are forty-eight hours later
4 and it's determined that somebody else pawned 'em, it doesn't
5 exclude Mr. this defendant Manigan from being participant as I
6 say but it's certainly a part of the case and would seem to me
7 to be be appropriately cross-examined on that, I mean, it
8 would seem that there's more there. You you're you're
9 correct,

10 Ms. Poulos, in that we don't know how he came into possession
11 of them but it's certainly more than casting a mere suspicion
12 or a conjectural inference. He's in possession of property we
13 know within forty-eight hours of the time it was stolen and of
14 course historically and traditionally a person in possession
15 of recently stolen property can be inferred that they stole
16 it, so I I think it's, uh, I think it's, uh, admissible
17 evidence. Alright, anything else?

18 MS. POULOS: Nothing else from the State, Your Honor.

19 THE COURT: Okay.

20 MR. WHELCHER: Is Your Honor planning on bringing jury in
21 now or you gonna take a break?

22 THE COURT: Well plan on bringin' 'em in now ---

23 MR. WHELCHER: Okay.

24 THE COURT: --- 'cuz they they've been havin' a break,
25 they've had a break for an hour.

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1 MR. WHELCHEL: Yes. Your Honor, I have one item at this
2 time. Defense would stipulate that Mr. Michael Manigan has
3 two prior convictions for burglary. Uh, the indictment in
4 this matter, I believe Your Honor has the indictment, alleges
5 all of the elements or all of the aggravating circumstances in
6 in a burglary of first offense, uh, but the State is going
7 forward on their proof of two prior convictions for burglary,
8 uh, the defense would offer to stipulate to those two
9 convictions at this time, Your Honor.

10 THE COURT: Alright, Ms. Poulos, do you wish to accept
11 the stipulation?

12 MS. POULOS: Your Honor, no, we we intend to call,
13 um, ---

14 THE COURT: Okay.

15 MS. POULOS: --- a witness from the clerk's office to get
16 the two prior burglaries into evidence.

17 THE COURT: Alright, unless the law has changed, I think
18 the State has a right to prove an element of the offense
19 absent a stipulation.

20 MR. WHELCHEL: Well, now that we've stipulated, Your
21 Honor, I don't think ---

22 THE COURT: But she's not. You you have but she has
23 not.

24 MR. WHELCHEL: Well I understand that, Your Honor.

25 THE COURT: Well do you have some evidence of a similar

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1 case that says she's no ---

2 MR. WHELCHER: No, sir.

3 THE COURT: --- is required to?

4 MR. WHELCHER: No, sir.

5 THE COURT: Fact, the case law says she's not required
6 to, does it not?

7 MR. WHELCHER: No, there's nothing that says that she
8 cannot choose to do that even though I've offered to
9 stipulate, Your Honor.

10 THE COURT: In other words, what I'm sayin' the case law
11 in fact says she has every right to ---

12 MR. WHELCHER: Yes.

13 THE COURT: --- to not agree to a stipulation.

14 MR. WHELCHER: Yes, sir.

15 THE COURT: Yeah, okay.

16 MR. WHELCHER: I was just offering it up for the record,
17 Your Honor.

18 THE COURT: Well I think you're generous to do so but,
19 uh, I think, ---

20 MS. POULOS: We appreciate it, Your Honor, ---

21 THE COURT: --- I think she ---

22 MS. POULOS: --- but ---

23 THE COURT: --- she has a -- she's entitled to prove
24 every essential element of the crime and she wishes to.

25 MR. WHELCHER: I think the problem with that, Your Honor,

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1 is that it essentially compels my client to testify because of
2 the two prior convictions.

3 THE COURT: He can't be compelled to testify, he still
4 doesn't have to ---

5 MR. WHELCHER: Well ---

6 THE COURT: --- if he doesn't want to.

7 MR. WHELCHER: --- I understand that, Your Honor. You
8 and I understand that. My client feels like he's compelled to
9 testify because ---

10 THE COURT: Well ---

11 MR. WHELCHER: --- the jury's gonna hear about it.

12 THE COURT: --- well he may feel compelled to do so but
13 that's, you know, that's his, uh, decision. I'll explain that
14 to him when the time comes that that he doesn't have to. Even
15 though he might feel compelled, nobody can require him to
16 testify.

17 MR. WHELCHER: Yes, sir.

18 THE COURT: Alright, bring the jury in and ask
19 Mr. Stribble to take the foreperson's seat.

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

21 THE COURT: Good afternoon, ladies and gentlemen, I
22 apologize for the delay but I had some matters I needed to
23 address and they took a little longer than I had anticipated
24 they likely would but we are now ready to begin with the trial
25 of the case for which each of you have been selected and,

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1 Mr. Stribble, I'm gonna ask you to serve as a foreperson and
2 as the foreperson you're gonna have three specific duties that
3 none of the other jurors will have. Number one, you'll be
4 asked to serve as the spokesperson for the jury and so if
5 during the trial something arises that needs to be brought to
6 my attention, you or a fellow juror has some difficulty,
7 problem or question if you'll let me know directly or through
8 the bailiff I'll address those issues or answer those
9 questions should they arise. Secondly, you're gonna be called
10 upon to preside over jury deliberations when the time comes
11 for jury deliberations, that of course will not be until the
12 end of the trial after all the evidence has been received and
13 I've instructed you on the law that's applicable in the case
14 but when the time does come for jury deliberations, it will be
15 you who will preside over that process in the jury room simply
16 to ensure that those deliberations are carried out in some
17 orderly fashion. Thirdly, you'll also be called upon to write
18 the verdict or the decision of the jury, you'll do that on the
19 verdict form that I'll provide you at the trial's conclusion
20 on which you will indicate the jury's unanimous decisions in
21 this case. Now the foreperson has those specific duties that
22 I've just indicated, that does not however mean that he is
23 anymore more important than any of you other jurors and that's
24 because the decision of a jury is the unanimous consensus
25 opinion of all twelve jurors and so each of you will have an

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1 equal say and an equal vote in what the ultimate decisions in
2 this case will be, someone simply has to be delegated those
3 responsibilities that I have just indicated and I have
4 delegated those to Mr. Stribble in appointing him as the
5 foreperson but each of you jurors are equally important so far
6 as the ultimate decision in the case is concerned because as
7 I've stated the verdict has to be unanimous, all twelve of you
8 must be in agreement.

9 Now, Ms. Thor and Ms. Fowler, each of you have been
10 selected as alternate jurors and the function of an alternate
11 juror is to take the place of one of the original jurors in
12 the event one of these original twelve jurors cannot continue
13 to serve for some reason during the course of the trial and so
14 if one or more of these jurors is unable to continue then one
15 or both of you would be called upon to take those absentee
16 juror's places, in that event you will become the twelfth
17 juror, in that event you would participate throughout the
18 trial including in the jury deliberation's at the trial's
19 conclusion. If, however, when the time does come the jury
20 deliberations all of the original twelve are able to
21 participate in that function then your service as an alternate
22 would end and that's because a jury verdict is that of twelve
23 and no more than twelve are permitted to engage in that
24 deliberation process but it is important that you, each of you
25 pay just as careful attention as we ask of all of the jurors

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1 in the case because it does occur from time to time for one
2 reason or another one or two of these original jurors may be
3 called away, in that event one or both of you would be called
4 upon to serve as the twelfth so we do appreciate your
5 participation as alternate jurors just as we appreciate the
6 participation of each of you jurors who have been selected for
7 the purpose of deciding the verdict in this particular case.
8 You may swear the panel.

9 THE CLERK: Yes. Please stand and raise your right hand.

10 (Whereupon, the jury panel was sworn.)

11 THE CLERK: Thank you, you may be seated.

12 THE COURT: Ladies and gentlemen, as you know you've been
13 selected to decide the verdicts in the case of the State vs.
14 Michael Anderson Manigan. Mr. Manigan has been accused by the
15 prosecution with having committed two separate and distinct
16 offenses, although they are alleged to have arisen out of one
17 particular event or a course of events, which the State
18 alleges occurred on or about December the 11th of 2010 but by
19 way of two separate indictments the State accuses the
20 defendant, Michael Manigan, of having committed the crimes of
21 burglary in the first degree and grand larceny. They allege
22 that on or about December the 11th of 2010 he did wilfully and
23 intentionally enter a dwelling that belonged to Elizabeth Ann
24 Vandahm located here in the City of Spartanburg, that he
25 entered that dwelling without her consent and with the intent

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1 to commit a crime therein. Now there are six specific
2 additional allegations, one or more may be established, but
3 only one of those additional allegations needs to be
4 established in order for the burglary to constitute a burglary
5 in the first degree. They also allege that on the same date
6 that he committed the crime of burglary he also committed the
7 crime of larceny in that he took, stole and carried away
8 personal property of Elizabeth Ann Vandahm and he took that
9 property with the intention of depriving the true owner of use
10 and possession of property and converting that property to his
11 own use, that is by stealing the property.

12 Now as to those allegations and as to each of those
13 charges as you've been told, he has entered a plea of not
14 guilty. As I've told ya that plea of not guilty places upon
15 the State the burden of proving all the allegations that they
16 have set forth in each of those indictments, the burden of
17 proving each of the essential elements that make up the crimes
18 that they allege against the defendant and; therefore, the
19 burden is upon the State to establish the defendant's guilt to
20 the satisfaction of you twelve jurors beyond a reasonable
21 doubt before any verdict of guilty could be returned as to
22 either of the separate charges. Every person who is accused
23 of a crime, and it does not matter how serious the offense
24 might be for which that person stands charged, every person
25 accused of a crime is presumed to be innocent of that charge

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1 and that presumption of innocence remains with any defendant
2 as it does with this defendant from the time he is placed
3 under arrest and throughout the course of the criminal process
4 and even throughout the course of the actual trial in the
5 case, that presumption of innocence will be with Mr. Manigan
6 even as you go back to begin with your deliberations at this
7 trial's conclusion and that presumption of innocence will be
8 with him in that jury room and it'll be with him forever
9 unless you twelve jurors determine that he's no longer
10 entitled to that presumption of innocence; in other words,
11 after you've carefully considered all the evidence in the case
12 and from that evidence you determine what you believe to be
13 the true facts as they relate to these allegations -- if you
14 twe -- and after you have applied the law that I will have
15 provided ya. If you twelve jurors unanimously determine that
16 his guilt as to a crime has been proven beyond a reasonable
17 doubt then he would no longer be entitled to that presumption
18 of innocence as it relates to that charge but it is only if,
19 unless and until you are satisfied of his guilt beyond a
20 reasonable doubt that the presumption of innocence would no
21 longer be applicable.

22 Now the way the trial was -- will proceed is that in a
23 moment the lawyers are going to address you in what are called
24 "opening statements". There are two occasions in a trial
25 where lawyers are permitted to address the jury directly and

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1 that is at the beginning of the trial before any evidence has
2 been introduced then again at the conclusion of the trial
3 after all of the evidence has been received, keep in mind,
4 however, as I've just indicated the lawyer's statements are
5 not to be considered by you as evidence upon which you will
6 base your decision and that's because the lawyers don't know
7 anything about this case of their own personal knowledge,
8 perception or experience like witnesses will be testifying to,
9 the lawyers will not be taking the witness stand, they'll not
10 be testifying under oath, they will not be subjected to direct
11 and cross-examination unlike witnesses will be and so what the
12 lawyers tell you in their statements is not to be considered
13 by you as any evidence upon which you will base your decision
14 but you should listen to what the lawyers have to say because
15 those statements do serve a purpose. The opening statements
16 serve to provide you with a basic understanding as to what
17 this case is about from bo -- uh, from both the perspective of
18 the State and the defense so that you'll have some context in
19 which to place the evidence that we will be receiving shortly
20 thereafter. The closing statements occur after the evidence
21 has been received and again, while those statements are not
22 evidence, it does afford the lawyers an opportunity to discuss
23 with you the evidence that you have seen and heard during the
24 course of this trial and through that discussion each will
25 have an opportunity to try to persuade you or to convince you

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1 that the evidence in the case does or does not support a
2 particular decision and it's in between those opening and the
3 closing statements accomplished by the lawyers that we
4 actually receive the evidence upon which you will base your
5 decision.

6 The State as I've told ya has the burden of proof and,
7 therefore, the State will go forward first in its presentation
8 of evidence. Once the State has concluded with its
9 presentation of evidence, the defendant has the same
10 opportunity to testify and to call witnesses and to present
11 evidence if he or she wish to do so but a defendant is under
12 no obligation to ever testify or to call a witness or produce
13 any evidence because the burden is not upon a defendant to
14 prove that he or she is not guilty or to prove that he or she
15 is innocent because in some cases that might not be possible,
16 the burden is upon the State because they have brought the
17 accusation to establish the defendant's guilt beyond a
18 reasonable doubt and that's why they have to present evidence
19 but a defendant is always afforded an opportunity to present
20 evidence in the event he or she wish to do so.

21 Now after all of the evidence is received and after you
22 hear the final summations of the lawyers, I will then instruct
23 you fully on the law as it relates to the criminal law
24 generally and as it relates to these particular crimes
25 specifically and then you'll be asked to go back and begin

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1 with your deliberations. Through that process you're simply
2 gonna be called upon through the exercise of good judgment and
3 common sense conscientiously apply it to the testimony and
4 evidence in the case to decide the facts, apply the law and to
5 arrive at a fair and just decision whatever that decision may
6 be. It is important that you keep an open mind throughout the
7 course of the trial and that simply means that you are not to
8 begin making up your minds or formulating your opinions as to
9 what you think the ultimate decisions in this case oughta be
10 until all the evidence has been received, until you've been
11 instructed on the law and until you've been asked to begin
12 with your deliberations. It's also important that you pay
13 careful attention to each of the witnesses as they testify
14 because sometimes there conflicts in testimony and if there's
15 a conflict in testimony that relates to a material fact, it
16 must be decided before you can reach a decision and you are
17 the persons who get to decide those facts; in other words, you
18 are the ones that decide the credibility and the believability
19 of witness testimony and therefore you can believe everything
20 that a witness testifies to, you may choose to believe none of
21 it. You may believe some portion of a witness's testimony and
22 reject some other portion of that same witness's testimony.
23 You may believe one witness as opposed to several or several
24 as opposed to one but it's important that you give each
25 witness the same degree of attention as they testify so that

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1 you'll be in a proper position to be able to fairly evaluate a
2 witness's testimony in light of not just that witness's
3 testimony but in light of all of the testimony and all the
4 evidence received during the trial, so I do wanna thank you in
5 advance for your participation as well as for your careful
6 attention. I would ask that you please give the lawyers your
7 attention now as they give you their opening statements.

8 Ms. Poulos.

9 MS. POULOS: Thank Your Honor. May it please the Court.
10 On December the 11th 2010 a young woman who was living alone
11 returned to her home on Carlisle Street at night, walked in
12 and saw broken glass everywhere, broken windows, a big rock
13 thrown in on the floor, another brick thrown in in a different
14 room, her kitchen cabinets had been opened, things had been
15 moved about, her dog was barking and acting crazy, that woman
16 was Elizabeth Vandahm, 31-year-old woman, Spartanburg native,
17 born and raised, grew up here, retire -- and has lived in
18 here -- here her entire life. She worked at Haywood Mall at
19 Dillard's in Greenville at the cosmetics counter.

20 December 11th 2010 started out like a typical workday for
21 Liz, she got up that mornin', got ready to go to work, her
22 normal shift started around twelve or one o'clock that
23 afternoon. She got ready dressed in all black as she did
24 every time she went to work and had done many, many times,
25 worked her shift, came back later that night, pulled up in her

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1 driveway, unlocked her house and stood there in shock at what
2 she was about to see: She realized that point someone had
3 been inside her home. Terrified and shocked she walked next
4 door to her next door neighbor and called the police. The
5 police arrive within minutes, they came to the scene. Officer
6 Hair came to the scene and took pictures, assessed the damage,
7 tried to figure out what all had been taken, how this person
8 got in, how they got out and at some point during this time
9 the, uh, Liz and her father walk out to the backyard and they
10 notice something in that backyard by the woods, it was a big
11 black trash bag. Well they brought this big black trash bag
12 over, low and behold inside was her computer and printer that
13 had been stolen. Liz also had some jewelry that was stolen
14 but that wasn't in the bag, just the computer and the printer
15 and along with that computer and printer was one of the most
16 crucial pieces of evidence in this case: fingerprints. Whose
17 fingerprints did they later turn out to be? the defendant
18 Michael Manigan's fingerprints, that's why we're here today.
19 We're here because the State has brought charges against the
20 defendant for burglary in the first degree and grand larceny
21 and we, the State, have the burden or the responsibility of
22 proving each element of those charges to you beyond a
23 reasonable doubt.

24 Now in South Carolina burglary in the first degree is the
25 entering into a dwelling without the consent, with the intent

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1 to commit a crime while inside during the nighttime or by
2 someone with two or more prior burglary convictions. Grand
3 larceny is defined as the taking and carrying away of property
4 with the intent to permanently deprive the owner of that
5 property. Now I know a lotta ya'll watch TV shows like Law &
6 Order and CSI, I tell this to juries often in opening
7 statements, this case isn't going to be like TV, we're not
8 gonna be able to solve this case in a 1-hour time slot, we may
9 not have all the answers, um, there's not going to be any
10 direct evi -- direct eyewitness testimony, unfortunately no
11 one saw this happen but there is other what we call
12 "circumstantial evidence" and you can think of circumstantial
13 evidence as a chain, all the facts and pieces of evidence are
14 the links, separately they may not matter or be important but
15 when they're all linked and placed together they do matter and
16 they are important and we believe that those links will form
17 and will prove to you that Gary -- that Michael Manigan is
18 guilty of burglary and grand larceny, that's what we're here
19 to prove. This isn't going to be a case of what -- a who must
20 have done this -- excuse, me who should've done this or who
21 could have possibly done this, this is gonna be a case about
22 who must have done this and we believe that the evidence will
23 show that Michael Manigan committed this crime, that's what
24 we're here to prove.

25 On behalf of the State, ladies and gentlemen, I wanna

OPENING STATEMENTS

1 thank you all for you service, for being patient with us today
2 and during the course of this trial all I can ask of ya'll is
3 this: Be fair to the State, be fair to the defense, pay
4 attention to the testimony as it's presented to you and the
5 most important thing is to remember to use your good ol'
6 common sense. Thank you.

7 THE COURT: Mr. Whelchel.

8 MR. WHELCHEL: Thank you, Your Honor. Not guilty,
9 Michael Manigan is not guilty. Under the law of this state
10 Michael Manigan is not guilty right now. Michael Manigan's
11 been not guilty the day he was arrested. Michael Manigan as
12 you heard the judge tell you and he'll tell you this again has
13 no burden of proof, is not required to testify or bring
14 anybody here to testify. He does not have to explain how or
15 why he is out, Michael Manigan is not required to do that.
16 Anybody who sits where Michael sits today charged of a crime
17 in this state is presumed innocent. Anybody charged with a
18 crime in this state is presumed innocent, that is the law of
19 this state. There's a reason for that. The judge has already
20 told you you may not be able prove your innocence and you're
21 not required to. This is the kinda thing that we started a
22 revolution for couple hundred years ago. There's a whole
23 lotta nations in this country where just the opposite is true:
24 State charges you, you gotta prove yourself innocent. It
25 doesn't work that way here and it's a real good thing 'cuz

OPENING STATEMENTS

1 here's the odd thing of what you haven't heard, what you
2 didn't hear from Ms. Poulos is this: Thirty-six hours after
3 this incident took place a fella by the name of Gary Manigan
4 pawned Ms. Vandahm's earrings. Yeah, thirty-six hours give or
5 take thirty minutes, after she comes home on Saturday night
6 and the pawn shop aren't open, so thirty-six hours roughly
7 after this burglary took place Gary Manigan has the earrings,
8 not a fingerprint, he has the earrings in his hand and he
9 takes 'em and he gets 50 whole dollars for I think \$2,000
10 earrings, I'm not sure about that value, Ms. Vandahm will tell
11 you that. Ms. Vandahm is the one who found out. She talked
12 to the investigator, investigator said, you know, you know
13 what your jewelry looks like better than I do. It's the
14 truth. I mean, let's be honest, men and women look at jewelry
15 in in entirely different ways. Primarily for men it's
16 somethin' I gotta buy and women well we all know they love it
17 and they can tell you the intricate differences in something
18 and all of those different cuts that a diamond has, a a
19 diamond ring has. It's pretty and I shiny, that's what I
20 know, and it costs a lotta money but you gotta understand
21 something here, this is crucial: Michael Manigan is presumed
22 innocent under the law and the burden to prove to you beyond a
23 reasonable doubt is Michael Manigan broke into this house and
24 stole this property rests with that table (indicating). They
25 found out as soon as Ms. Vandahm called that Gary Manigan had

OPENING STATEMENTS

1 pawned these items or sold these items at at a pawn shop less
2 than a mile from her home, yeah, but Gary Manigan's not on
3 trial. I don't see him. Decided Michael Manigan needed to be
4 tried when a fingerprint was developed months after the crime
5 took place, rephrase that, months after the alleged burglary
6 on the part of Michael Manigan took place. If it -- we'll
7 just ignore Gary Manigan takin' the earrings and selling 'em
8 to a pawn shop. I was a prosecutor myself in court, I was
9 here a long time ago, you can tell that, and I cannot
10 emphasize to you enough just how important that this case is
11 to my client as he's been waiting since April 2011 for this
12 day in court and remember, he's not guilty, the law in this
13 state says he's not guilty. There's is only one entity that
14 can say he is guilty, that's you. Doesn't matter what the
15 prosecutor thinks, doesn't matter what investigators think, it
16 might shock you it doesn't even matter what the judge thinks
17 about that 'cuz you decide whether or not the evidence you
18 hear and sometimes the evidence you don't hear is sufficient
19 for you as a collective body to take what is referred to in
20 the law as the "cloak of innocence" that surrounds my client
21 Mike Manigan and anybody else arrested and charged with a
22 criminal offense in this state. It it is up to you to
23 determine whether or not the State has proved to you with
24 evidence so strong and so convincing as to remove that cloak
25 of innocence because that evidence is strong enough,

OPENING STATEMENTS

1 convincing enough that you believe they've proven it beyond a
2 reasonable doubt, that's the burden that rests there
3 (indicating), absolutely none rests with Mr. Manigan in his
4 defense, fundamentally crucial basic law that you need to
5 understand that is always true in this state and country and
6 it's always been true, hope to God it's always true.

7 They're gonna ask you to take the fact that Michael
8 Manigan lives right across the street from this young lady,
9 where his mama lived and when she died he inherited that
10 house. Gary Manigan's over at Michael's house, he's his
11 nephew. My wife, I'm reminded what my wife says at times:
12 You can't help who your relatives are, she says you can't help
13 who ya love and then she looks at me and smiles and I say
14 thank you darlin'. They want you to believe guilt by
15 association 'cuz there's a fingerprint on some computer parts
16 they're gonna show you that they found months later and that
17 this property was found up the street in the next yard lying
18 in the open in a bag. Somewhere between five and ten o'clock
19 somebody went into that house. Nobody knows how long that
20 property was out there, nobody knows. You'll hear the
21 testimony from Mr. Vandahm, this lady's father, when he went
22 over to the house, you'll hear her testimony when she went
23 over there. All we know is that sometime in between when he
24 was there to let the dogs out, when she got home somebody went
25 in the house. We do know this and you'll hear it: Thirty-six

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 hours later Gary Manigan walked in said, What'll you give me
2 for those, but he's not here.

3 THE COURT: Ms. Poulos.

4 MS. POULOS: Your Honor, State calls Elizabeth Vandahm.
5 (Whereupon, the witness came forward.)

6 ELIZABETH ANN VANDAHM,
7 having been first duly sworn, testified as follows:

8 THE CLERK: Thank you, you may be seated.

9 THE COURT: Ms. Poulos, before you start let me see ya'll
10 just a minute.

11 (Whereupon, a bench conference was held off the record.)

12 DIRECT EXAMINATION BY MS. POULOS:

13 Q. Ms. Vandahm, if you would, please state your full name.

14 A. Elizabeth Ann Vandahm.

15 Q. And where do you live?

16 A. Uh, [REDACTED].

17 Q. Is that in the city of Spartanburg?

18 A. Yes.

19 Q. And how long have you lived in Spartanburg?

20 A. Um, I grew up here so a long time.

21 Q. How long, how long have you lived in your home on
22 Carlisle Street?

23 A. Um, it was five years in November.

24 Q. Did you also go to school here in Spartanburg?

25 A. I did.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Where do you work?

2 A. I work at Dillard's in Greenville.

3 Q. How long have you worked at Dillard's?

4 A. Um, almost 3 1/2 years maybe -- well maybe not.

5 Q. And what -- where do you want -- what are your gen --
6 general duties at Dillard's?

7 A. Um, I'm the business manager for the Christian Dior
8 counter so I kinda run all the promotions and sales and
9 business aspects of it.

10 Q. And home on Carlisle Street are you -- you're still
11 livin' in that home today?

12 A. Yes.

13 Q. Okay, and taking you back to December the the 11th 2010,
14 what day of the week was that, do you recall?

15 A. It was a Saturday.

16 Q. And what did you do that day?

17 A. Um, I just got ready and went to work.

18 Q. What was your -- what time was your normal shift?

19 A. Um, I think I probably had to be there at 1 until a
20 around 9:45 or 10, it just depends, around 9:45.

21 Q. And Haywood Mall is is in -- is that in Greenville?

22 A. Yes.

23 Q. So did you have a bit of a commute?

24 A. Yes.

25 Q. Okay. What time would you normally have have come home

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 when you worked your shift?

2 A. Um, sometime anywhere around probly like 10:30, round
3 about that time, sometimes a little bit earlier, sometimes a
4 little bit later but...

5 Q. Do ya have a a uniform or or somethin' that you wear or a
6 color that you wear every time you go in?

7 A. Yes, I have to wear all black every ---

8 Q. All ---

9 A. --- day.

10 Q. --- black. Okay, every day go to work it's all black.

11 A. Yes.

12 Q. Okay. On this day when you left for work, were you
13 dressed in all black?

14 A. Yes.

15 Q. And when you left your home, was it in normal
16 condition?

17 A. Yes.

18 Q. Were there any windows broken?

19 A. No.

20 Q. Do you have any pets?

21 A. I do. I had one dog at the time, now I have three.

22 Q. What kind of dog did you have at the time?

23 A. Uh, he's a little Boston Terrier/Bull Mastiff mix.

24 Q. About how many pounds?

25 A. He's about 35 pounds.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. How many dogs do ya have now?

2 A. Three.

3 Q. Where does -- where did your dog stay while you were at
4 work?

5 A. Um, at that time he stayed in the living room. There's a
6 glass door that separates the living room from the rest a the
7 house so he would just stay in there.

8 Q. You said he stayed in the living room, is that in the
9 front part of your house -- house?

10 A. Yes.

11 Q. Okay. Is the door where you had him is it a glass
12 door?

13 A. It is, it's a fully glass pane door.

14 Q. Okay. And the night that you worked your shift and and
15 returned home, 'bout what time would you say that you got
16 home?

17 A. Um, I would say it was probly around 10:30.

18 Q. And did you go in from the the front door or from the
19 back door?

20 A. Yes, I always go in the front door.

21 Q. In the front door. Okay, and when you got inside, what
22 did you notice?

23 A. Well the dog, I pulled the blind up a little bit in the
24 front because so he likes to see out, um, and normally when I
25 come home he's just laying on the back of the couch in the

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 window and when I got home he was running back and forth from
2 the window to that glass door just jumping at back and forth,
3 um, like really worked up so ---

4 Q. Was ---

5 A. --- that was kind of a first thing I noticed.

6 Q. --- was that unusual for your dog to be behaving that
7 way?

8 A. Yes.

9 Q. How long had you had that dog?

10 A. Think he was two at the time so I've had him for two
11 years.

12 Q. Okay, what else did you notice in the ho -- in your
13 house?

14 A. Uh, well when I walked back towards the back door to let
15 him out, um, there was glass everywhere. There was a big
16 cement like a it was just a big piece a cement laying in the
17 middle of the kitchen floor, um, and there was -- the dog was
18 just jumping up and down, broken glass, I -- that was the
19 first thing just...

20 Q. Did you call the police? What what was the first thing
21 that you did?

22 A. Well actually was on the phone with my dad, um, so I told
23 him, as soon as it registered with me what happened, I told
24 him and then I called 911.

25 Q. Did you stay in your house or did you go to somebody

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 else's house?

2 A. Um, I went to my next door neighbor's house and stayed
3 out on the front porch until the police came.

4 Q. And what what is her name?

5 A. Christy Holcombe.

6 Q. Okay. Had your dad been over to your home earlier that
7 day?

8 A. Yes, he always comes, um, while I'm at work to let the
9 dog out. Uh, ---

10 Q. He he usually comes every day while you're at work?

11 A. Yes.

12 Q. Okay. Was there anything missing from inside your home
13 that that you noticed?

14 A. Yes, my computer monitor and the printer were, uh,
15 missing, they're usually still on my desk and it was just...

16 Q. Was there anything missing from your your bedroom?

17 A. Yes, there -- I have a jewelry box on my dresser and
18 there was quite a bit of jewelry missing.

19 Q. Can you describe some of the the jewelry pieces that
20 were missing.

21 A. Um, there was a pair of diamond earrings, there was a an
22 antique gold high school ring, um, I think it was from the
23 twenties, um, there was a pearl ring, um, there was a lot of I
24 had like sterling silver costume jewelry missing.

25 Q. How much stuff do you think that the jewelry was worth?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. Altogether and over \$3,000, not more than that.

2 Q. And your computer and printer how much do you think
3 those were worth?

4 A. Uh, I would probly say to get to \$600 maybe.

5 Q. Okay. So about \$3,000 wortha jewelry and another several
6 hundred for the the computer and and printer?

7 A. Um-hum.

8 Q. Okay. Was there anything unusual in your kitchen?

9 A. Yes, um, the -- there was glass everywhere, everything
10 was knocked over on the counter, there kitchen cabinets that
11 were open, um, the back door wouldn't open.

12 Q. Did you find anything on the floor that you recall?

13 A. Yes, there was, um, in the kitchen there was the piece of
14 cement and glass and then in my bathroom, um, there was glass
15 and a brick, there had been a a brick thrown through that
16 window.

17 Q. Okay, what about the the back door? Was there anything
18 unusual with the back door? Had it been damaged or or not?

19 A. Yes, it, someone had tried to, uh, pry it open. The door
20 frame was just chipped and the, uh, the doorknob was popped
21 off. Um, there was a glass window in the top a the door and
22 one a the panes it had been broken. Um...

23 Q. Was your kitchen window broken ---

24 A. Yes.

25 Q. --- as well? And how high is the -- your kitchen window

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 from the ground, do do you know?

2 A. That time it had to have been probably 7, 7 1/2 feet off
3 the ground.

4 Q. From the ground, okay. Do you recall anything missing
5 from your kitchen?

6 A. Um, there was beer missing out of refrigerator,
7 um, ---

8 Q. Um, ---

9 A. --- that's it.

10 Q. --- let's talk a little bit about the the backyard now.
11 Do you have a a a large backyard or a small backyard? Can can
12 you describe that for us.

13 A. Um, it's not very wide, it's fairly deep, um, especially
14 for since it's a downtown neighborhood, most yards are smaller
15 than that. Um, mine when I bought the house I was deeded
16 extra land that I think had belonged to the city but...

17 Q. Did you have a a type of fence ---

18 A. Yes, I have a s ---

19 Q. --- in your backyard?

20 A. --- have a 6-foot privacy fence. Um, a few months before
21 we had had the big wind storm so there was a really big old
22 tree that had been it uprooted so what happened was the roots
23 had lifted part of the privacy fence and then when the tree
24 fell it kinda slid back into my yard so I had had, um, I guess
25 it's called chicken wire, hog wire, we kind of repaired it

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 until we could get everything taken care of with that.

2 Q. What -- was -- who put up the chicken wire fence?

3 A. My dad.

4 Q. Your dad and and did he do that as sort of a temporary
5 fix?

6 A. Um-hum.

7 Q. Okay. What do -- what type a fence do you have now?

8 A. It's fixed, it's a 6-foot privacy fence all the way
9 around.

10 Q. Okay. And that that chicken wire fence would you say
11 that it was bendable?

12 A. Oh, yes.

13 Q. How tall would you say that the chicken wire fence was?

14 A. Maybe 4 feet.

15 Q. Okay. Would it been impossible for for you to climb over
16 this chicken wire fence?

17 A. Oh, yeah.

18 Q. Okay. Now where this tree that you mentioned that had
19 fallen over durin' the storm there, I'm assumin' there's
20 there's a big root ball.

21 A. Was huge.

22 Q. Okay, and did it leave a big hole?

23 A. Yes.

24 Q. Okay. So the roots were uplifted and that's what caused
25 the hole.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. Right.

2 Q. Okay. Now had -- why hadn't the tree been cleared up at
3 this point?

4 A. Uh, well at first we were tryin' to figure out whose tree
5 it was, um, and then Duke Power had come out and cut, yeah, a
6 lot of it but then it was just trying to find someone, um,
7 because to access it you would have to come down the street
8 behind my house, it's actually behind my neighbor's house, and
9 it's not, it's not a cul-de-sac, it's just like it was, it
10 just ends so the spacing, every -- it was just difficult to
11 find some people to get back there to to get it.

12 Q. And did you ultimately pay for the tree to be cleared?

13 A. I did.

14 Q. You did? Okay. And did the, uh, back to the chicken
15 wire fence, did that fence stretch across the back part of
16 your property?

17 A. It took the cor -- part -- one of the corners and more
18 than half of the back.

19 Q. Okay. Let's see. I approach the witness, Your Honor?

20 THE COURT: (No audible response.)

21 Q. Ms. Vandahm, I'm I'm showing you what's been marked for
22 identification purposes as State's Exhibits 1 through 13.
23 Will you take a moment to review those and let me know when
24 you're ready.

25 A. Sure.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Okay.

2 (Whereupon, the witness reviewed the exhibits.)

3 A. Okay.

4 Q. Have you had a chance to review those exhibits?

5 A. Yes.

6 Q. And were those photographs that were taken of your home
7 on the night that this incident happened?

8 A. Yes.

9 Q. Do those pictures fairly and accurately represent the way
10 that your home looked on that night?

11 A. Yes.

12 MS. POULOS: Your Honor, at this time we'd ask that
13 State's Exhibits 1 through 13 be admitted into evidence.

14 MR. WHELCHEL: Without objection, Your Honor.

15 THE COURT: They're admitted.

16 (State's Exhibit Nos. 1 through 13, photographs, admitted
17 into evidence.)

18 MS. POULOS: Permission to publish photos, Your Honor.

19 THE COURT: You may. Let me ask the jurors in the back
20 row if you will let me ask you, ma'am, if you'll come to the
21 front seat and everybody else move down one, that at least
22 gives the last alternate a chance to see the screen. And
23 these photographs and they're being shown to you now but they
24 will be with you when you go back to deliberate.

25 BY MS. POULOS:

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Ms. Vandahm, I'm showing you what's been admitted as
2 State's Exhibit 1, now that's a little bit dark but can you,
3 can you describe what's in that photograph.

4 A. Um, it's my front door.

5 Q. Your front door, okay. And along the sides right here
6 (indicating), can you tell what this is on along the sides on
7 your railings?

8 A. It's, uh, garland, it was Christmastime.

9 Q. Christmas garland, okay. This (indicating) is your front
10 door?

11 A. Yes.

12 Q. Okay. This is, this is State's Exhibit No. 7, alright,
13 can you tell us where that (indicating) is.

14 A. It's my bathroom floor.

15 Q. And and what what is this (indicating) on the floor?

16 A. Glass.

17 Q. And did you say that there was a somethin' that had been
18 thrown on the floor earlier?

19 A. There's a brick.

20 Q. It was a brick? And where was the brick?

21 A. Um, it was on the other side of the door.

22 Q. On the other side of door, okay. This is State's
23 Exhibit 6 and what is in this photograph?

24 A. That's my bathroom window.

25 Q. Is the bathroom window broken?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. Yes.

2 Q. And what are these (indicating) bars?

3 A. Um, they're like the wooden divides. That window doesn't
4 actually open, ---

5 Q. Okay.

6 A. --- um, so it's just kind of the decorative.

7 Q. Okay, and is this window on -- in the back of your home
8 or in the front?

9 A. The back.

10 Q. This is State's Exhibit 11, alright, what room is that in
11 your home?

12 A. The kitchen.

13 Q. Kitchen. What is this object right here (indicating)?

14 A. That's the piece a cement that was thrown through the
15 window.

16 Q. Okay, and where is your window? If I look at this
17 picture, where would your window be?

18 A. Um, above the cabinets but ---

19 Q. So whe ---

20 A. --- kind of in front of the island I guess.

21 Q. Up more this (indicating) way? The island is here
22 (indicating), your window was was up here (indicating)?

23 A. I little bit over and back.

24 Q. To the right, ---

25 A. Yes.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. --- okay. And where were your your kitchen cabinets that
2 were open? What side of the kitchen were those on?

3 A. The ones that are blocked by the island just right in
4 front, I guess it would be the forth one over, you could see
5 it was ---

6 Q. Okay.

7 A. --- open.

8 Q. Over here (indicating) on this, past this left side?

9 A. Yeah, it would be just the one right next to this one
10 that you can see.

11 Q. Okay.

12 A. The one next to it was open.

13 Q. Okay. Alright, this is State's Exhibit 10, alright, what
14 window is that (indicating)?

15 A. One of the kitchen windows.

16 Q. Kitchen window, okay. And is there glass there?

17 A. Yes.

18 Q. Alright, is the glass in tact or ha -- is it broken?

19 A. Broken window and the storm window are broken.

20 Q. Okay, this was one of the windows that you found
21 broken?

22 A. Um-hum.

23 Q. Okay, and this kitchen window is it in the back of your
24 house or the front?

25 A. The back.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. And had the window been been lifted? Can ya tell from
2 this picture?

3 A. Yes, it had been broken. The latch was open and then the
4 frame had been lifted.

5 Q. Okay. This is State's Exhibit 13, what room is this
6 (indicating)?

7 A. Um, I use it as an office, it's supposed to be the dining
8 room.

9 Q. And was there anything missing from this room?

10 A. Um, the computer monitor and the printer.

11 Q. Okay. Where where did you have that? Did you have it on
12 the, on the desk?

13 A. Um-hum, and the keyboard was missing too.

14 Q. Okay. Is there anything else un -- unusual about this
15 this photograph? Is there anything outta place?

16 A. Just everything was knocked over and the iron...

17 Q. Where'd you normally have that iron?

18 A. I think it was just sitting up on the edge. I think I
19 was trying to iron something really quick but ---

20 Q. And and this red object here (indicating) what is that?

21 A. It's just a little canister I used to keep pens ---

22 Q. Okay.

23 A. --- and pencils ---

24 Q. Ha ---

25 A. --- in.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. --- has that been knocked over?

2 A. Yes, and the speakers were knocked over.

3 Q. Where where were the speakers? Are these (indicating)
4 the speakers?

5 A. Yes.

6 Q. Okay. This is State's Exhibit 15, is -- what is this
7 (indicating)?

8 A. Um, it's the trash bag that was found in back a my house
9 that had my computer monitor and printer and keyboard in it.

10 Q. Ms. Vandahm, cr -- I'm showing you what's been marked as
11 Exhibit State -- State's Exhibits 14 through 17, would you
12 take just a brief moment and look over those.

13 (Whereupon, the witness complied.)

14 Q. What do those pictures show?

15 A. Um, they're of the trash bag that my computer, uh,
16 monitor and printer were in and then there's a picture of the
17 fence, the temporary fence that I had.

18 Q. Do those photographs clearly and accurately reflect the
19 the the trash bag as it was found in your home and the way
20 that the fence looked on the night this happened?

21 A. Yes, the trash bag was closed when it was found but the
22 fence is the same way.

23 Q. Okay.

24 MS. POULOS: Your Honor, State would request that State's
25 Exhibit 14 through 17 be admitted into evidence.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 MR. WHELCHEL: No objection, Your Honor.

2 THE COURT: They're admitted.

3 (State's Exhibit Nos. 14 through 17, photographs,
4 admitted into evidence.)

5 BY MS. POULOS:

6 Q. Now, Ms. Vandahm, this was a trash bag that you found,
7 what -- where, tell me where on your property you found
8 this.

9 A. Um, it was behind the the hog wire fence but inside my
10 original like where where my fence would've continued if the
11 original fence were there, it was kind of next to where the
12 tree had been uprooted but on the other side of the hog wire
13 fence obviously but...

14 Q. Okay, I I'm gonna show you a better picture in a moment.
15 Was the trash bag when when you first saw it was it open like
16 this or was it closed?

17 A. No, it was closed.

18 Q. It was closed. What type of trash -- do you recall what type
19 trash bags that you kept in your house?

20 A. That kind.

21 Q. With the blue ties?

22 A. Yes.

23 Q. Okay. So did you, did you recognize it as as being one
24 of yours?

25 A. Yes, because, um, the cabinet that was open in the

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 kitchen was the cabinet where I kept those trash bags.

2 Q. Okay. Now gonna show you State's Exhibit 14, is this the
3 chicken wire fence that you were describing earlier?

4 A. Yes.

5 Q. And over here (indicating) is that the big root ball from
6 the the tree, this is the roots of the tree that had fallen
7 over?

8 A. Yes.

9 Q. Okay. About where would you say the -- you found or you
10 saw the trash bag?

11 A. Probably as far over on this (indicating) side of the
12 picture as you can see.

13 Q. On the left side?

14 A. Um, it was almost right where the fence joined my
15 original fence.

16 Q. Okay. Is your property line right here (indicating)
17 where the chicken wire fence is or is it somewhere else?

18 A. No, it's farther back.

19 Q. It's farther back.

20 A. It's about ---

21 Q. Where you saw the black trash bag, was that in your
22 property?

23 A. Yes.

24 Q. It was in your property line. Was it on the line or well
25 within your property?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. Um, I would say it was at least, you know, 2 or 3 feet
2 within inside my property line. It was inside where the
3 original fence was, I believe that fence is built in a little
4 bit so...

5 Q. Okay. This is State's Exhibit 16, what is that
6 (indicating)?

7 A. My printer.

8 Q. It's your printer. What are these lines on on your
9 printer?

10 A. Scratches.

11 Q. Okay, so were the scratches on there before?

12 A. No.

13 Q. And again, the trash bag was it open or closed when you
14 saw it?

15 A. Closed.

16 Q. Was there anything covering up the trash bag? Was there
17 a tree in front of it?

18 A. No.

19 Q. Okay. Could you see the trash bag from your backyard?

20 A. Yes, uh, me and my dad and Officer Hair were in the back
21 and we -- I saw the reflection of it, uh, I don't know if was
22 a street light or his flashlight but...

23 Q. Was the the computer and the printer did you identify
24 them as yours?

25 A. Yes.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Was there anything else in that trash bag?

2 A. Just the keyboard was in there too.

3 Q. Okay. What did, what did you do with it? Did Officer
4 Hair take the bag in?

5 A. Yes, he went over the hog wire fence and got the bag and
6 brought it back and photographed and fingerprinted it.

7 (Whereupon, a discussion was held off the record.)

8 Q. Ms. Vandahm, State's Exhibit 18 is -- do you recall this
9 (indicating) item?

10 A. Yes.

11 Q. Alright, and where was that item?

12 A. Lying in the middle of the kitchen floor.

13 Q. What i -- what would you say this is?

14 A. Um, I think that it's the fen -- the cement from this
15 part of the fence post, ---

16 Q. Um-hum.

17 A. --- um, that was upgraded.

18 Q. And you said this was found in your kitchen floor?

19 A. Um-hum.

20 Q. Was this in your backyard?

21 A. Yes.

22 Q. Where was this?

23 A. Um, it woulda been right around where the tree was
24 uprooted.

25 Q. Okay. This (indicating) is also part of State's Exhibit

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 18, what what is that item?

2 A. A brick.

3 Q. And where was that brick found?

4 A. Um, that was in my bathroom.

5 Q. Where? Was it on the floor or on the counter?

6 A. On the floor.

7 Q. Okay. Alright. And do those two items fairly and
8 accurately reflect the concrete rock and the, and the brick
9 that you found in your home ---

10 A. Yeah.

11 Q. --- I -- at this time?

12 MS. POULOS: Your Honor, permission for State's
13 Exhibit 18 to be admitted into evidence.

14 MR. WHELCHEL: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (State's Exhibit No. 18, rock and brick, admitted into
17 evidence.)

18 BY MS. POULOS:

19 Q. Ms. Vandahm, one more question about the brick. Do you
20 normally keep bricks around your home? Were there bricks ---

21 A. There were bricks.

22 Q. Where were they?

23 A. Um, there was a bucket that I had kind of, my house is a
24 really old house so it's, um, and there's all kinds a stuff
25 back there, it was over grown when I first bought the house,

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 so in cleaning up everything I would find bricks and glass and
2 so I would put it in a bucket on the back porch.

3 Q. And your bucket was on on the back porch, was it near
4 your back door?

5 A. Not really, no.

6 Q. Okay. Was it right beside your home along the wall ---

7 A. Um-hum, ---

8 Q. --- or was just ---

9 A. --- it was probly right under my bathroom window.

10 Q. Alright, Ms. Vandahm, I'm showing you what's been marked
11 as State's Exhibit 27 and 28 for identification purposes, do
12 you recall or do you, do you recognize what's in those
13 photographs?

14 A. Yes.

15 Q. And what are they?

16 A. It is the back of my fence, um, after the tree was
17 uprooted.

18 Q. Okay, and do those photographs fairly and accurate
19 represent the way that the tree looked after the storm had
20 blown it over?

21 A. Yes.

22 Q. Okay. When were those photographs taken, do you
23 recall?

24 A. Um, probably the next day after the tree fell.

25 Q. But before the -- this incident happened?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. Yes.

2 Q. Okay.

3 MS. POULOS: Your Honor, State would request State's
4 Exhibit 27, 28 be admitted into evidence.

5 MR. WHELCHEL: Without objection, Your Honor.

6 THE COURT: They're admitted.

7 (State's Exhibit Nos. 27 and 28, photographs, admitted
8 into evidence.)

9 BY MS. POULOS:

10 Q. Pardon, Ms. Vandahm, one other look at your back yard.
11 Alright. Okay, what is that (indicating) showing?

12 A. Um, it's part of the tree that had fallen but it's the on
13 the other side.

14 Q. Is this a view from your backyard or from the woods?

15 A. No, from the woods.

16 Q. Okay, so is this your house that -- your roof right here
17 (indicating)?

18 A. No, that's my next door neighbor's.

19 Q. Okay, where would your hou -- house have -- had been?

20 A. Um, over to the right.

21 Q. To the right? Okay. And when this tree was was knocked
22 over, did you have lights around, did you street lights
23 around?

24 A. It knocked all the power out on the street ---

25 Q. Okay.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. --- when it fell.

2 Q. On the night of this incident, did you have street
3 lights?

4 A. Um, was it on? Mean on the the 11th?

5 Q. Yes, on December 11th, ---

6 A. Um, ---

7 Q. --- do do you recall?

8 A. --- I don't think they are are back there.

9 Q. Okay. So up until the time where this storm blew out
10 this tree and knocked it over to the night of this incident on
11 December 11th, those street lights had been knocked out and
12 and the power company just -- had they been out to fix it?

13 A. Right, they they had fixed, um, you know, all the power
14 issues. I just think back there I don't think that there is a
15 street light.

16 Q. Okay. Is it dark back there?

17 A. Yes, well it's not now. I had a light installed in the
18 back corner of my yard ---

19 Q. Okay.

20 A. --- after all this happened.

21 Q. This is State's Exhibit 27, this is just another --
22 again, this -- was this photograph taken before the incidents
23 at your home?

24 A. Yes.

25 Q. So we can see here the chicken wire fence had not been

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

- 1 put up by this point, correct?
- 2 A. No.
- 3 Q. Okay. And this (indicating) is the the root ball ---
- 4 A. Um-hum.
- 5 Q. --- from the tree?
- 6 A. Yes.
- 7 Q. Okay. And so who put up the the chicken wire fence?
- 8 A. My dad.
- 9 Q. Your father. And was part of your your fence, the wooden
- 10 fence still up?
- 11 A. Yes.
- 12 Q. Okay, so recently di -- did your father just sorta
- 13 replace this (indicating) portion with the chicken wire?
- 14 A. Yes, it kind of because it left a hole whole tail so the
- 15 chicken wire fence came out into my yard at kind of a curve,
- 16 it just totally curved out that corner.
- 17 Q. Ms. Vandahm, I'm showing you what's been marked as
- 18 State's Exhibit 29 for identification purposes, do you recall
- 19 what what that exhibit is?
- 20 A. It's a floor plan a my house.
- 21 Q. And did did you draw that ---
- 22 A. I did.
- 23 Q. --- floor plan? Okay, and does that fairly and
- 24 accurately represent the way your home looks?
- 25 A. Yes.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Okay, and obviously this this is not drawn to scale but
2 is it a ---

3 A. No.

4 Q. --- pretty fair representation?

5 A. Yes.

6 Q. Okay.

7 MS. POULOS: Your Honor, State would ask that State's
8 Exhibit 29 be admitted into evidence.

9 MR. WHELCHER: No objection.

10 THE COURT: It's admitted.

11 (State's Exhibit No. 29, floor plan of victim's home,
12 admitted into evidence.)

13 Q. Alright, Ms. Vandahm, if you can, describe to me -- Your
14 Your Honor, may I ask permission for the witness to step down?

15 THE COURT: She may.

16 Q. Ms. Vandahm, would you step down, please.

17 (Whereupon, the witness left the stand.)

18 THE COURT: Ms. Vandahm, you see that microphone above
19 you right there (indicating)? When you -- if you'll just
20 project your voi -- you don't have to look up at it but if
21 you'll project your voice, that way it'll pick your voice up.

22 THE WITNESS: Okay.

23 THE COURT: She'll be referring to a diagram, I need need
24 you to stand there so that everybody can hear.

25 THE WITNESS: Okay.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 BY MS. POULOS:

2 Q. Okay. Ms. Vandahm, I'm gonna ask you use this this
3 pointer, I'll try to make it a little bit clear. Can you
4 point to the front side of your house.

5 A. This (indicating) is the front side.

6 Q. And can you point to the back.

7 A. This (indicating) the back.

8 Q. Okay. The damage to the exterior of your home was that
9 in the front, uh, front side a your house or your -- the
10 backside?

11 A. It was the backside.

12 Q. Okay, and can you walk us through the the windows that
13 were broken and point to those if you can.

14 A. Um, this (indicating) window it was my bathroom window,
15 it was broken and then this window (indicating) is the kitchen
16 window that was broken and the window on the back door was
17 broken.

18 Q. Alright. Now the window on the back door, um, if I may.
19 Okay, Ms. Vandahm, your your back door can you point to your
20 back door.

21 A. Right here (indicating).

22 Q. Now was there any damage to that door?

23 A. Yes, as if someone had tried to pry it open so the
24 doorknob ---

25 Q. What ---

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. --- had been popped off and the door frame, door jam was
2 ruined.

3 Q. Okay, but the door was still closed and locked.

4 A. Yes, we had to cut the lock to get it off.

5 Q. Okay. And your bathroom window I believe you described
6 earlier in the photograph can you please point to your your
7 bathroom window.

8 A. Right here (indicating).

9 Q. Is that the window that we saw earlier had the bars?

10 A. Yes.

11 Q. Okay, and your kitchen window, can you point to where
12 that was.

13 A. Right here (indicating).

14 Q. Did that have any bars on it?

15 A. No it -- well no, ---

16 Q. Okay. Is that the ---

17 A. --- no, it doesn't.

18 Q. --- is that the one where you said the latch had been
19 pulled and and the window had been opened?

20 A. Yeah, someone had reached through the broken glass and
21 unlocked ---

22 Q. Now the big ---

23 A. --- the latch.

24 Q. --- concrete block that we saw where was that again on
25 this diagram?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

- 1 A. It was about right here (indicating) in the kitchen.
- 2 Q. Okay. And the brick can you tell us where that was.
- 3 A. It was right here (indicating) in the bathroom.
- 4 Q. Alright, thank you.
- 5 (Whereupon, the witness returned to the stand.)
- 6 Q. Now, Ms. Vandahm, after the the police arrived what what
- 7 kind of things did did Officer Hair do that that you saw him
- 8 do? Did he take photographs?
- 9 A. He did. He took photographs, um, and then he started
- 10 fingerprinting.
- 11 Q. He started fingerprinting, okay. Did he take prints from
- 12 the computer parts after he brought the trash bag over?
- 13 A. Yes.
- 14 Q. Alright. And did he take prints from anywhere else
- 15 inside the house that that you recall?
- 16 A. Yes, u, I think on quite a few surfaces 'cuz it was so
- 17 old that none of it's really smooth.
- 18 Q. Okay. Now after he had done all this, after he had done
- 19 all of this, um, and did anybody else come over to the
- 20 house?
- 21 A. Um, well yeah, actually, uh, a lotta my neighbors had
- 22 come to help, uh, board up the windows.
- 23 Q. Were your parents there as well?
- 24 A. Yes, my parents came, Officer, he -- they got there maybe
- 25 five minutes after Officer Hair got there.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Did anyone come over to your home that was
2 unexpected?

3 A. Yes.

4 Q. And who was that?

5 A. Michael Manigan.

6 Q. Is he the defendant in this case?

7 A. Yes.

8 Q. And about what time did he come over?

9 A. Um, I don't know what time he got there because I was in
10 the house, um, with Officer Hair and everyone else had to stay
11 out until he was done fingerprinting so I don't know how long
12 he had been there before that.

13 Q. Where did Michael Manigan live?

14 A. Across the street from me.

15 Q. Across the street from you. Do you know Michael
16 Manigan?

17 A. Um, I had never met him before.

18 Q. Had you ever socialized with him before?

19 A. No.

20 Q. Had he ever been inside your home before?

21 A. No.

22 Q. Had he ever really talked to you much before to get to
23 know you?

24 A. No.

25 Q. Is there any reason for him to have touched anything

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 inside your home?

2 A. No.

3 Q. Is there any reason for him to have touched any of your
4 property?

5 A. No.

6 Q. Is there any reason for him to have been in your
7 backyard?

8 A. No.

9 Q. And what was Michael Manigan doing ---

10 A. Um, ---

11 Q. --- in your house?

12 A. --- he was asking a lotta questions. Um, he asked me why
13 I wore all black to work. Um, he just, I mean, I -- it was
14 odd that he was there but I just kinda thought, you know, the
15 neighbors were there so there were a lotta people there
16 but ---

17 Q. Do do you remember any other questions that he was
18 asking?

19 A. Um, he asked me what the police had found, he, you know,
20 asked why I, uh, wore all black to work, um, he had -- in that
21 instance like that's all I think he asked.

22 Q. He he what?

23 A. At at that time I think that's all I, that I can really
24 remember.

25 Q. And was that normal for him?

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. See, I never met him before so I didn't really, I thought
2 it was a little bit odd but then again I didn't.

3 Q. If you are standing in your backyard, can you see Michael
4 Manigan's front porch?

5 A. Yes.

6 Q. How 'bout when you are standing where the the big hole
7 that was left from the tree, could you see Michael Manigan's
8 house?

9 A. He -- I'm not, I'm not sure.

10 Q. The area that was where the trash bag was found, can you
11 describe what that area looked like.

12 A. Um, just a whole lotta vines, um, dead trees, tree
13 stumps. Um, I think a long time ago someone that, you know,
14 had probably just used that area to dump trash because there,
15 I mean, there's just all kinds of stuff back there, it's just
16 overgrown and...

17 Q. Was was there a a nice little neat path that was cut
18 through there?

19 A. Oh, no.

20 Q. Was, um, a sidewalk there?

21 A. No.

22 Q. Was it an area that the public used?

23 A. No.

24 Q. Now when every the -- body was winding up and officer had
25 had got -- gathered all the evidence, your parents and friends

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 had helped you board up the house, did you decide to stay in
2 your home that night?

3 A. I did. My parents wanted me to come stay with them, um,
4 my neighbors wanted me to stay with them and I just didn't
5 wanna leave the house.

6 Q. Why didn't you wanna leave the house?

7 A. I think I was just, I was so upset but I just felt like I
8 didn't want that to keep me from being in my own house.

9 Q. And before you went to bed did anything unusual happen?

10 A. Yes.

11 Q. What happened?

12 A. Um, probly about an hour after everyone left there was a
13 knock on the front door and it was Michael Manigan.

14 Q. Michael Manigan?

15 A. Yes.

16 Q. And and what what did Michael Manigan want?

17 A. Kinda hesitated a little bit when I answered the door,
18 um, and then he asked me for a beer and then he told me that
19 it was a shame what had happened to my house and that he
20 watches me and that he watches my house.

21 Q. 'Bout what time a night was this?

22 A. Had to be around two o'clock in the morning probably by
23 that time.

24 Q. And you were by yourself.

25 A. Yes.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Thank you. Please answer any questions Mr. Whelchel may
2 have.

3 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

4 (Whereupon, a discussion was held off the record.)

5 MR. WHELCHER: May we approach, Your Honor?

6 THE COURT: Sure.

7 (Whereupon, a bench conference was held off the record.)

8 THE COURT: Alright, ladies and gentlemen, I'm told that
9 this witness is gonna be of some length so I think it's probly
10 appropriate to break up the testimony although I ordinarily
11 don't do that, in any event we'll break for the evening. I'll
12 remind you my caution given you prior to breakin' for lunch:
13 You can't talk about the case, can't conduct any research,
14 can't do any investigation. You have to base your decision
15 upon what you see and hear during the trial, you can't
16 supplement that knowledge, no media exposure, no discussions,
17 no research, no investigation. Have a good evening, please
18 report directly to your jury room at 9:30 in the mornin', 9:30
19 in the mornin'.

20 THE BAILIFF: Follow me, please.

21 THE COURT: Before you step out let me ask, Ms. Vandahm,
22 if you want to, you can step down, have a seat.

23 (Whereupon, the witness left the stand.)

24 THE COURT: Okay, have a good evenin'.

25 (The following takes place outside the presence of the

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 jury.)

2 THE COURT: Your Honor, we located the missing
3 photographs which we, um, we think -- I don't think
4 Mr. Whelchel objects. We're gonna publish them in the
5 morning, uh, through Ms. Vandahm.

6 THE COURT: Okay. Alright, Court is in recess until 9:30
7 in the mornin'.

8 (Proceedings January 15, 2013)

9 THE BAILIFF: Thank you, be seated.

10 THE COURT: Any matters to address before the jury's
11 brought back in?

12 MS. POULOS: No, sir, Your Honor.

13 MR. WHELCHER: No, Your Honor.

14 THE COURT: Bring the jury in, please.

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

16 THE COURT: Good morning, ladies and gentlemen. As you
17 know when we recessed yesterday the State's first witness had
18 been called and she had just finished her direct examination
19 by the prosecution so we'll continue with the
20 cross-examination by the defense. Ms. Vandahm, if you'll
21 please come back around and resume your seat on the stand and
22 you're reminded that you're still under oath.

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

24 MS. POULOS: Your Honor, Mr. Whelchel has has agreed to
25 allow the State to publish a few of the photographs that

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 weren't published yesterday.

2 THE COURT: Okay.

3 BY MS. POULOS:

4 Q. Ms. Vandahm, gonna take you back to some a these
5 photographs. I'm showing you right now what's been entered
6 into evidence as State's Exhibit No. 2. Do you mind getting
7 the lights, please. Thank you. Is this (indicating) your
8 front door or your back door?

9 A. It's the back door.

10 Q. And do you no -- notice anything unusual about the
11 door?

12 A. Um, the door frame is damaged, um, the doorknob is popped
13 off, um, the window is broken.

14 Q. And right where the window is is the half moon right ---

15 A. Ye --

16 Q. --- here (indicating)?

17 A. --- yes, one of the panes is broken.

18 Q. Okay. State's Exhibit No. 5 is that just a close-up of
19 the same door?

20 A. Yes.

21 Q. You said that the lock -- the knob had been popped off,
22 is that what we're lookin' at right there (indicating)?

23 A. Yes.

24 Q. Okay, but the door hadn't been opened.

25 A. No.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

- 1 Q. Okay, so the lock did its job?
- 2 A. It did. The -- we had to cut the lock to get it off.
- 3 Q. Alright, this is State's Exhibit No. 3, can't see it very
- 4 well, but is this (indicating) a piece of the glass that was
- 5 left?
- 6 A. Yes, that's a picture taken from inside.
- 7 Q. From the inside, ---
- 8 A. Um-hum.
- 9 Q. --- okay. This is State's Exhibit No. 12, do you
- 10 recognize what's in this photograph?
- 11 A. Yes, it's the counter below the kitchen window,
- 12 um, and ---
- 13 Q. And if you recall yesterday I had asked you about the the
- 14 big cement rock and the brick, which of those two items, if if
- 15 either of those, had been thrown through that window?
- 16 A. The cement rock had been thrown through that window.
- 17 Q. Do ya notice anything unusual in that photograph?
- 18 A. Just everything on the counter knocked over and, um, the
- 19 glass.
- 20 Q. What what are some of those items that had been knocked
- 21 over?
- 22 A. Um, can't really te -- the -- that basket.
- 23 Q. It -- on the right side, right here (indicating)?
- 24 A. Um-hum.
- 25 Q. Okay.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. And like those toothbrush I've used 'em to polish silver,
2 they we're -- should've been sitting on the sink.

3 Q. Okay.

4 A. Um, ---

5 Q. This is State's Exhibit No. 4, is -- are we looking here
6 at at your back door still?

7 A. Yes.

8 Q. Okay, and what is this bucket?

9 A. Um, it's a bucket, when I bought the house the backyard
10 had been so overgrown that you could find all kinds a things
11 back there and ---

12 Q. What sorts ---

13 A. --- so ---

14 Q. --- of things did you have?

15 A. Uh, there's anything broken glass to bricks to rocks.

16 Q. What are some a these items that we see here
17 (indicating)?

18 A. Um, bricks and broken glass.

19 Q. Was was that bucket turned over like that when ya left?

20 A. No.

21 Q. Where did you normally keep that bucket?

22 A. Um, off the side of the porch.

23 Q. But it was still on your back porch?

24 A. Pro -- if it wasn't on the back porch, it was right next
25 to the back porch.

ELIZABETH ANN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Okay. This is State's Exhibit No. 8, are we still
2 lookin' at your your back, the back part of your house?

3 A. Yes, it's right ---

4 Q. Okay.

5 A. --- underneath the kitchen window.

6 Q. Okay, so this (indicating) is the kitchen window.

7 A. Yes.

8 Q. Alright, I'm gonna move this down just a little bit.
9 What's wrong with that (indicating) window?

10 A. The storm window and the actual window's broken and then
11 the window frame is pulled up.

12 Q. And what is -- what are these items that we're lookin' at
13 the bottom?

14 A. The table that was on the back porch and then a cooler.

15 Q. Is that where you normally keep that table?

16 A. No.

17 Q. Where do you normally keep it?

18 A. On the back porch.

19 Q. Okay. Which would be if you're lookin' at this
20 photograph to the left? to the right?

21 A. To the left.

22 Q. To the left, okay. So you didn't leave it there when you
23 left.

24 A. No.

25 Q. Did you keep your cooler on top a that table?

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

1 A. No.

2 Q. This is State's Exhibit No. 9, what is this a picture
3 of?

4 A. The top a that cooler.

5 Q. And is -- does there appear to be some sort of marking on
6 that?

7 A. Looks like a footprint.

8 Q. Alright, Ms. Vandahm, please answer any questions that
9 Mr. Whelchel may have for you.

10 MS. POULOS: Your Honor, may Mr. Whelchel and I approach?

11 THE COURT: (No audible response.)

12 (Whereupon, a bench conference was held off the record.)

13 CROSS-EXAMINATION BY MR. WHELCHER:

14 Q. Ms. Vandahm, this is State's Exhibit No. 29 that's
15 already been admitted, ---

16 A. Um-hum.

17 Q. --- that's the drawing that you did that shows where the
18 rooms are in your home, is that correct, ma'am?

19 A. Yes.

20 Q. Okay, want you to keep that in front of you please,
21 ma'am, and just go through these and first thing I want you to
22 do is there a photograph, look through there just find the
23 photograph of the front door, ma'am, please.

24 A. It's right here (indicating).

25 Q. Got it? This is the front door to your home, State's

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

- 1 Exhibit No. 1, ma'am?
- 2 A. It is.
- 3 Q. That's the door you went in that night?
- 4 A. Yes.
- 5 Q. Okay. And there was no damage to this particular door,
- 6 is that correct?
- 7 A. No.
- 8 Q. Okay. Find the back door for me please, ma'am, all the
- 9 photographs of it. This back door is located where on State's
- 10 Exhibit, pardon me, ma'am, No. 29?
- 11 A. Right here (indicating).
- 12 Q. Okay. So the front door is here (indicating) opening
- 13 into the living room and on the front side a the house.
- 14 A. Yes.
- 15 Q. Back door is here (indicating) ---
- 16 A. Yes.
- 17 Q. --- comin' off porch and into the kitchen?
- 18 A. Yes.
- 19 Q. And these three lines here (indicating) what are those,
- 20 ma'am?
- 21 A. It just shows where there's two windows.
- 22 Q. That would be the double window over the kitchen sink?
- 23 A. Yes.
- 24 Q. Okay. There are no other windows in the kitchen?
- 25 A. There's one over here (indicating).

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHEL

- 1 Q. Okay, but it's just -- is it a double window or a
- 2 single ---
- 3 A. No, ---
- 4 Q. --- window?
- 5 A. --- single window.
- 6 Q. Okay. The kitchen's -- excuse me, this window over here
- 7 (indicating) that's not depicted, it's a single window but a
- 8 full-sized window, is that correct?
- 9 A. Yes.
- 10 Q. Okay, so it comes lower, closer to the floor than do
- 11 these windows here (indicating) over the sink.
- 12 A. Um, maybe, it's on the other side of the fence.
- 13 Q. Well I understand that.
- 14 A. So I'm not sure, I think the backyard's a little ---
- 15 Q. And the kitchen windows over the sink are smaller than
- 16 the other windows from top to bottom, is that correct?
- 17 A. Yes.
- 18 Q. Okay. Alright, State's Exhibit No. 3, ---
- 19 A. Um-hum.
- 20 Q. --- what is that please, ma'am?
- 21 A. The window on the back door.
- 22 Q. That's the top of the back door?
- 23 A. Yes.
- 24 Q. And is this the window that was broken out, ma'am?
- 25 A. Yes.

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

- 1 Q. Alright. And this is State's Exhibit No. 2 another shot
2 of the door, is that correct?
- 3 A. Yes.
- 4 Q. And that just shows more of the door itself.
- 5 A. Um-hum.
- 6 Q. And damage right here (indicating) where somebody tried
7 to jimmy the lock or kick it in or whatever?
- 8 A. Yeah, there's damage all around the top and on the sides.
- 9 Q. But this is the door and door frame that subsequently had
10 to be replaced.
- 11 A. Yes.
- 12 Q. Okay. State's Exhibit No. 5, what is that (indicating),
13 ma'am?
- 14 A. Um, just a close-up of where the doorknob was and where
15 the latch is.
- 16 Q. Okay, but it's the same door.
- 17 A. Yes.
- 18 Q. Okay. And finally, State's Exhibit No. 4, is that the
19 same door also, ma'am?
- 20 A. It is.
- 21 Q. Okay. So in a row we have the top middle close-up of the
22 locks and then the bottom of this one door, is that correct,
23 ma'am?
- 24 A. Yes.
- 25 Q. Okay. And directly in front of the door in State's

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

1 Exhibit No. 4 is this bucket and some scrap material it looks
2 like, is that correct, ma'am?

3 A. Yes.

4 Q. Where was that bucket when you left for work earlier that
5 day?

6 A. It was either on the porch but not in front of the door
7 or it was either right next to the porch.

8 Q. Where it is in the photograph is not where you left it.

9 A. No.

10 Q. Turned upside down and with all the debris scattered
11 around it is not where you left it.

12 A. No.

13 Q. Okay. How tall are you, ma'am?

14 A. Five ten and a half.

15 Q. Okay. Would you stand up, could you step down, ---

16 MS. POULOS: Objection, Your Honor, ---

17 Q. --- please.

18 MS. POULOS: --- her height is not relevant in this case.

19 THE COURT: Sustained.

20 MR. WHELCHER: You step down, please, ma'am.

21 THE COURT: I I sustained the objection.

22 MR. WHELCHER: I hadn't asked her anymore about that,
23 Your Honor.

24 THE COURT: She objected to her having to come down outta
25 the stand and I ---

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

1 MR. WHELCHER: Oh, I didn't ---

2 THE COURT: --- sustained the objection, ---

3 MR. WHELCHER: --- I thought she was ---

4 THE COURT: --- do you understand?

5 MR. WHELCHER: --- objecting -- did you -- that one
6 question.

7 THE COURT: Alright, excuse me just a minute. Let let me
8 ask the jury to step out just a minute, please.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Mr. Whelchel, when a an objection is made and
12 I sustain it, if I want a discussion with you about it, I'll
13 ask you for it, otherwise I expect you just to follow the the
14 ru -- the ruling of the Court, you understand?

15 MR. WHELCHER: I understand that, Your Honor.

16 THE COURT: Okay.

17 MR. WHELCHER: Your Honor, all I wanted to do was make
18 sure I unders -- I didn't know if she was objecting to the
19 question about her height or her stepping down, that's all I
20 was tryin' to do is find out which one it was.

21 THE COURT: Well I had ---

22 MR. WHELCHER: I ---

23 THE COURT: --- said she's not stepping down from the
24 stand so it isn't -- doesn't matter what the the prosecutor
25 thought, it matters what I rule.

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHEL

1 MR. WHELCHEL: I just wanna make sure where Your Honor
2 was ruling ---

3 THE COURT: Alright, well you understand it now?

4 MR. WHELCHEL: I understand completely.

5 THE COURT: Okay, bring the jury in.

6 THE BAILIFF: Bring 'em back.

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

8 THE COURT: Alright, you may continue with your
9 examination.

10 MR. WHELCHEL: Thank Your Honor.

11 BY MR. WHELCHEL:

12 Q. How long have you lived in this house, ma'am?

13 A. Um, 'bout a little over five years.

14 Q. Okay. Is that before this happened or including all this
15 other time too?

16 A. No, the the whole time. I moved into the house November
17 of 2007 ---

18 Q. Okay.

19 A. --- so I'd been there three years when this ---

20 Q. Alright, ma'am.

21 A. --- happened.

22 Q. And until this door was damaged at this particular time,
23 this is the door that was on there when you bought the
24 house?

25 A. No, um, we put a new door on when I bought the house.

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHEL

1 Q. Okay. And can you see through this window in the door?

2 A. Um, I'd had to be on my tiptoes toes but I wouldn't be
3 able to see if someone was standing on the other side of it.

4 Q. Okay. And when the door was installed, I'm assuming that
5 this was not, this window here broken out was not broken out.

6 A. No.

7 Q. That's what you saw when you came home that night,
8 correct?

9 A. Yes.

10 Q. And where did you say this bucket was? Was either on the
11 porch or ---

12 A. Or beside the porch, I don't remember exactly.

13 Q. Okay, either way you didn't leave it like that.

14 A. No.

15 Q. And any reason for you to stand on the bucket like
16 that?

17 A. Well I used to have to stand on the steps to clean the
18 window but no.

19 Q. Okay. Ms. Vandahm, I'm showing you State's Exhibit
20 No. 6, that's a photograph of a window in your home?

21 A. Yes, it's my bathroom window.

22 Q. That's the bathroom window.

23 A. Yes.

24 Q. Okay. And these are the wooden dividers here
25 (indicating), is that correct, ---

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHEL

1 A. Yes.

2 Q. --- in the window? Okay, thank you, ma'am. Showing you
3 State's Exhibit No. 8, which window is this, ma'am?

4 A. The kitchen window.

5 Q. That's seen from the outside.

6 A. Yes.

7 Q. And on the inside of this window is depicted here in
8 State's Exhibit No. 12.

9 A. Yes.

10 Q. Okay. And this picture was taken by the officers who
11 came?

12 A. Yes.

13 Q. Okay. Is this another, this is State's Exhibit No. 10,
14 this is another photograph of this same window, am I
15 correct?

16 A. Yes.

17 Q. Okay. And you say that there was -- is this glass down
18 here (indicating), ma'am?

19 A. It appears to be.

20 Q. Okay. And there was glass inside the ---

21 A. Yes.

22 Q. --- kitchen. And on the floor and in the kitchen is
23 where you found the brick or the big hunk a concrete?

24 A. The big chunk of concrete.

25 Q. Excuse me?

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

- 1 A. The big chunk of concrete.
- 2 Q. That was in the kitchen?
- 3 A. Yes.
- 4 Q. Okay. State's Exhibit No. 11, ma'am, that is, correct me
- 5 if I'm wrong, kitchen floor?
- 6 A. Yes.
- 7 Q. And that's the big hunk a concrete we were just talkin'
- 8 about, is that right?
- 9 A. It is.
- 10 Q. Guess I could have just asked ya that when I showed ya
- 11 that. And this is a State's Exhibit No. 9, that would be a
- 12 close-up of what, ma'am?
- 13 A. The top of the cooler.
- 14 Q. The same cooler that's shown in State's Exhibit No. 8?
- 15 A. Yes.
- 16 Q. Okay. Now after the police arrived you and your father
- 17 went outside in the backyard, is that correct, ma'am?
- 18 A. Me and my father and the police officer.
- 19 Q. Okay. All of ya at the same time or did ---
- 20 A. Yes, because ---
- 21 Q. Okay.
- 22 A. --- we couldn't get out the back door to see ---
- 23 Q. I I'm sorry, I didn't hear what you said at first.
- 24 A. Because we couldn't open the back door, ---
- 25 Q. Okay.

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

1 A. --- we all three went out around to the back of the house
2 to see the damage to the back of the door and the window and
3 to look and see.

4 Q. So you went out the front door and where?

5 A. I unlocked the padlock on my gate and went through the
6 gate to the back do -- or the backyard.

7 Q. Okay, so there's a padlock on the gate ---

8 A. Yes.

9 Q. --- and so you can't get in the yard, in the backyard
10 from the front side.

11 A. Not without unlocking that.

12 Q. Alright, ma'am. These pictures, State's Exhibits 14, 28,
13 and 27, starting with 14, ma'am, can you tell me what this
14 (indicating) depicts?

15 A. Um, it is the temporary fence that we had put up around
16 the uprooted tree in the backyard.

17 Q. Okay. Was this tree that is uprooted was that on your
18 property or adjoining property?

19 A. No, it was on -- it was behind my house.

20 Q. But and it wasn't in your yard is what I'm askin' you,
21 right?

22 A. No.

23 Q. But the tree is so big that when it fell over the root
24 ball essentially took your fence and just ---

25 A. Right, 'cuz the roots lifted the fence and when the tree

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

1 fell it it, when it was uprooted, it slid into my yard.

2 Q. No pun intended but when the tree uprooted, it uprooted
3 your fence also ---

4 A. Yes.

5 Q. Okay. But the tree fell away from your fence and didn't
6 damage your fence other than it ---

7 A. No. Yeah, ---

8 Q. --- being uprooted?

9 A. --- other than uprooting it no.

10 Q. Okay. So just to make sure I understand, ma'am, if this
11 (indicating) is the property line on your house, ---

12 A. Um-hum.

13 Q. --- the tree and your house is behind me, the fence line
14 as it existed before the tree uprooted, the tree would be if
15 this is your one end to one end of your backyard, where
16 exactly was this big tree?

17 A. My house is behind you?

18 Q. My -- your house is this (indicating) way and this
19 (indicating) is your backyard and right here's (indicating)
20 your fence from one side to the other ---

21 A. The tree woulda been right here (indicating).

22 Q. Okay, and your fence woulda been right here (indicating).

23 A. Yes.

24 Q. Okay, so when this tree fell this (indicating) way or
25 some way away from your fence when the tree fell.

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

1 A. Yeah, what happened was it uplifted and had it fell but
2 it slid back so it slid into my yard.

3 Q. Oh, okay. When that happened if the tree's in this
4 (indicating) corner, did it go that (indicating) way, this
5 (indicating) way or ---

6 A. This (indicating) way.

7 Q. Back where I'm standing?

8 A. Um-hum.

9 Q. Okay. And when that happened the root ball is what
10 destroyed the fence.

11 A. Yes.

12 Q. Okay, and subsequently I believe your father put up what
13 you refer to as the chicken wire.

14 A. Yes.

15 Q. Okay. When were these photos taken, ma'am, Exhibits 27
16 and 28?

17 A. Um, I am assuming probably right after the tree fell.

18 Q. Okay. Did you take those?

19 A. No.

20 Q. Okay. Who saw the bag first that was in or around the
21 fence, wherever it was?

22 A. I did.

23 Q. Okay. Again, ma'am, this (indicating) is your fence
24 line ---

25 A. Um-hum.

ELIZABETH VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

- 1 Q. --- and the tree's uprooted that (indicating) way.
- 2 A. It's where the root ball's in my yard.
- 3 Q. Oh, I understand you say it slid back into your yard ---
- 4 A. Um-hum.
- 5 Q. --- when it went over so you've got the chicken wire up.
- 6 A. Um-hum.
- 7 Q. Okay. Where was the bag, using that bar in front of you
- 8 as your fence line?
- 9 A. Probably here (indicating).
- 10 Q. Okay. And where is Oakdale Court -- Street?
- 11 A. (Indicating).
- 12 Q. And how many houses are there from the -- from where your
- 13 house is on, uh, I forget the name of the street you live
- 14 on?
- 15 A. Carlisle Street.
- 16 Q. Excuse me. From Carlisle Street how many other houses
- 17 are there down there to the right of your house on Carlisle?
- 18 A. Um, looking at?
- 19 Q. If you're on your front porch, let's say you're on your
- 20 front porch, ---
- 21 A. Okay, ---
- 22 Q. --- you're looking at ---
- 23 A. --- to the right ---
- 24 Q. --- Carlisle ---
- 25 A. --- of me?

ELIZABETH ANN VANDAHM - REDIRECT EXAMINATION BY MS. POULOS

1 Q. --- Street, yes, ma'am.

2 A. One, two, three, four, five, si -- seven, eight maybe.

3 Q. Okay. And correct me if I'm wrong, ma'am, Carlisle
4 Street is the street that's intersects with Hydrick Street
5 that runs behind the post office.

6 A. It is.

7 Q. Okay. And when you moved into your home, ma'am, did
8 Carlisle Street connect all the way at the end with, uh,
9 Daniel Morgan?

10 A. No.

11 Q. It had already been blocked off.

12 A. Yes.

13 Q. Were you aware of the fact that it used to connect all
14 the way to the end?

15 A. I was told it was back ---

16 Q. Okay.

17 A. --- then.

18 Q. Beg the Court's indulgence, Your Honor. Thank you,
19 ma'am.

20 REDIRECT EXAMINATION BY MS. POULOS:

21 Q. Just briefly, Ms. Vandahm. Did you consider a fence line
22 to be your property line or was the -- your property line a
23 different area, in a different area?

24 A. Um, my fence was set inside the property line I think at
25 least 6 inches if I'm right.

ELIZABETH ANN VANDAHM - REDIRECT EXAMINATION BY MS. POULOS

- 1 Q. Inside the property line.
- 2 A. Right.
- 3 Q. Now this bag that was found was it on your property?
- 4 A. Yes.
- 5 Q. Was it within the -- your property line?
- 6 A. Yes.
- 7 Q. Did you consider that your backyard?
- 8 A. Yes.
- 9 Q. The area that the bag was found Mr. Whelchel asked you if
- 10 that was on Oakdale Court but and I wanna make sure that I
- 11 understand this, this was on your property, correct?
- 12 A. Yes.
- 13 Q. Okay, was this area some nicely neat cut yard?
- 14 A. No.
- 15 Q. What was the area like?
- 16 A. Behind my fence is overgrown vines and these dead trees
- 17 and, I mean, there I -- there's all kinds of stuff back there,
- 18 it ---
- 19 Q. Was ---
- 20 A. --- you can't, I can't even go back there to look to
- 21 see.
- 22 Q. --- was there a nice little neat pathway cut through?
- 23 A. No.
- 24 Q. And the wire fence had that been bent down?
- 25 A. Yes.

ELIZABETH ANN VANDAHM - RECROSS-EXAMINATION BY MR. WHELCHER

1 Q. The bag, you think you beli -- believe that you testified
2 that it was closed, were the ties pulled?

3 A. I believe so.

4 Q. Thank you.

5 RECROSS-EXAMINATION BY MR. WHELCHER:

6 Q. I think you testified yesterday, ma'am, that you have a
7 pretty big backyard.

8 A. Um, it's big in relation to neigh -- or backyards in my
9 neighborhood, it's not big and it's not what I would consider
10 a big backyard.

11 Q. It's long, is that right, ma'am, fr ---

12 A. It is.

13 Q. --- like from the back a your house to the fence?

14 A. For a, for a house in my neighborhood it's pretty long,
15 yes.

16 Q. Okay. From the back of your house to the fence line, is
17 it longer than this (indicating), ma'am?

18 A. Um, yes.

19 Q. Okay. I'm gonna back up, ma'am, I want you to stop me
20 when I get as far away as it is from your house to the fence
21 line, you understand?

22 A. Okay.

23 (Whereupon, the defense counsel began exiting the
24 courtroom.)

25 A. Probably there. That ---

ELIZABETH ANN VANDAHM - RECROSS-EXAMINATION BY MR. WHELCHEL

1 (Whereupon, defense counsel re-entered the courtroom.)

2 Q. When you stopped me, ma'am, I was across the lobby and
3 standing in front of the doors for the other courtroom, is
4 that correct?

5 A. Yes.

6 Q. Okay. You don't know who put the bag there, do ya?

7 A. I don't.

8 Q. Okay. You don't know how long the bag was there, do
9 ya?

10 A. Not not specifically, no.

11 Q. Your father came around at about 5, 5:30 normally?

12 A. 5:30 or 6.

13 Q. Okay, and you got home at?

14 A. About 10:30 probably.

15 Q. Okay. Why do you wear black, ma'am, when you go to
16 work?

17 A. Because I work in cosmetics and we're supposed to.

18 Q. Do other companies choose red and, I don't understand the
19 black, that I'm, and I'm just curious to be honest with you.

20 A. No, everyone that works in cosmetics wears all black
21 except there's a couple ---

22 Q. And that's at Dillard's.

23 A. --- exceptions. I believe it's everywhere.

24 Q. Oh, I didn't know that. Thank you.

25 MS. POULOS: Just one more question, Your Honor.

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 REDIRECT EXAMINATION BY MS. POULOS:

2 Q. Regardless of how long your backyard was, Ms. Vandahm,
3 could you see the black, the black trash bag from standing in
4 your backyard?

5 A. Yes.

6 Q. Thank you.

7 THE COURT: You may step down.

8 (Whereupon, the witness left the stand.)

9 MS. POULOS: Your Honor, State calls Richard Vandahm.

10 (Whereupon, the witness came forward.)

11 RICHARD ALLEN VANDAHM, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MS. POULOS:

14 Q. Mr. Vandahm, if you would, please state your full name.

15 A. Richard Allen Vandahm.

16 Q. And where do you live, sir?

17 A. I live at [REDACTED] in Spartanburg.

18 Q. How long have you lived in Spartanburg?

19 A. Uh, thirty-four years.

20 Q. Do you know the victim in this case Liz Vandahm?

21 A. Yes, my daughter.

22 Q. She's your daughter. Where do you work, sir?

23 A. I work at Milliken.

24 Q. And how long have you worked at Milliken?

25 A. For 37 years.

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Where does your daughter live?

2 A. Lives at [REDACTED] in Spartanburg.

3 Q. Is that within the city limits?

4 A. Yes, it is.

5 Q. Do you, sir, have the occasion to go by Liz's house?

6 A. Uh, yes, when she's working, uh, if she's working for --
7 if she, if she opens in the morning and works till like six,
8 I'll go at lunchtime and, uh, take care of her dog, uh, if she
9 goes in at noon and works till late at night, I'll go in after
10 work and take care of her dog.

11 Q. So your purpose when she's at work is to go check on the,
12 on the dog and just sorta check on the house?

13 A. Yeah, I'm the, I'm the, I'm the dog care -- caretaker.

14 Q. And in December of 2010 is is that in fact what what you
15 were doing?

16 A. Yes.

17 Q. And on this particular day on December the 11th of 2010
18 had you been by Liz's house?

19 A. Yes.

20 Q. And about what time did you go by there?

21 A. Uh, I usually, my usual routine is that I leave after
22 work five o'clock or a little after five, uh, takes me about
23 fifteen minutes to get there so I'm probly there at 5:15,
24 5:20, uh, and, uh, do my dog care.

25 Q. Okay. And on this this day do you recall about how long

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 you were there or or or typically how long do you usually
2 stay?

3 A. Well usually probly I take the dog for a walk so it's
4 probably say, I would say maybe twenty minutes.

5 Q. Okay. So what time do you think that that you got there
6 roughly?

7 A. Roughly somewhere between 5:15 and 5:30.

8 Q. Do you think that you were gone by about six?

9 A. Yes.

10 Q. Okay. When you were inside Liz's Liz's home, did you
11 notice anything usual?

12 A. No.

13 Q. Did you notice any glass broken?

14 A. No, I did not.

15 Q. Did you notice a big concrete block in the kitchen?

16 A. No, I didn't.

17 Q. Did you notice a a brick in the bathroom?

18 A. No, I didn't.

19 Q. Did you notice her computer and printer gone?

20 A. No, I didn't.

21 Q. So it, from what you could tell everything was normal
22 like it had always been.

23 A. Yes, everything looked normal.

24 Q. Did you notice any kitchen cabinets open?

25 A. No, I did not.

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. So you basically walked through the house, walked the
2 dog, checked the dog and there were no problems.

3 A. That's correct.

4 Q. Was the dog acting strange while you were there?

5 A. Not that I can recall.

6 Q. Was he barking?

7 A. No.

8 Q. Was he agitated?

9 A. Uh, I I don't recall him being agitated.

10 Q. And when you left, sir, do you remember if it was already
11 dark at that point?

12 A. Uh, I don't, I don't remember.

13 Q. When you got done with the dog around six o'clock or so,
14 did you go home?

15 A. Yes, I did.

16 Q. And sometime after you had got home did did you speak
17 with your daughter again later on?

18 A. She usually calls me when she gets off a work just to let
19 me know that she's on her way home ---

20 Q. Okay.

21 A. --- and, uh, so she called me to let me know that she had
22 arrived at home.

23 Q. Okay, and were you on the phone with her when she walked
24 into her home?

25 A. Yes, I was.

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Okay, what did she tell you?

2 A. Uh, we were talking and then I guess as she walked into
3 her kitchen she told me somebody broke into her home.

4 Q. Did -- what did she do then, do do you know?

5 A. Uh, I told her to call the police and that her mother and
6 I would be right on over there.

7 Q. Now you and huh -- her mother went went over to the
8 house, when you got there was the police there?

9 A. The police officer was already there.

10 Q. Okay, and what sorta things do you recall the police
11 officer doing?

12 A. Uh, when I went in he was in the house and it appeared
13 that he was dusting for fingerprints.

14 Q. Did you see him taking any pictures?

15 A. Uh, I don't recall.

16 Q. Now at some point you guys walked outside to the
17 backyard?

18 A. Yes.

19 Q. Did you notice anything unusual in the backyard?

20 A. You know, I saw the, uh, bathroom window broken, uh, I
21 saw the window on the back door broken and the knob broken off
22 a the back door latch, uh, the bucket overturned on the porch,
23 kitchen window broken and the table and cooler sitting
24 underneath the kitchen window.

25 Q. Now there's been testimony earlier about this tree that

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

- 1 fell down in in the storm, ---
- 2 A. Yes.
- 3 Q. --- was the big root ball, uh, where where was that?
- 4 A. It was in the, in the, uh, I guess you would call it the
- 5 north the northeast corner of her yard.
- 6 Q. Northeast corner, okay. Let's see, showin' you State's
- 7 Exhibit 27, if you would, sir, where the root ball is shown in
- 8 this photograph ---
- 9 A. Yes.
- 10 Q. --- that is the northeast, sorta sorta the right side, so
- 11 if you're facing, uh, you're standing at Liz's backyard by the
- 12 back door and looking out to her backyard, the root ball ---
- 13 A. It ---
- 14 Q. --- would be on the left ---
- 15 A. --- it would be on, ---
- 16 Q. --- on the right?
- 17 A. --- it would be on the right.
- 18 Q. Okay. Now State's Exhibit 28, did you take these
- 19 photographs by the way, sir, these ---
- 20 A. I did.
- 21 Q. --- State's Exhibit 27 and 28?
- 22 A. Yes, I did.
- 23 Q. And when did you take these photographs?
- 24 A. I took 'em the day after the tree went down.
- 25 Q. Okay, but this, it was before this incident, ---

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 A. Yes.

2 Q. --- correct? And this wooden fence that we see here
3 (indicating), you at some point put the chicken wire fence
4 up ---

5 A. I did.

6 Q. --- on State's Exhibit 14.

7 A. I did.

8 Q. You did that, sir, okay. On State's Exhibit 28,
9 where -- what view is that photograph taken from? Is that
10 from Liz's backyard or are you in another area ---

11 A. I was -- at that point it was taken at the end of
12 Oakdale. I was standing at the end of Oakdale when I took
13 that picture.

14 Q. Okay, and if you're lookin' at this picture, you're on
15 the opposite end, you're look -- you would be looking towards
16 her home.

17 A. I would be looking, I would be looking toward the, uh,
18 toward the southwest.

19 Q. And can you describe what that area looks like from that
20 photograph.

21 A. It's all overgrown with, uh, weeds and vines and small
22 branches and small trees.

23 Q. Okay. At some point while you you guys were out there,
24 did you notice anything unusual?

25 A. Well I noticed that the, uh, the hog wire fence that I

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 had put up had been, uh, had been bent over along with the,
2 uh, the, uh, supports used to hold the fence up were also bent
3 over.

4 Q. Is that material, sir, bendable, is it pliable is it easy
5 to ---

6 A. You you know, if anybody, if if anybody with any
7 considerable weight put their foot on the, on the, on the, uh,
8 support or the fence, it would push over.

9 Q. But it wasn't bent over when you put it up.

10 A. No.

11 Q. And to your knowledge when you went by that that day it
12 had not been bent over.

13 A. Uh, I I -- to my knowledge no.

14 Q. Now did you notice a big trash bag?

15 A. Uh, I saw the trash bag when my daughter pointed it
16 out.

17 Q. Okay, and where exactly was this trash bag?

18 A. Trash bag was to the, uh, to the left of the root ball,
19 uh, probably couple or several feet inside, uh, the property
20 line.

21 Q. Okay. Was it over the wire fence?

22 A. It was between the wire fence and the property ---

23 Q. And the property line, okay. So the fence was not her
24 property line.

25 A. The wire fence was not the property line.

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 Q. Okay, but the bag, how far within her property line would
2 you say that was?

3 A. The bag was I would say it was maybe 2, 3 feet inside her
4 property line, something like that, maybe 2 feet.

5 Q. Did you notice, sir, the table with the cooler set on
6 top?

7 A. Yes, I did.

8 Q. And and did you, uh, do you know normally where Liz keeps
9 that?

10 A. Normally the table sits on her, uh, back porch.

11 Q. Okay. And where it was after you got there is that
12 where, where it was or or did it appear to have been moved?

13 A. Well it it's -- it was, it was sitting under the kitchen
14 window and it's normally kept on the back porch so it appears
15 to have been moved from the back porch to the kitchen window.

16 Q. Had you ever seen the cooler stacked on top a the table
17 like that?

18 A. No.

19 Q. Did you notice anything unusual on on top a the cooler,
20 any markings?

21 A. Uh, I didn't, no.

22 Q. Okay. Now when the officer brought back the black trash
23 bag, ---

24 A. Yes.

25 Q. --- to to your recollection was that bag open or

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 closed?

2 A. Uh, it was closed.

3 Q. Were the ties pulled or ---

4 A. Uh, I don't remember whether the ties were pulled.

5 Q. But you couldn't see, didn't see the items without
6 opening up the trash bag?

7 A. That's correct.

8 Q. Okay. You you could or you couldn't, sir?

9 A. Could not see the items without opening the trash bag.

10 Q. You couldn't, okay. Now when the officer o -- opened up
11 the trash bag, did you recognize those items as as being Liz's
12 computer?

13 A. I recognized those items as being her computer monitor
14 and her printer.

15 Q. And her printer, okay, co -- because you had seen those
16 items in her home.

17 A. Yeah, in fact, I had purchased those items for her.

18 Q. You purchased 'em for her, okay. Now at some point when
19 you were there that night and after the the police when they
20 were dusting for fingerprints, taking photographs and and
21 doing all that and wrapping all that up, at some point did
22 anything unusual happen? Did anyone come over to the home?

23 A. Uh, well while the officer was was, uh, doing his
24 investigation in the house I stayed outside with my wife and
25 my daughter's dog and, uh, Mr. Michael Manigan came over and,

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

1 uh, we started talking.

2 Q. And Michael Manigan is the defendant in this case?

3 A. That's correct.

4 Q. And what sorta things was he telling you?

5 A. I know we -- it it was just to chat, uh, you know, I
6 don't, I don't recall anything specific except maybe he did
7 mention that that, uh, he had a piece a glass that we might be
8 able to use to fix one of the broken windows but...

9 Q. Did he ask to go inside at that, at that time?

10 A. At one point he did ask to go inside.

11 Q. Did anything seem odd about that conversation?

12 A. Not really.

13 Q. What did he do when he was inside, do you remember?

14 A. I don't recall. I went in first to to ask, uh, Officer
15 Hair whether it was okay for him to come inside, uh, I was
16 told it was okay and so I went in with him, uh, I don't recall
17 anything unusual that he did.

18 Q. Who else was besides Officer Hair, yourself, and and your
19 wife, sir, who else was inside the house after after all the
20 the processing of the scene had taken ---

21 A. Well there were ---

22 Q. --- place?

23 A. --- two neighbors, another neighbor from across the
24 street by name of Mark Clover who was there and and another
25 neighbor by the name of Scott Rounds who was also there.

RICHARD ALLEN VANDAHM - DIRECT EXAMINATION BY MS. POULOS

- 1 Q. Okay, and what were those neighbors doing over there?
- 2 A. Uh, they were, they had taken some scrap beadboard and
- 3 put it over the kitchen window and the bathroom window to to
- 4 block 'em off and then the inside they put a piece of the
- 5 beadboard over the, uh, main window in the back door.
- 6 Q. So were they just helping her ---
- 7 A. They were helping her ---
- 8 Q. --- board up windows?
- 9 A. --- board up the, board up the, uh, damage.
- 10 Q. Was Michael Manigan helping?
- 11 A. No.
- 12 Q. Now after this, everything was all done and and you guys
- 13 got the house situated, did Liz stay in the house or did she
- 14 leave with ya'll?
- 15 A. She stayed in the house.
- 16 Q. Did you, did you ask her to leave with ya'll?
- 17 A. We asked her several times to leave with us, to come over
- 18 and stay at our, in our house.
- 19 Q. Did did she want to stay?
- 20 A. She wanted to stay in her house.
- 21 Q. Did Liz tell you anything about the defendant Michael
- 22 Manigan coming back over to her house later on that night?
- 23 A. Uh, whe told us the next day.
- 24 Q. Okay, what what did she tell you?
- 25 A. Just that he came over and, uh, that was about two

RICHARD ALLEN VANDAHM - CROSS-EXAMINATION BY MR. WHELCHER

1 o'clock in the morning, uh, that he asked for, uh, you know,
2 if she she had any beer and, uh, and said that, uh, they were
3 watching her house.

4 Q. That he told her they were watching her house?

5 A. Yeah.

6 Q. Okay, thank you.

7 CROSS-EXAMINATION BY MR. WHELCHER:

8 Q. Mr. Vandahm, how far is it from according to your
9 estimation the back of your daughter's home to that wooden
10 fence, sir? Is it farther than this (indicating)?

11 A. I can tell you how far it is, it's a hundred feet.

12 Q. You measured it?

13 A. Yes.

14 Q. Okay. Would be farther than this (indicating)?

15 A. Yes.

16 Q. Okay. And the bag was found somewhere close to the edge
17 a that hundred feet, is that correct?

18 A. Yes.

19 Q. Okay. Thank you, sir.

20 MS. POULOS: Nothing further, Your Honor.

21 THE COURT: You may step down.

22 (Whereupon the witness left the stand.)

23 MS. POULOS: Your Honor, State calls Christy Holcombe.

24 (Whereupon, the witness came forward.)

25 ANNA CHRISTINE HOLCOMBE,

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

1 having been first duly sworn, testified as follows:

2 THE CLERK: Thank you, you may be seated.

3 DIRECT EXAMINATION BY MS. POULOS:

4 Q. Ms. Holcombe, if you would, state your full name.

5 A. Anna Christine Holcombe.

6 Q. And where do you live, ma'am?

7 A. Currently I live at [REDACTED], Spartanburg.

8 Q. Back on December the 11th 2010 where did you live?

9 A. On Carlisle Street, Spartanburg.

10 Q. Did you know the victim Elizabeth Vandahm in this case?

11 A. Yes, ma'am.

12 Q. How did you know her?

13 A. She was my next door neighbor and friends for several
14 years after we lived next door to each other.

15 Q. If you're on Carlisle Street and you're facing your
16 homes ---

17 A. Um-hum.

18 Q. --- where would your home be in relation to hers?

19 A. If I'm standing Carlisle Street looking at her house, my
20 house would be the next house to the left.

21 Q. And it was right next door.

22 A. Yes.

23 Q. Where are you employed, ma'am?

24 A. Currently I am not employed. I was laid off a couple of
25 months ago.

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

1 Q. And where did you work before that.

2 A. I worked at the Denny's home office.

3 Q. How long had you been at Denny's?

4 A. Twenty-three years.

5 Q. Now your yards, you said you guys were next doors, your
6 yards basically intersect, they come together.

7 A. Correct.

8 Q. Are are your homes pretty close to to one another or is
9 there a large amounta space in between 'em?

10 A. No, that the homes were close together.

11 Q. Okay. Was there some sort of a a privacy fence between
12 ya'lls yards?

13 A. Uh, there was on her side, yes.

14 Q. Um, do you recall what -- well actually before I go to
15 that, um, are you familiar with the area behind Liz's
16 backyard?

17 A. Yes.

18 Q. Okay. And can you describe that area.

19 A. Uh, it dead-ends which is Oakdale Court, uh, a lot of
20 trash and so forth had been thrown back there, nobody really
21 lived in that area so it was, um, thorns and trash, limbs and
22 oak trees, that's basically all that it is.

23 Q. And you're familiar with the tree that had fallen over?

24 A. Yes.

25 Q. Do you recall if there had been any power outages because

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

1 of the storm?

2 A. Yes, it took out the power on the entire street, uh, the
3 tree.

4 Q. Um, so there were no street lights or or were there some
5 street lights?

6 A. No.

7 Q. Okay, so the area on Carlisle Street was pretty black
8 other than the lights within your homes.

9 A. Um, no, there was no power whatsoever on the street or in
10 the house.

11 Q. Was there any power, any lights to your knowledge behind
12 your homes?

13 A. No.

14 Q. Do you recall what you were doin' on December the 11th
15 2010?

16 A. Um, yes, I had decided to cut grass that day, um, ---

17 Q. 'Bout what time?

18 A. Um, I would say starting around four o'clock in the
19 afternoon.

20 Q. Around four o'clock did you say, I'm sorry?

21 A. Um-hum.

22 Q. And and what sorts of things were you doin' be -- besides
23 cutting grass?

24 A. Uh, cut the grass, uh, weed eaten, uh, I would always get
25 my broom and sweep off the, um, walkways in front the houses

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

1 has always been a mess, um, then I worked on my Christmas
2 decorations and I also worked on Liz's Christmas decoration.

3 Q. What kind of decorations did you put on Liz's house?

4 A. I put up live tree garland on her front porch and lights,
5 Christmas lights.

6 Q. Did you also do some yard work in her house -- at -- in
7 her yard, I'm sorry?

8 A. Yes, I cut her grass and weed eated as well.

9 Q. Okay. When you started workin' that day, was it
10 daylight?

11 A. Yes.

12 Q. And 'bout how long would you say you were out there?

13 A. I was out there probly about five hours.

14 Q. Okay. What time do you, do you think you you went
15 inside?

16 A. Um, it was around 9, 9:30 before I went in.

17 Q. And were ya out there continuously during those several
18 hours?

19 A. Yes.

20 Q. Okay, you you never got in your car and drove off and
21 left?

22 A. No.

23 Q. Do you recall hearing any glass breaking at any point
24 during that time you were out there?

25 A. No, ma'am.

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

- 1 Q. Do you recall Liz's dog barking from inside?
- 2 A. No.
- 3 Q. Um, do you recall the -- any noises coming from within
- 4 her home?
- 5 A. No.
- 6 Q. Do you recall any noises coming from her backyard?
- 7 A. No.
- 8 Q. Now durin' the time frame that that you were out there
- 9 working, did you see Liz's father Richard Vandahm?
- 10 A. Yes.
- 11 Q. And 'bout what time do you think he came by?
- 12 A. 5, 5:30.
- 13 Q. Wa -- was that pretty usual thing for him to do when Liz
- 14 was at work?
- 15 A. Yes.
- 16 Q. And during the time frame that you were working, did did
- 17 you see anybody else?
- 18 A. Um, I did see, uh, Michael ---
- 19 Q. Did you ---
- 20 A. --- Manigan.
- 21 Q. --- did -- you saw the defendant Michael Manigan?
- 22 A. Yes, ma'am.
- 23 Q. And where was he?
- 24 A. Across the street at his house.
- 25 Q. He lived across the street?

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

- 1 A. Um-hum.
- 2 Q. And what what was he doing?
- 3 A. Mainly just, um, sitting on front porch. Uh, that ---
- 4 Q. Was he watching you?
- 5 A. He he was.
- 6 Q. Did he say anything to you?
- 7 A. He spoke to me several times, um, asking about how many
- 8 yards I was gonna cut that day and cutting grass, yard work.
- 9 Q. Was he asking general questions about yard work or was he
- 10 asking questions, um, can you be a little bit more specific
- 11 into what questions he was asking.
- 12 A. Um, about how many yards I was gonna cut and how long it
- 13 was gonna take, um, because I was cutting it, I was cutting so
- 14 much grass and I kept getting interrupted and kept havin' to
- 15 cut my lawn mower off so ---
- 16 Q. Who was interrupting you?
- 17 A. Um, Michael Manigan and Gary Manigan.
- 18 Q. And who is Gary Manigan?
- 19 A. Um, I -- they're, um, he and Michael are related, I'm not
- 20 quite sure exactly how they're related, um, but he did, um,
- 21 interrupt me as well.
- 22 Q. Had you had any dealings with the defendant Michael
- 23 Manigan before?
- 24 A. No.
- 25 Q. Did you -- were you friends with him?

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

- 1 A. Um, I would say neighbors and friends ---
- 2 Q. Did ---
- 3 A. --- yes.
- 4 Q. --- did you, did you ever let him inside your home?
- 5 A. No.
- 6 Q. Was Liz friends with him?
- 7 A. Not that I'm aware of.
- 8 Q. Had he ever been inside Liz's home to your knowledge?
- 9 A. Not that I'm aware of.
- 10 Q. Did you guys all hang out together with the defendant
- 11 Michael Manigan?
- 12 A. No.
- 13 Q. Now Michael Manigan was across the street sitting on his
- 14 porch asking you questions, was he doing anything else?
- 15 A. Not other than sitting on the porch. He would go back
- 16 in -- he would go inside for a couple minutes and come back
- 17 out, um, he did that several times, other than that no.
- 18 Q. And when you went back inside a around 9 or 9:30 did did
- 19 you look back outside your windows to -- at Liz's house?
- 20 A. No.
- 21 Q. Did ya have any reason to?
- 22 A. No.
- 23 Q. What was the next thing after you went in and and I'm
- 24 assuming did you, did you take a shower and and ---
- 25 A. Yes.

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

1 Q. --- just try to ---

2 A. Yes.

3 Q. --- relax?

4 A. Yes.

5 Q. Okay, what was the next thing you remember?

6 A. Uh, uh, the knock on my door. Uh, Liz had come over to
7 let me know someone had attempted or broke into her home.

8 Q. Did you hear a dog barking?

9 A. Uh, no, at -- not in my, not in my house no.

10 Q. Not in your house, ---

11 A. No.

12 Q. --- okay. Did you hear any dogs barking?

13 A. Um, not at the time.

14 Q. Now did you go over to her house with her?

15 A. I stayed outside with her on my porch until the police
16 and her family arrived.

17 Q. Okay. And after the police arrived and and they process
18 and assess the scene, did you guys all go in and and help
19 her?

20 A. We did after everything was wrapped up we wanted to
21 help ---

22 Q. Okay.

23 A. --- board up the windows and so forth.

24 Q. Okay, you helped board up the windows, you and a couple
25 of other neighbors?

ANNA CHRISTINE HOLCOMBE - DIRECT EXAMINATION BY MS. POULOS

- 1 A. Um-hum.
- 2 Q. Who who were those neighbors?
- 3 A. Um, Mark Comer and Scott Rounds.
- 4 Q. Okay. Had had you ya'll socialized and and were you all
- 5 friends ---
- 6 A. Yes.
- 7 Q. --- with Liz?
- 8 A. Yes.
- 9 Q. Okay. Now at some point later on did did everyone go
- 10 home?
- 11 A. Yes.
- 12 Q. And did you go home as well?
- 13 A. I did go home.
- 14 Q. Okay, so you've you said earlier that you're friends with
- 15 Liz, correct?
- 16 A. Yes, yes.
- 17 Q. And did you guys talk regularly?
- 18 A. Yes.
- 19 Q. And you spent good bitta time together.
- 20 A. Yes, ma'am.
- 21 Q. Alright, did Liz ever tell you that Michael Manigan, the
- 22 defendant, came back to her house at two o'clock in the
- 23 mornin', one or two ---
- 24 A. Yeah, she did.
- 25 Q. --- while she was by herself?

ANNA CHRISTINE HOLCOMBE - CROSS-EXAMINATION BY MR. WHELCHER

1 A. Yes.

2 Q. And what did she say about that?

3 A. She said that he came back, over knocked on the door, um,
4 around two o'clock in the mornin'. Um, ---

5 Q. What what was her demeanor like?

6 A. Um, I would say somewhat confused, um, questionable, um,
7 to why, uh, any neighbors for that matter would be comin'
8 knockin' on her door at two o'clock in the mornin' but...

9 Q. Thank you.

10 A. Um-hum.

11 Q. Please answer any questions Mr. Whelcher has.

12 CROSS-EXAMINATION BY MR. WHELCHER:

13 Q. When the police arrived, a lot of the neighbors came out,
14 watched what was goin' on, is that correct, ma'am?

15 A. Yes, sir.

16 Q. Okay, and I think you said two other guys were boarding,
17 helping to board up windows.

18 A. Yes.

19 Q. Okay. Were you there when Michael Manigan offered to
20 give some glass to Mr. Vandahm for them to use in the
21 window?

22 A. Uh, I was there when Michael Manigan came over.

23 Q. Okay. And Michael Manigan, these two gentleman and a
24 lotta people came out 'cuz the police cars were there, is that
25 correct, or a police car was there?

ANNA CHRISTINE HOLCOMBE - CROSS-EXAMINATION BY MR. WHELCHER

- 1 A. Police cars were there.
- 2 Q. More than one?
- 3 A. Um, seems that there was more than one.
- 4 Q. Were the blue lights goin' or were -- had they been
- 5 turned off by that time?
- 6 A. They were off the time but I really, uh, ---
- 7 Q. You don't remember.
- 8 A. I don't remember that.
- 9 Q. Okay. Your house been broken into, the house you lived
- 10 in had it been broken into any time ---
- 11 A. No.
- 12 Q. --- while you were living there?
- 13 A. No.
- 14 Q. And to your knowledge Ms. Vandahm's house had not been
- 15 broken into any time prior to this particular evening.
- 16 A. No, sir.
- 17 Q. So it was an unusual occurrence that particular evening
- 18 for the police to show up and all those neighbors to come out
- 19 and watch.
- 20 A. No, that was not a -- that -- I would say no, there was
- 21 all, uh, we had a good bit of police traffic on that road.
- 22 Q. I understand that, ma'am, but I'm talking about the
- 23 break-in.
- 24 A. Um, we had another break-in, uh, prior to that ---
- 25 Q. Oh, okay.

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 A. --- so, um, ---

2 Q. Did the neighbors come out for that too?

3 A. Uh, several neighbors came out for that as well.

4 Q. Oh, okay. What time did you start your yard work if you
5 know?

6 A. Say around four o'clock.

7 Q. Okay. And it was dark by when, ma'am?

8 A. Uh, 6, 6:30.

9 Q. Okay. Thank you.

10 A. Um-hum.

11 REDIRECT EXAMINATION BY MS. POULOS:

12 Q. Just briefly, Ms. Holcombe, was anybody else other than
13 close friends and family inside Liz's house helpin' her?

14 A. No.

15 Q. Thank you.

16 THE COURT: You may step down.

17 (Whereupon, the witness left the stand.)

18 MS. POULOS: Your Honor, the State calls officer Charles
19 Hair.

20 CHARLES HAIR, having been first
21 duly sworn, testified as follows:

22 THE CLERK: Thank you, you may be seated.

23 DIRECT EXAMINATION BY MS. POULOS:

24 Q. Sir, if you would, please state your name for the record.

25 A. Charles Hair.

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

- 1 Q. And how long view been a police officer, sir?
- 2 A. About 6 1/2 years.
- 3 Q. Where do you currently work?
- 4 A. City of Spartanburg Police Department.
- 5 Q. What are your, some a your general duties?
- 6 A. I just do, uh, what's called basic, I guess basic routine
- 7 patrol, uh, can range anywhere from workin' a B&E to makin' a
- 8 traffic stop, uh, workin' a traffic accident.
- 9 Q. Are you assigned to certain area of the city?
- 10 A. Uh, just primarily the south side a town.
- 11 Q. Okay. On December the 11th 2010, did you receive a call
- 12 to respond to [REDACTED]?
- 13 A. That's correct.
- 14 Q. Is that within the city limits of Spartanburg?
- 15 A. It is.
- 16 Q. In Spartanburg County?
- 17 A. It is.
- 18 Q. What was that call in reference to?
- 19 A. I was referenced to a breaking and entering that had
- 20 already occurred.
- 21 Q. 'Bout what time did you get that call, do you remember?
- 22 A. Uh, no, I do not.
- 23 Q. When you arrived what did you see?
- 24 A. Uh, when I arrived, uh, I I met the victim and she and I
- 25 went inside of her, the front door of her house.

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 Q. What did you do after that?

2 A. Uh, did a walk-through and, uh, just noticed like the
3 glass on the floor and the brick and the large cement block
4 and the cabinet door was open, just walkin' through there just
5 lookin' for things that were outta place.

6 Q. Was anyone else inside the home when you were doin' this
7 walk-through?

8 A. I believe it was just, uh, me and her.

9 Q. Okay. Now and and so you determined that the house was
10 clear, no one was inside, no no perpetrator was inside.

11 A. No.

12 Q. Okay, and no one else that didn't need to be there was
13 inside.

14 A. No.

15 Q. Alright. What entrance did you go inside the house
16 from?

17 A. Uh, from the front.

18 Q. Okay. Did you find, uh, ca -- first of all, tell us a
19 little bit about the the damage that you found specifically.

20 A. Uh, upon entering I believe as we walked through I think
21 the first room we went in, think we went to the left and
22 that's when I saw that the, uh, computer equipment was, I was
23 told by her the com -- the computer equipment was missin' ---

24 Q. Okay.

25 A. --- and then we went, kinda just went room by room, then

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 we went, I think the next room we went was, uh, I think it was
2 her bedroom and that's where saw the brick and the glass from
3 where the bathroom window had been broken, then we went
4 straight back into the kitchen, uh, where could see the glass
5 from the kitchen window and also the glass on the floor from
6 the door and the cabinets, uh, kitchen cabinets were open.

7 Q. How many windows did did you find broken?

8 A. Uh, three.

9 Q. Okay. And can you, can you tell us which three those
10 were.

11 A. Uh, the bathroom window, the kitchen window and then a
12 pane out of the, uh, back door.

13 Q. Okay. The bathroom window do you recall was that the
14 window that had the the wooden bars?

15 A. That's correct.

16 Q. Okay. And and the third window was the kitchen
17 window, ---

18 A. That's correct.

19 Q. --- correct? Were you able to determine a point of entry
20 and exit?

21 A. Uh, the kitchen window ---

22 Q. Okay.

23 A. --- was was what I, my investigation is what I believe to
24 be the entry ---

25 Q. Okay.

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 A. --- and exit point.

2 Q. Alright. I'm gonna show you what's already been admitted
3 as State's Exhibit 18, is that (indicating) the concrete
4 brick, I mean, a concrete rock or piece of, piece a concrete
5 that you found?

6 A. Yes, that was found on the kitchen floor.

7 Q. On the kitchen floor, okay. Can you -- do you mind
8 holdin' that?

9 (Whereupon, the witness complied.)

10 Q. Would you say that's pretty heavy, sir?

11 A. Yes.

12 Q. Alright. This is also part a State's Exhibit 18, what
13 what is this (indicating)?

14 A. Uh, that's the brick that was found, uh, in the
15 bathroom.

16 Q. In the bathroom, alright. Now did you take, uh,
17 photographs as part of your assessment in processing of the
18 scene?

19 A. Yes, I I took photos first. I photographed the inside
20 the house and the, uh, exterior.

21 Q. And are those the photographs that we have been viewing
22 in this ---

23 A. Yes.

24 Q. --- trial? Did there appear to be any areas in the home
25 that were rummaged through?

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 A. Uh, the bedroom and the room that the computer was in and
2 in the kitchen the the cabinets were open.

3 Q. Okay. Did you dust for fingerprints inside the home?

4 A. Yes, I did.

5 Q. What areas did you dust?

6 A. I dust the computer room, the area of where I was shown
7 that the computer was, uh, in her, in her bedroom the area
8 that I was shown where the jury was kept, I remember dustin'
9 the jewelry box, uh, the dresser drawers and then I moved into
10 the kitchen area, uh, remember dustin' the refrigerator, a
11 couple of cabinet doors and I think that's about -- I maybe
12 the, I I do recall the back door as well.

13 Q. Do you recall dusting around the the window, the kitchen
14 window?

15 A. Uh, I think I did around the base of it ---

16 Q. Okay.

17 A. --- where where I was told that items were outta place, I
18 guess like they had been knocked over so I I dusted kinda at
19 the base.

20 Q. Okay. Now when you went inside the backyard, did did Liz
21 alert you to something unusual in the backyard?

22 A. Yes, I was approached by her and her father.

23 Q. Alright, and and what was that?

24 A. I was referenced to a trash bag they had located in the
25 wood line behind her house.

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 Q. And was there a large tree that had also fallen down?

2 A. Yes.

3 Q. Alright, and where was this trash bag in relation to that
4 tree?

5 A. Uh, it was off to the side of it, uh, I say maybe a,
6 maybe a few feet to several feet away off but it's off to the
7 side.

8 Q. Okay, and, uh, when the tree had fallen and there
9 were -- did you see the big root ball that was left, ---

10 A. Uh, yes, ---

11 Q. --- the roots?

12 A. ---- there was, there was a hole there as well.

13 Q. There was a hole? Okay. Did you see a wire fence
14 that ---

15 A. Yes.

16 Q. --- had been -- and did that appear to be in a temporary
17 fence?

18 A. Yes.

19 Q. Was that fence bent down?

20 A. Uh, slightly yes.

21 Q. Was it pliable, easily bendable?

22 A. I would say so.

23 Q. Alright. So that that wired fence it it didn't keep you
24 from going in and outside of the yard.

25 A. No, I wouldn't think so.

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 Q. If you're standing in Ms. Vandahm's backyard, could you
2 see black trash bag?

3 A. Yes, with with some maneuvering, yes you could.

4 Q. Alright, but was it behind a a tree?

5 A. Uh, it was, it was slightly hidden but you you still
6 could see it.

7 Q. You could still see it, alright. Can you describe what
8 this bag looked like, what color was it?

9 A. It was black with a blue draw strings.

10 Q. Okay. Was that bag closed, had the draw strings been
11 pulled?

12 A. Yes.

13 Q. Alright, and so what did you do with that bag when you
14 found it?

15 A. Uh, I took it, well I I retrieved it and I brought it to
16 the front porch, uh, to look at it under porch light, uh, but
17 I didn't like the lighting there so I I took it on the inside
18 a the house for a a better light purpose.

19 Q. Okay. Um, I'm gonna show you this is State's Exhibit 15,
20 sir, what is in that photograph?

21 A. This is a photograph of the black trash bag that I
22 retrieved, I took this at the time when I brought it out ---

23 Q. Um, ---

24 A. --- out to the front porch.

25 Q. --- the way, the way that it was in that photograph, did

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 you open it?

2 A. I I I guess it, I would say it opened when I set it
3 down.

4 Q. Okay, but you testified a minute ago that it was closed
5 when you saw it ---

6 A. Yes.

7 Q. --- when you first saw it and were alerted to it, at some
8 point did you open ---

9 A. Yes.

10 Q. --- it up and allow Liz to look and see what was in
11 there?

12 A. Yes, I did.

13 Q. Did she identify that property as hers?

14 A. Yeah, she did.

15 Q. And then after that did you take this photograph?

16 A. Yes.

17 Q. Okay, so after ya opened it and ya let her look at it
18 that's when the picture was taken.

19 A. Yes.

20 Q. Okay. Now you mentioned earlier about dusting for
21 fingerprints inside the home, did you also dust for -- well
22 actually, let me, let me back up. How do you decide what
23 types of things to dust for fingerprints and what not to?

24 A. Okay, uh, well we use a metallic base fingerprint dust
25 so, uh, right off initial I look for for smooth surfaces 'cuz

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 it's more, uh, uh, pliable I guess for the dust and on items
2 like this (indicating), I mean, you can kinda see a print
3 literally before you you dust.

4 Q. What item? On smooth items?

5 A. Yes.

6 Q. Would you say that this (indicating) is a smooth item?

7 A. No.

8 Q. Did you dust that?

9 A. No, I did not.

10 Q. Alright. Would you say that this (indicating) is a
11 smooth item?

12 A. No.

13 Q. Did you dust that?

14 A. No, I did not.

15 Q. Alright. And and if you can explain why are smooth
16 surfaces better than rough surfaces?

17 A. Uh, because on on a rough surfaces you have, uh, I guess
18 when I'm saying rough if it's dirty or if it's, uh, very
19 rigid, uh, it's, uh, not easy for the dust that we use to to
20 attach itself to, uh, any type a print that would be left on
21 that surface.

22 Q. Is it possible to dust an area for fingerprints and not
23 be able to lift a print?

24 A. It's possible.

25 Q. Is it possible for a person to touch a surface and not

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 leave his fingerprint?

2 A. Possible.

3 Q. Did you dust for fingerprints on the computer and the
4 monitor, the monitor and that printer?

5 A. Yes, I did.

6 Q. Was that because it was a smooth surface?

7 A. Uh, yes, and I had looked prior to dustin' and I thought
8 that I saw a print already.

9 Q. Okay. Did you find any possible latent prints on on
10 those items?

11 A. Yes.

12 Q. Alright. Let's see, Officer Hair, I'm showing you what's
13 been pre-marked as State's Exhibits 19A, B, C, and D, what are
14 those items?

15 A. Those are the prints I lifted, uh, on the scene on
16 fingerprint cards.

17 Q. Alright, how do you know that they were lifted from [REDACTED]
18 [REDACTED]?

19 A. Oh, because on each of the cards they have slots
20 designated for case number, date and time, type offense and
21 location and also victim information, where the print was
22 lifted and who lifted the print.

23 Q. Okay, and and you filled that out? Is is that your
24 handwriting on the left side a that card?

25 A. That's correct.

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 Q. Alright, so you got all four of those fingerprints from
2 Carlisle Street, ---

3 A. Yes, I did.

4 Q. --- [REDACTED], ---

5 A. That's correct.

6 Q. --- victim's home.

7 MS. POULOS: Your Honor, we would ask that State's
8 Exhibits 19A, B and C and C and D be admitted into evidence.

9 MR. WHELCHER: No objection.

10 THE COURT: They're admitted.

11 (States Exhibit Nos. 19A, B, C and D, latent fingerprint
12 cards, admitted into evidence.)

13 BY MS. POULOS:

14 Q. Officer Hair, can you look at Exhibit 19A and tell us
15 where that print was lifted from.

16 A. This print was lifted from the backside of the computer
17 monitor.

18 Q. And if you can look at 19B and tell us where that print
19 was lifted.

20 A. Uh, this print was lifted from the front right side of
21 the dresser drawer near the knob.

22 Q. What about 19C, where did you lift that print from?

23 A. 19C was lifted from the left side of the computer
24 printer.

25 Q. And what about Exhibit 19D?

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 A. And 19D was lifted from the front side of the printer
2 near the middle.

3 Q. And you testified earlier that you dusted for
4 fingerprints in several areas, correct?

5 A. That's correct.

6 Q. But were those the only four that you were able to get a
7 good reading off of?

8 A. That's correct.

9 Q. How exactly did you get the prints onto those little
10 cards?

11 A. Uh, we use a a tape. Once once you dust and you
12 determine that you have a a good print, uh, you place tape on
13 that print very smoothly, uh, trying to eliminate any air,
14 keep any air bubbles from gettin' inside of it and you place
15 the tape onto this card usin' that same technique tryin' to
16 get it as smooth, uh, as you possibly can.

17 Q. So the print is basically on the underside a that tape, a
18 sticky part?

19 A. Yes.

20 Q. And you then stick that onto the card, ---

21 A. Yes.

22 Q. --- is that how you do it? What what do you -- what did
23 you do with those prints once you took them? Di -- did you,
24 did you keep 'em with you ---

25 A. Yes.

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

- 1 Q. --- at the scene?
- 2 A. I did.
- 3 Q. Did they ever leave your sight?
- 4 A. No.
- 5 Q. From the time that they are with you, what do you do with
- 6 them when you leave the scene?
- 7 A. Uh, once I leave the scene I take them, I place 'em into,
- 8 uh, evidence.
- 9 Q. And are they secured in the evidence department?
- 10 A. Yes.
- 11 Q. Do you recall, sir, after you had had processed the
- 12 scene, had the fingerprints already and and, uh, do you recall
- 13 anyone other than Liz's neighbors and family coming over?
- 14 A. Uh, yes, uh, the defendant did come over Mr. Manigan,
- 15 Mike ---
- 16 Q. Defendant Mr. Manigan came over? Did did you talk to
- 17 Mr. Manigan?
- 18 A. Uh, no, I did not have any interactions with him.
- 19 Q. What what was he doin'?
- 20 A. Uh, he appeared just to be havin' conversation with the
- 21 people that were there.
- 22 Q. Okay, but but you saw him inside the house.
- 23 A. Yes, I I believe he was holdin' a small dog I believe.
- 24 Q. Okay. Now the black trash bag that you had already
- 25 dusted the prints from, where where was that trash bag? Was

CHARLES HAIR - DIRECT EXAMINATION BY MS. POULOS

1 it right by your side or or had you -- did you put it off
2 somewhere?

3 A. I had it, it was with me.

4 Q. It was with you the whole time?

5 A. Um-hum.

6 Q. Okay. So anybody that basically saw you and that was
7 inside the house could see that trash bag.

8 MS. WHELCHER: Objection, Your Honor, calls for
9 conjecture on the part of this witness.

10 THE COURT: Okay, re ---

11 MS. POULOS: Were a lot ---

12 THE COURT: --- rephrase your question.

13 MS. POULOS: Yes, sir.

14 BY MS. POULOS:

15 Q. Were a lot of people in the house Liz's friends?

16 A. Yeah, they were towards the front of the house.

17 Q. Could they see you?

18 A. Not sure.

19 Q. Okay. Could you see them?

20 A. Uh, I was still kinda goin' back and forth in the back
21 but yeah, I could see 'em when I walked past, uh, the open,
22 opening where the hallway was, I seen 'em.

23 Q. And when you saw where all these people were, you at that
24 point still had that black trash bag right beside you ---

25 A. Yes, all ---

CHARLES HAIR - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. --- and the fingerprint cards right beside you?

2 A. Yes.

3 Q. Okay. Uh, thank you. Please answer any questions
4 Mr. Whelchel may have for you.

5 CROSS-EXAMINATION BY MR. WHELCHER:

6 Q. Officer Hair, when you dust for prints, you don't know
7 whose prints they are, ---

8 A. No.

9 Q. --- you just dust the smooth surfaces in the hopes that
10 there might be an identifiable print ultimately, is that
11 correct?

12 A. Somewhat correct.

13 Q. Yeah, and you take like Ms. Vandahm's fingerprint so that
14 you can eliminate a print that mighta been hers on a, on the
15 windowsill or any of the property, is that correct?

16 A. Yeah, that's done but not by me but that's that's proper
17 procedure for that.

18 Q. But ya have to do that in court in order to eliminate ---

19 A. Yeah.

20 Q. --- a print that ---

21 A. Yes.

22 Q. --- you have so you know who it is eventually, ---

23 A. Yeah.

24 Q. --- is that right?

25 A. That's correct.

CHARLES HAIR - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Okay. And you said in, uh, direct examination from the
2 solicitor that when you put the bag down it kinda fell open,
3 the opening did?

4 A. Yeah, slightly.

5 Q. Thank you, sir.

6 MS. POULOS: Nothing further, Your Honor.

7 THE COURT: You may step down.

8 (Whereupon the witness left the stand.)

9 THE COURT: We'll take a short break before we go
10 further. I'll ask the jury to please retire to your jury
11 room. Do not discuss the case in any fashion, we'll bring you
12 back after that break to continue with the trial.

13 THE BAILIFF: Follow me, please.

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

16 THE COURT: Court is in recess fifteen minutes.

17 (Whereupon, a recess was taken.)

18 THE BAILIFF: Thank you, be seated.

19 MS. POULOS: Your Honor, may may Mr. Whelchel and I
20 approach?

21 THE COURT: Okay.

22 (Whereupon, a bench conference was held off the record.)

23 THE COURT: Alright, we'll be at ease while the witness
24 arrives.

25 (Whereupon, a recess was taken.)

KIMBERLY ASHLEY - DIRECT EXAMINATION BY MS. POULOS

1 THE COURT: Alright, we ready for the jury?

2 MS. POULOS: Yes, sir, Your Honor.

3 THE COURT: Alright, bring 'em in, please.

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

5 THE COURT: Alright, Ms. Poulos.

6 MS. POULOS: Thank Your Honor. State calls Sergeant
7 Kimberly Ashley.

8 KIMBERLY ASHLEY, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. POULOS:

11 Q. Sergeant Ashley, if if you would, please state your name
12 for the record.

13 A. Kimberly Ashley.

14 Q. And where are you employed, ma'am?

15 A. The Spartanburg County Sheriff's Office at the detention
16 center.

17 Q. How long have you been employed at the detention center?

18 A. Approximately 22 years.

19 Q. Does your department normally take fingerprints when
20 someone's booked into the facility?

21 A. Yes, ma'am.

22 Q. And have you taken prints in the past?

23 A. Yes, ma'am.

24 Q. Can you explain the process.

25 A. When a individual is brought to the facility, um, once

KIMBERLY ASHLEY - DIRECT EXAMINATION BY MS. POULOS

1 they have charging papers, whether it be a warrant or a
2 ticket, then the individual we, uh, confirm their identity
3 from the information that we have, submit their fingerprints
4 through a Livescan machine, they are submitted to SLED
5 electronically and then we, uh, wait approximately 10 to 15
6 minutes to see if we get a response back.

7 Q. And are are those inked prints or are they electronic
8 prints?

9 A. Electronic prints.

10 Q. Okay. Do you keep a printed copy for your files?

11 A. Yes, we do.

12 Q. Let's see, Sergeant Ashley, I am showin' you what's been
13 pre-marked for identification purposes as State's Exhibit 20,
14 do you recognize that (indicating) card?

15 A. Yes, I do.

16 Q. Are those prints -- were those prints taken at the
17 Spartanburg County Jail?

18 A. Yes, they were.

19 Q. How do you know that?

20 A. On the upper left hand corner there is a specific
21 identifying marker and that number that's off the upper left
22 hand corner actually comes from our terminal and is unique
23 only to our terminal.

24 Q. Okay, can you read out that number.

25 A. 422100179729.

KIMBERLY ASHLEY - DIRECT EXAMINATION BY MS. POULOS

1 Q. Is there also a name on that card?

2 A. Michael Manigan.

3 Q. Okay.

4 MS. POULOS: Your Honor, this time we would ask that
5 State's Exhibit 20 be admitted into evidence.

6 MR. WHELCHER: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (State's Exhibit No. 20, fingerprint card, admitted into
9 evidence.)

10 BY MS. POULOS:

11 Q. Now, Sergeant Ashley, do you also take palm prints?

12 A. Yes, we do.

13 Q. Okay. Is that somethin' you do routinely?

14 A. Yes, we do.

15 Q. I'm gonna show you now what's been pre-marked as State's
16 Exhibit tw -- 22, and do you recognize what I've handed you?

17 A. Yes, I do.

18 Q. Was that -- what is it? Is it a fingerprint or is a palm
19 print?

20 A. It's a palm print.

21 Q. Were those -- was -- were those palm prints taken at the
22 Spartanburg County Jail?

23 A. Yes, they were.

24 Q. And how do you know that?

25 A. Again, there is a specific unique identifying number up

KIMBERLY ASHLEY - DIRECT EXAMINATION BY MS. POULOS

1 in the upper left hand corner.

2 Q. Okay. And each time you take a set of prints, are
3 they -- are -- it -- are -- do you identify unique number for
4 that print?

5 A. Yes.

6 Q. What is the number on that card?

7 A. For the the the set a prints themselves or for the
8 individual?

9 Q. For -- the the number on the upper left.

10 A. Oh, the number that came from our terminal?

11 Q. Yes?

12 A. It's 422100162442.

13 Q. Okay. And what is the number assigned to that unique
14 individual?

15 A. The number is assigned to the the individual that was
16 printed, Michael Manigan, on this particular day.

17 Q. Okay. Is the defendant's name on that card ---

18 A. Yes.

19 Q. --- Michael Manigan?

20 A. Yes, ma'am.

21 Q. Okay.

22 MS. POULOS: Your Honor, we would ask that State's
23 Exhibit 22 be admitted into evidence.

24 MR. WHELCHEL: No objection, Your Honor.

25 THE COURT: It's admitted.

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 (State's Exhibit No. 22, palm print card, admitted into
2 evidence.)

3 MS. POULOS: Thank you, that's all I have. Please answer
4 any questions Mr. Whelchel might have.

5 MR. WHELCHER: Thank you, ma'am.

6 THE COURT: You may step down.

7 (Whereupon, the witness left the stand.)

8 MS. POULOS: Your Honor, may Sergeant Ashley be excused?

9 THE COURT: She may be.

10 MS. POULOS: Your Honor, the State would call
11 Investigator Lou Jones.

12 LOU MATHIS JONES, having been
13 first duly sworn, testified as follows:

14 THE CLERK: Thank you, you may be seated.

15 DIRECT EXAMINATION BY MS. POULOS:

16 Q. If you would, ma'am, please introduce yourself and and
17 tell the jury where you are employed.

18 A. My name is Lou Mathis Jones, I am employed by the
19 Spartanburg Public Safety.

20 Q. And how long have you been employed with Spartanburg
21 Public Safety?

22 A. Twenty-four years.

23 Q. What are some a your current duties?

24 A. I examine and compare latent prints to latent prints, ink
25 prints to ink prints, latent prints to ink prints, I do report

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 of my findings and testify to those findings in court.

2 Q. And what type of training have you had?

3 A. I've had Basic Fingerprinting, Fingerprint
4 Classification, the History of Fingerprinting, Fingerprint
5 Ridge Analysis, Fingerprint Comparison, I have diploma from
6 the American Institute of Applied Science for Basic Forensics
7 101, Complex Latent Print Comparison, Demystifying Palm Prints
8 and Advanced Palm Print Comparison.

9 Q. Do you hold any certifications?

10 A. I have a certificate of competency from SLED for the
11 operation of our Automated Fingerprint Identification System,
12 better know as AFIS.

13 Q. And if you would for the jury can you just tell the jury
14 what SLED stands for?

15 A. South Car -- South Carolina Law Enforcement Division.

16 Q. How long have you been examining fingerprints?

17 A. For twenty-three years.

18 Q. And how many fingerprints or or palm prints have you
19 examined during your time?

20 A. I would say in excess of 250,000.

21 Q. Have you testified in trial before regarding the
22 identification of fingerprints?

23 A. Yes.

24 MS. POULOS: Your Honor, at this time we would move that
25 Investigator Lou Jones be qualified as an expert in

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 fingerprint analysis.

2 MR. WHELCHER: No objection.

3 THE COURT: She is so qualified.

4 MS. POULOS: Thank you.

5 BY MS. POULOS:

6 Q. Investigator Jones, what is a latent print?

7 A. A latent print is the outline of your friction ridges in
8 sweat or some transferable substance on an object or a surface
9 when you touch it.

10 Q. Are there different distinguishing characteristics of of
11 a fingerprint or a palm print?

12 A. Well for for one thing a a palm print is about ten times
13 the size of of a fingerprint but we're looking for the same
14 characteristics in them.

15 Q. How is it possible for someone to leave a fingerprint or
16 a palm print print?

17 A. Now it depends on, um, if they have any transferable
18 substance on their hands or if there is a transferable
19 substance on the surface that they touch.

20 Q. If if someone has lotion on their hands, for example,
21 would they be able to leave a print?

22 A. You can, it depends on the type of surface it is.

23 Q. Okay. Is it possible for a person to touch a surface and
24 not leave any prints?

25 A. Yes.

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 Q. What are the characteristics or details you look for in
2 examining a print?

3 A. In a -- I'm looking for, uh, first of all, I'm looking to
4 see if there's sufficient clarity to make an identification
5 'cuz you've gotta be able to see where those, uh, those lines
6 in your fingers are called "grooves and ridges", so you've
7 gotta be able to see where they end which is called an "ending
8 ridge" or it bifurcates where they split, one ridge will split
9 into two or if there's any dots, I look at the curvature of
10 the ridge, ridge flow and, uh, if there's any creases, any
11 permanent scars in the, in the, uh, print.

12 Q. And are are fingerprints and palm prints unique as to
13 each individual?

14 A. Yes.

15 Q. Is it possible for one person to have the same
16 fingerprints as somebody else?

17 A. No.

18 Q. Based on your training, experience, have you ever seen
19 anybody with, uh, have you ever seen anybody two two people
20 with the same set of fingerprints?

21 A. No.

22 Q. Alright, um, I am show you State's exhibits 19A, B and C
23 and D which have already been admitted into evidence, do you
24 recognize those cards? Have seen 'em before?

25 A. Yes.

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 Q. Okay. And were those prints that were taken from [REDACTED]
2 [REDACTED] the the crime scene?

3 A. Yes.

4 Q. Alright, and have you examined those fingerprints?

5 A. Yes.

6 Q. How many of those four prints were you able to to use in
7 your analysis?

8 A. Two.

9 Q. And can you, can you tell us what -- which exhibit
10 numbers they were.

11 A. 19A and 19B.

12 Q. And was there sufficient clarity in those prints that
13 would allow you to do your analysis?

14 A. Yes.

15 Q. What did you do with the prints after you examined
16 them?

17 A. I marked those points of identification that I saw within
18 those prints and submitted to our computer system, better
19 known as AFIS, our Automated Fingerprint Identification System
20 to do a possible search.

21 Q. Does SLED run that database?

22 A. Yes.

23 Q. And does AFIS then give you some possible matches?

24 A. Yeah, they'll give ya possible matches 'cuz the only
25 thing that AFIS does is search the area that you've marked,

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 it's gonna be up to the actual examiner to make an
2 identification because AFIS can't make an identification.

3 Q. Okay. So at at that point when you enter into the system
4 you don't have a name ---

5 A. No, you don't.

6 Q. --- but you have potential a match or matches.

7 A. It's a possible match. What you do if you see one that
8 looks like what you entered in then you're going to go to
9 another part a that computer system and do a comparison,
10 you're gonna put both prints side by side and still -- then
11 start counting those points of identification, not only are
12 you counting those points identification, you're looking at
13 the curvature and ridge flow of the ones that you did not
14 mark.

15 Q. Alright, now I'm gonna show you what's been admitted as
16 State's Exhibit 20, do you recognize what I've handed you?

17 A. Yes.

18 Q. Alright, and what what is that?

19 A. This is a fingerprint card or tin print card.

20 Q. Okay, can you please read out the number in the left,
21 upper left hand corner.

22 Q. 422100179729.

23 A. And did you compare that print to a print, the prints
24 found at the scene?

25 A. Yes.

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 Q. Specifically which one?

2 A. Let's see, one second, 19B.

3 Q. Okay, um, and that I believe was the print that was found
4 from the the printer, is that correct?

5 A. Yes.

6 Q. Did you generate a fingerprint comparison chart?

7 A. I did.

8 Q. Investigator Jones, I'm handing you what's been
9 pre-marked for identification purposes as State's Exhibit 21,
10 is that the fingerprint comparison chart that you made?

11 A. Yes.

12 Q. And is that the print that was left, um, at the scene?

13 A. Uh, the print to the left is the one that was left at the
14 scene.

15 Q. Okay, and what is the the print that's on the right of
16 that chart?

17 A. That's the one from our Automated Fingerprint
18 Identification System that was a possible match for this
19 one ---

20 Q. Okay, ---

21 A. --- that we know.

22 Q. --- can you read out the respondent identification number
23 on your comparison chart.

24 A. 422100179729.

25 Q. Is that the same number that is on the other exhibit?

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 A. Yes.

2 Q. Alright, so those two numbers do they match?

3 A. Yes, they do.

4 Q. Alright, um, and is that comparison chart something you
5 do as a regular, in the regular course of your analysis?

6 A. That's part a my comparison stage. The analysis stage is
7 when I'm looking at the the the print itself to see if it's
8 going to be sufficient clarity in that print in ridge flow and
9 directions and if there's any points identification but durin'
10 the comparison stage is when I do the chart.

11 Q. Okay.

12 MS. POULOS: Your Honor, at this time we would ask that
13 State's Exhibit 21 be admitted into evidence.

14 MR. WHELCHER: No objection.

15 THE COURT: It's admitted.

16 (State's Exhibit No. 21, fingerprint comparison chart,
17 admitted into evidence.)

18 BY MS. POULOS:

19 Q. Investigator Jones, whose fingerprint did you determine
20 it to be after your analysis?

21 A. A Michael Manigan.

22 Q. What kind of things are you lookin' for?

23 A. I'm looking for ridge flow, direction of ridge flow,
24 ridge curvature, any permanent scars in the ridges,
25 bifurcations, any other details within a print that makes that

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 print unique from some other print.

2 Q. Okay, and based on all of your experience and expertise
3 in fingerprint analysis, you said that you were able to
4 determine a match?

5 A. Yes.

6 Q. And would you state again who that was.

7 A. Michael Manigan.

8 Q. Is he the defendant in this case?

9 A. Yes.

10 Q. Alright. Alright, gonna show you what's been admitted
11 into evidence as State's Exhibit 22, this is the palm print
12 card that I showed ya earlier, um, can you please read out the
13 number again on the upper left-hand corner.

14 A. 422100162442.

15 Q. And did you compare that print with prints found at the
16 scene?

17 A. I did.

18 Q. Okay, and did you generate a, um, comparison?

19 A. I did.

20 Q. Alright, and which exhibit ---

21 A. Um-hum.

22 Q. --- did did did you, uh, analyze that print with?

23 A. 19B -- 19A sorry.

24 Q. 19A?

25 A. 19A.

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 Q. And 19A, um, is that the monitor?

2 A. It's the monitor.

3 Q. Okay. And you an -- you you made another fingerprint
4 chart for that analysis?

5 A. Yes, I did.

6 Q. Alright. Investigator Jones, this is State's Exhibit 23
7 for identification purposes, is that the fingerprint analysis
8 chart, side by side chart, that you generated with a palm
9 print?

10 A. Yes.

11 Q. Alright, and can you read the respondent number on
12 the -- on that, uh, chart.

13 A. 42210062442162442.

14 Q. Alright, and does that number match up with the number on
15 the palm print card that you used to compare it to?

16 A. Yes.

17 Q. Alright, and, um, okay, um, Your Honor, at this time we
18 would ask that State's Exhibit 23 be admitted into evidence.

19 MR. WHELCHEL: No objection.

20 THE COURT: It's admitted.

21 (State's Exhibit No. 23, fingerprint analysis chart,
22 admitted into evidence.)

23 BY MS. POULOS:

24 Q. Okay, and were you able to make a comparison with regard
25 to the palm print?

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 A. Yes.

2 Q. Alright, and what kind of things were ya lookin' for in
3 palm print?

4 A. I'm looking for the same, um, detail within the print.
5 I'm lookin' for ridge flow, ridge curvature, um, the size of
6 the, uh, print itself, if there's any incipient ridges and
7 permanent scars, I'm looking for if they have the size of the,
8 uh, ridges, whether they're 1 inch ridge or 1/2 an inch ridge
9 or 4 inch ridges, I'm looking to see where they stop at which
10 is called an "ending ridge", where they bifurcate at and
11 that's when ya have one that splits into two, to see if
12 there's any dots and any creases within the print.

13 Q. Okay. And based your experience in fingerprint analysis,
14 were you able to determine a match for that palm print?

15 A. Yes.

16 Q. And who, um, did you determine that print to be?

17 A. Michael Manigan.

18 Q. Is he the defendant in this case?

19 A. Yes.

20 Q. Did you make an enlargement of your palm print
21 comparison?

22 A. I did.

23 Q. Investigator Jones, this is State's Exhibit 24 for
24 identification purposes, is that, um, a blow-up of the palm
25 print comparison ---

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 A. Yeah.

2 Q. --- that you made?

3 A. It is, it's an enlargement of it.

4 Q. Did you make that enlargement?

5 A. Yes.

6 Q. Okay.

7 MS. POULOS: Your Honor, we'd ask that State's Exhibit 24
8 be admitted into evidence.

9 MR. WHELCHER: Without objection.

10 THE COURT: It's admitted.

11 (State's Exhibit No. 24, blow-up of palm print
12 comparison, admitted into evidence.)

13 BY MS. POULOS:

14 Q. Investigator Jones, can you please explain your analysis
15 using that chart.

16 MS. POULOS: Your Honor, may I ask for permission for her
17 to step down?

18 THE COURT: She may.

19 (Whereupon, the witness left the stand.)

20 THE COURT: When you stand down to talk to the jury,
21 please use that microphone that's in the middle of the ---

22 THE WITNESS: Okay.

23 THE COURT: --- jury box. If you need to step one side
24 or the other to show something, that's fine but just be sure
25 when you speak you use that microphone.

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 THE WITNESS: Okay. This (indicating) is actually the
2 analysis that was done and this (indicating) is the actual
3 print from the crime scene palm print, partial palm print and
4 this (indicating) one is actually the one from our Automated
5 Fingerprint Identification system. You've heard me talk about
6 direction of ridge flow, that these these (indicating) lines
7 are also called "friction ridges" so you have to make sure
8 that these ridges are going the same direction. And you heard
9 me talk about, um, here (indicating) ri -- ridge curvature.
10 You will see that these ridges go here (indicating), makes a
11 dip down here (indicating), so you have to follow the flow of
12 the ridges, the curvature of the ridges and this one Number 1
13 is marked as as here on the chart. I mark my charting in
14 clockwise position, I go around just like a clock, now I'm not
15 only looking at the ones that are marked, I'm also looking at
16 the ones that are not marked but that is like a half an inch
17 ridge, the line just stops here (indicating), so there's
18 different sizes that they be a half an inch, it may be an
19 inch, it may be 2 inches and then what you have to do you put
20 both prints side by side, this this (indicating) half an inch
21 ridge has to also be here (indicating), our Number 1 here, and
22 then you look at the ridge flow the way that it's curving down
23 and making sure that the same thing goes over here
24 (indicating) and when this Number 2 point this (indicating)
25 ridge comes here (indicating) and it stops, it's called an

LOU MATHIS JONES - DIRECT EXAMINATION BY MS. POULOS

1 "ending ridge" and the same thing has to go here (indicating).
2 This (indicating) ridge comes here (indicating) it stops and
3 the same amount of ridges have to intervene between 1 and 2
4 and 3 and 4, all the way around the, all the way around the
5 charting and as I said before, not only am I looking at those
6 that are marked, I'm looking at the ridges that are not marked
7 making sure they're the exact same in both prints.

8 BY MS. POULOS:

9 Q. And did you determine that palm print to be the exact
10 same?

11 A. Yes.

12 Q. And, um, you may take your seat.

13 A. Okay.

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

15 Q. And, um, Investigator Jones, um, I take you back to the
16 print cards, State's Exhibit 19A, B, C and D, did you make any
17 notations on any of these cards?

18 A. Yes, uh, I labeled them, labeled them Number 1, 2, 3 and
19 4, my initials and the date.

20 Q. Did you also put, uh, the defendant's name?

21 A. On the ones where an identification was made, the name is
22 on there.

23 Q. Okay. And is that your handwriting?

24 A. It is my handwriting.

25 Q. And your initials or signature?

LOU MATHIS JONES - CROSS-EXAMINATION BY MR. WHELCHEL

1 A. Yes.

2 Q. Okay. Um, thank you, please answer any questions
3 Mr. Whelchel may have for you.

4 CROSS-EXAMINATION BY MR. WHELCHEL:

5 Q. You obtained or you identified a print from 19A, is that
6 correct, ma'am, ---

7 A. Yes.

8 Q. --- and 19D, is that correct?

9 A. Excuse me, thought it was a B.

10 Q. Well you tell me.

11 A. That's what it looks like to me. Let's see, that is a D,
12 a 19D.

13 Q. A and D?

14 A. Um-hum.

15 Q. Okay.

16 A. A and D.

17 Q. These (indicating) two.

18 A. That's a D, yeah.

19 Q. Alright. Originally when you first looked these prints
20 you were unable to identify anybody, is that correct?

21 A. When I originally looked at the prints, I was unable to
22 identify anybody?

23 Q. The prints didn't match anybody. You didn't get a match
24 when you first looked at the prints, is that correct?

25 A. Um, I don't understand. What do you mean? When I first

LOU MATHIS JONES - CROSS-EXAMINATION BY MR. WHELCHEL

1 searched the, uh, Number 1, uh, 19A ---

2 Q. When was that, ma'am?

3 A. The date on this print is, um, 2/15/11 19D, the first one
4 I did.

5 Q. Okay.

6 A. The first time I searched I did get an an identification
7 on Number 2, ---

8 Q. Okay.

9 A. --- 19D.

10 Q. And you notified Investigator Nelson in late March that
11 you had a match, is that correct?

12 A. I'm not sure when he was notified, no, I'm not sure what
13 date that was.

14 Q. Okay, do you have your paperwork with you that tell you
15 when you notified him?

16 A. No, it doesn't tell me when I notified him. I enter,
17 once I've made an identification, I usually enter a supplement
18 report into our investigative part of the report and then he
19 he's the investigator so he usually go back and look at 'em.

20 Q. Okay, so do you recall whether or not it was late March
21 when you notified the investigator that you had a match?

22 A. No, I do not recall what date, uh, he was notified.

23 Q. Okay. Alright, ma'am, can you tell us where that
24 property was, those items? Uh, let me ask you this: Let's
25 deal with ---

LOU MATHIS JONES - CROSS-EXAMINATION BY MR. WHELCHER

1 A. A?

2 Q. --- 19A.

3 A. Okay.

4 Q. Can you tell us where that was when this fingerprint
5 was ---

6 (Cough.)

7 A. Can I tell you where it was at?

8 Q. Yeah.

9 A. It says on the monitor.

10 Q. I know. Where was the property located?

11 A. The ca -- I only know what the card has on it. It says
12 monitor, print lifted from monitor.

13 Q. I understand that. Can you with all of your expertise
14 tell us where that print, that piece a property was when that
15 fingerprint that you identified was put on it?

16 A. No, I cannot, I can only tell you that, uh, who this
17 print belongs to.

18 Q. Okay. Can you tell us when that fingerprint was put on
19 that property?

20 A. No.

21 Q. Thank you, ma'am.

22 A. Okay.

23 MS. POULOS: Nothing further, Your Honor.

24 THE COURT: You may step down.

25 (Whereupon, the witness left the stand.)

GAIL MOFFITT - DIRECT EXAMINATION BY MS. POULOS

1 MS. POULOS: May Investigator Jones be excused, Your
2 Honor?

3 THE COURT: She may be.

4 MS. POULOS: May we approach, Your Honor?

5 THE COURT: Um-hum.

6 (Whereupon, a bench conference was held off the record.)

7 (Pause.)

8 MS. MOFFITT: Your Honor, State calls Gail Moffitt.

9 GAIL MOFFITT, having been first
10 duly sworn, testified as follows:

11 THE CLERK: Thank you, you may be seated.

12 DIRECT EXAMINATION BY MS. POULOS:

13 Q. Ms. Moffitt, if you would, state your name for the jury.

14 A. Gail Moffitt.

15 Q. And where are you employed, ma'am?

16 A. Clerk of Court's office.

17 Q. How long have you been employed with Spartanburg County
18 Clerk of Court?

19 A. Forty-five years.

20 Q. And what are some a your general duties?

21 A. Uh, we're custodian of records, family, common pleas and
22 general session.

23 Q. As as a clerk, does your office normally routinely keep
24 records of of criminal records?

25 A. Yes, we do.

GAIL MOFFITT - DIRECT EXAMINATION BY MS. POULOS

1 Q. And explain to the jury what types of criminal records
2 are exactly maintained in your office.

3 A. We maintain the warrants and indictments before they go
4 to court and after they go to court and sentence sheets, any
5 kind of document that's filed in the case.

6 Q. Okay. Um...

7 (Whereupon, a discussion was held off the record.)

8 MR. WHELCHER: Okay.

9 Q. Ms. Moffitt, I'm showing you what's been identified as
10 State's Exhibit 25 for identification purposes, what type a
11 document is that?

12 A. That's an indictment.

13 Q. And can you read out that case number.

14 A. Yes, 94-GS-42-2618.

15 Q. Is that a case that came out of Spartanburg County?

16 A. Yes, it is.

17 Q. And has that been certified as a true and accurate copy
18 of the original?

19 A. It has.

20 Q. Is that a document that your office normally keeps in a
21 regular course of its business?

22 A. Yes, it is.

23 MS. POULOS: Your Honor, we'd ask that State's Exhibit 25
24 be admitted into evidence.

25 MR. WHELCHER: May we approach, Your Honor?

GAIL MOFFITT - DIRECT EXAMINATION BY MS. POULOS

1 THE COURT: (No audible response.)

2 (Whereupon, a bench conference was held off the record.)

3 BY MS. POULOS:

4 Q. Ms. Moffitt, I'm gonna hand you what's already been
5 admitted as State's Exhibit 25, can you please read the case
6 number again.

7 A. 94-GS-42-2618.

8 Q. And, um, is that a conviction?

9 A. Yes, he entered a guilty plea.

10 Q. Alright, it was a guilty plea and what charge was that a
11 conviction for?

12 A. Burglary second non-violent.

13 Q. Whose name is on that conviction?

14 A. Uh, Mr. Manigan ---

15 Q. What's ---

16 A. --- signed ---

17 Q. --- what's the first name?

18 A. Michael Anderson Manigan.

19 Q. And, um, I'm gonna show you State's Exhibit 26 for
20 identification purposes, do you, do you, uh, recognize that
21 document?

22 A. Yes, I do.

23 Q. And what type a document is that?

24 A. That's an indictment.

25 Q. What is the case number on that?

GAIL MOFFITT - DIRECT EXAMINATION BY MS. POULOS

1 A. 97-GS-42-3463.

2 Q. Okay. Is that document something that is stored in your
3 office ---

4 A. Yes, it is.

5 Q. --- as part of your records?

6 A. Yes, it is.

7 Q. Alright.

8 MS. POULOS: Your Honor, State would ask that State's
9 Exhibit 26 be admitted into evidence.

10 MR. WHELCHEL: No objection.

11 THE COURT: It's admitted.

12 (State's Exhibit No. 26, indictment, admitted into
13 evidence.)

14 BY MS. POULOS:

15 Q. And, Ms. Moffitt, the second document that I showed you,
16 um, is that also a conviction?

17 A. It is.

18 Q. And what is that conviction for?

19 A. It's also for burglary second degree violent.

20 Q. And whose name is on that conviction?

21 A. Mr. Michael Anderson, ---

22 Q. Mr. Michael ---

23 A. --- Manigan.

24 Q. --- who?

25 A. Michael Anderson Manigan, I'm sorry.

GAIL MOFFITT - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Michael Anderson Manigan, okay. Uh, and those are two
2 separate documents?

3 A. That is two different indictments.

4 Q. And those are two different burglary convictions ---

5 A. That's correct.

6 Q. --- and they're both for Michael Manigan?

7 A. They are.

8 Q. Okay, thank you Ms. Moffitt.

9 A. You're welcome.

10 CROSS-EXAMINATION BY MR. WHELCHER:

11 Q. What does the '94 signify, ma'am, here (indicating)?

12 A. That is the year the case number, the year that was ---

13 Q. So that would be 19 ---

14 A. --- went before the grand jury, right, 1994.

15 Q. And the other one was?

16 A. 1997.

17 Q. Thank you, ma'am.

18 MS. POULOS: Nothing further from the State, Your Honor.

19 THE COURT: You may step down.

20 (Whereupon the witness left the stand.)

21 MS. POULOS: State rests, Your Honor.

22 THE COURT: Ladies and gentlemen, that is all the
23 testimony or other evidence to be offered by the State at
24 least in their case in chief. It's probably now convenient
25 time for us to break for lunch so we'll do that and we'll

MOTIONS AND MATTERS

1 resume this afternoon at two o'clock, at two o'clock this
2 afternoon. Keep in mind you're still not to discuss the case,
3 conduct any research, do any investigation or allow yourself
4 to be exposed to any type of media coverage that might relate
5 to the case. Have a good lunch and please report to your jury
6 room at two o'clock this afternoon, two o'clock.

7 THE BAILIFF: Follow me, please.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Alright, any motions or other matters to
11 address?

12 MR. WHELCHER: Your Honor, I need to talk to ---

13 THE COURT: Wait till we get the door shut. Okay.

14 MR. WHELCHER: I'm sorry. I need to talk to Mr. Manigan
15 concerning whether or not he's going to testify and I I can do
16 that over the lunch break like ---

17 THE COURT: Alright, what about your motions? You got
18 any motions you wanna make?

19 MR. WHELCHER: I would like to do those at the close of
20 the lunch break, Your Honor, after I talk to Mr. Manigan.

21 THE COURT: Alright. Mr. Manigan, Mr. Whelcher's gonna
22 talk to you about your right to testify ---

23 THE DEFENDANT: Yes, sir.

24 THE COURT: --- as well as not testify.

25 THE DEFENDANT: Um-hum.

MOTIONS AND MATTERS

1 THE COURT: Ya understand any time you're charged with a
2 crime and your case comes to trial you have an absolute right
3 to remain silent which simply means nobody can make you take
4 the witness stand and testify, at the same time, if you wanna
5 provide this jury with any other information yourself after
6 lunch is the only opportunity that you will have to do so ---

7 THE DEFENDANT: Yes, sir.

8 THE COURT: --- so you have the right to remain silent,
9 you also have the right to take the witness stand and testify
10 in the case, that's simply a decision that you have to make.
11 If you elect not to testify, I will instruct the jury that
12 they can't hold that against ya, they can't consider it in any
13 way in their deliberations or in their determination as to
14 whether or not the evidence in the case proves you're guilty
15 beyond a reasonable doubt. At the same time, if you elect to
16 testify, you have to answer questions not only that your
17 lawyer ask of ya but you'll also have to, have to answer
18 questions that the prosecutor will ask of ya even if those
19 responses might tend to prove you guilty of some crime they
20 claim you committed. You and Mr. Whelchel, uh, have you
21 discussed with him prior to today about your right to testify
22 and not testify?

23 THE DEFENDANT: Somewhat, sir. I ---

24 THE COURT: Alright, well you understand he'll talk with
25 you some more about that and he will discuss with you the

MOTIONS AND MATTERS

1 advantages and the disadvantages of testifying as well as not
2 testifying ---

3 THE DEFENDANT: Yes, sir.

4 THE COURT: --- and you'll have to reflect upon a
5 decision and you'll have to inform me as to what that decision
6 is after lunch whether or not you will testify, okay, ---

7 THE DEFENDANT: Alright, sir.

8 THE COURT: --- so whatever questions you have about that
9 you ask Mr. Whelchel. When we come back after lunch, if you
10 have any questions you need to ask me about, I'll be happy to
11 answer those questions if I can, okay?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Alright, court is in recess until two
14 o'clock.

15 MR. WHELCHER: Thank you, Your Honor.

16 MS. POULOS: Thank Your Honor.

17 (Whereupon, a recess was taken.)

18 THE BAILIFF: Thank you, be seated.

19 THE COURT: Uh, Mr. Whelchel, you've talked to
20 Mr. Manigan about his right to testify or not?

21 MR. WHELCHER: I have, Your Honor.

22 THE COURT: And he -- has he indicated to you what his
23 preference is?

24 MR. WHELCHER: Tells me he's gonna testify, Your Honor.

25 THE COURT: Is that right, Mr. Manigan?

MOTIONS AND MATTERS

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you've made the decision to testify and
3 that's your decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you're satisfied with that desc --
6 decision after your discussions with your lawyer?

7 THE DEFENDANT: Sir, could could I have just a second
8 with him for a minute, sir?

9 THE COURT: Sure.

10 (Attorney/client discussion held off the record.)

11 THE DEFENDANT: Sir.

12 THE COURT: Yes, sir.

13 THE DEFENDANT: Yes.

14 THE COURT: Yes what?

15 THE DEFENDANT: I wanna testify.

16 THE COURT: Okay, and you're satisfied with that
17 decision?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You need to discuss it with your lawyer any
20 further?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. Any other matters we need to address
23 before the jury is brought in?

24 MR. WHELCHER: Briefly, ---

25 MS. POULOS: None from the State ---

MOTIONS AND MATTERS

1 MR. WHELCHEL: --- Your Honor, yes, sir. Have a seat,
2 yeah, you can sit down. Your Honor, at this time I make a
3 motion for a directed verdict based on the insufficiency of
4 the evidence that's presented thus far in the trial. The
5 State has closed its testimony, Your Honor, I would make my
6 motion for a directed verdict based on the fact that the only
7 evidence that ties Mr. Manigan to this particular burglary is
8 the fingerprint that was found on property approximately a
9 hundred feet away from the home. I would cite as precedent
10 for this request for a directed verdict, Your Hon -- Your
11 Honor, the case of the *State vs. Mitchell*, it's both case
12 heard before the Court of Appeals of South Carolina and
13 subsequently heard or appealed by the State to the Supreme
14 Court of South Carolina. The facts in that case are
15 remarkably similar to this case, Your Honor. In *Mitchell*
16 what happened was the victim in that case was a fella by the
17 name of Mr. Mathis. Mr. Mathis came home in the evening and
18 found that there were beers missing from his refrigerator. He
19 questioned his children, Your Honor, and determined that they
20 didn't have anything to do with the beer missing from the
21 refrigerator, thought nothing of it. Several days later, I
22 think six to be exact, he went into a back room or a spare
23 room in his home and when he went into that room he stepped on
24 glass and then he started lookin' around and saw where someone
25 had broken the window and unlatched the latch for the window

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1 in that room. He then checked other property in his house,
2 Your Honor, and found that two weapons were stolen. He called
3 the police, they came out the next morning, dusted for
4 fingerprints and ultimately developed a print that matched
5 that of the defendant in the *Mitchell* case Mr. Mitchell. That
6 fingerprint was the only evidence, any kind of physical
7 evidence that tied Mr. Mitchell to that particular burglary.
8 Court of Appeals and and both the Supreme Court ruled that the
9 evidence in the *Mitchell* case like in this case, Your Honor,
10 was entirely circumstantial and that only evidence linking
11 M -- and that the only evidence linking Mr. Mitchell to the
12 burglary was the fingerprint as in this case. My client was
13 not arrested until months after that happened when the
14 fingerprint was developed, that's the only evidence that ties
15 him to this case. *Scape* -- the case of the *State vs. Bostick*
16 cites *Mitchell*, Your Honor, and it says that, Analyzing the
17 evidence presented by the State in the most light, in the
18 light most favorable to it, we believe the State's evidence
19 here raised the only a suspicion of guilt by *Bostick*. In
20 addition, I've shown him the memorandum handed to Your Honor
21 that in addition to *Bostick* there was a *State vs. Walker* case
22 that was decided by the Supreme Court and they also cited both
23 *State vs. Mitchell* Court of Appeals and the Supreme Court.
24 The interesting thing in both of those decision is this, Your
25 Honor: I couldn't have found a case that is as similar to

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1 this, I couldn't made up a case like this one that is so
2 similar to *Mitchell* if I had tried to. In *Mitchell* the
3 defendant had two prior convictions for burglary that was
4 stipulated to by the defense and of course we attempted to
5 stipulate to that earlier. The only evidence that tied
6 Mr. Mitchell, as you can see in my memorandum, to this
7 particular burglary was that fingerprint even though they had
8 testimony that Mr. Mitchell had been in the home on previous
9 occasions. The testimony, excuse me, Your Honor, the evidence
10 in this Mitchell case is this: The fingerprint evidence. A
11 fingerprint was found on a screen outside the window that was
12 broken and everybody assumed was the point of entry, screen
13 was found on the ground and the print was on the screen. Both
14 the Court of Appeals of South Carolina and the Supreme Court
15 of South Carolina determined that that print does not prove
16 entry. That print, Your Honor, was found on a screen on the
17 ground directly beside or directly beneath the window that was
18 the point of entry and the courts, both of them, said or ruled
19 that that fingerprint in that location does not prove entry,
20 which is one of the elements required of the burglary, does
21 not prove the entry and therefore when the defense made their
22 motion for a directed verdict in that case that motion shoulda
23 been granted. Uh, our case the facts are unbelievably
24 similar, Your Honor, except for the fact that the fingerprint
25 found in this case as the testimony has revealed is on

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1 property more than 100 feet away from the alleged point of
2 entry and there no testimony of when that fingerprint got
3 there, who put it there, other than it belonging to my client,
4 Your Honor. I believe that case *State vs. Mitchell* and this
5 case are so very similar that it is proper for the Court to
6 direct a verdict of not guilty.

7 THE COURT: Ms. Poulos.

8 MS. POULOS: Yes, sir, thank you, Your Honor. Your
9 Honor, in response to Mr. Whelchel's motions, we we clearly
10 believe that through the testimony of victim, the other
11 witnesses, the officers that we have presented sufficient
12 evidence. We know that all of the evidence is circumstantial
13 in this case, it's without a doubt it is clearly a
14 circumstantial case but we believe that we have strong
15 forensic evidence that connects Mr. Manigan, Michael Manigan,
16 to this case. There's evidence of two prior burglary
17 convictions, there is testimony that he was across the street,
18 that he was eyeing the victim's property, he, there's even
19 testimony that he went over after this incident happened when
20 the victim was a -- home alone and said point blank, I've been
21 watching your house. Your Honor, taking all of those factors
22 together, we don't, we don't believe that -- we believe that
23 in in the light viewed most favorable to our case, Your Honor,
24 that it is sufficient, it is a substantial, I mean, a
25 circumstantial case but, Your Honor, we believe that we've

MOTIONS AND MATTERS

1 crossed that threshold that would allow this case to go to the
2 jury and we would argue in opposition to Mr. Whelchel's
3 motion.

4 MR. WHELCHER: Your Honor, the problem is this: The
5 Supreme Court and the Court of Appeals before them said in
6 their decision, This is a circumstantial case, everything in
7 it is circumstantial. But for this fingerprint, that's all
8 they have and when they s -- they say, excuse me, Your Honor.
9 Court of Appeals and Supreme Court both rule that the evidence
10 in the *Mitchell* case was entirely circumstantial as in this
11 case, that the only evidence linking Mr. Mitchell to the
12 burglary was the fingerprint even though there was testimony
13 at the trial that he had been there and they all knew
14 Mr. Mitchell. My client lives across the street, that's
15 not, that's only circumstantial evidence and that's not
16 evidence of entry in this case. When they quoted and they
17 cited *Mitchell* in *State v. Walker* and said that when evidence
18 merely raises a suspicion of guilt, the proper thing for the
19 Court to do is to erec -- to direct a verdict of not guilty.
20 The Court said, excuse me, Your Honor, the Court of Appeals
21 said, Whether or not fingerprint found outside a dwelling near
22 the point of entry is substantial circumstantial evidence
23 sufficient to permit a jury to receive the case, that's the
24 question, they said we think not and that's in the first Court
25 of Appeals case *State v. Mitchell*, 332 South Carolina 619.

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1 That was appealed to the Supreme Court by the State and the
2 Supreme Court affirmed that ruling and said that the
3 respondent, in that case the defendant, was entitled to a
4 directed verdict on the burglary charge, that's *State v.*
5 *Mitchell*, 341 South Carolina, it's it's in the memorandum of
6 law, Your Honor. Based on the facts that the *Mitchell* case
7 that's already been decided by Court of Appeals and the
8 Supreme Court and the incident case are so very similar, Your
9 Honor, I would make a motion for a directed verdict of not
10 guilty. I have the *Mitchell* cases if Your Honor ---

11 THE COURT: Okay. Well I I see some similarities;
12 however, I also see some differences and from what you tell me
13 the the differences in the *Mitchell* case the Court found that
14 there was not evidence of an entry. There was evidence of a
15 fingerprint outside the residence but there was no evidence of
16 an entry of a person into the residence. In this case there's
17 plenty of evidence of an entry.

18 MR. WHELCHER: Excuse me, Your Honor?

19 THE COURT: In this case there is plenty of evidence of
20 an entry into the residence because the victim has testified
21 the condition of her home when she left that day and the
22 co -- the condition of her home when she returned home so I
23 don't think there's any real question that someone entered the
24 residence so the question is was it the defendant or not and
25 in this case there was property taken after that entry, that

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHER

1 property has the defendant's fingerprint on it so it had to be
2 taken from inside the residence because that's where it was
3 then it was found outside the residence, that is
4 circumstantial evidence no doubt but it is substan -- a
5 substantial circumstantial evidence so your motion is denied.
6 Alright, anything else we need to address before we bring the
7 jury in?

8 MS. POULOS: Nothing from the State, Your Honor.

9 THE COURT: Alright, bring 'em in.

10 THE BAILIFF: Okay.

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

12 (Whereupon, a discussion was held off the record.)

13 THE COURT: Good afternoon, ladies and gentlemen. As you
14 know we recessed for lunch, the State had concluded with their
15 presentation so we're now gonna proceed with any to be
16 offered by the defendant. Mr. Whelchel.

17 MR. WHELCHER: Thank Your Honor, call Johnnie Williams.

18 (Whereupon, the witness came forward.)

19 JOHNIE WILLIAMS, having been
20 first duly sworn, testified as follows:

21 THE CLERK: Thank you, you may be seated.

22 DIRECT EXAMINATION BY MR. WHELCHER:

23 Q. State your name please for the record, sir.

24 A. Johnnie Williams.

25 Q. Where do you work, Mr. Williams?

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHER

- 1 A. I'm employed by E-Z Money Pawn Shop in Spartanburg.
- 2 Q. And how long have you worked there, sir?
- 3 A. Twenty-three years.
- 4 Q. Mid-December of 2011, excuse me, 2010 did you have
- 5 occasion to take in some earrings, sir?
- 6 A. Yes, sir, I do.
- 7 Q. And when you received this property, Mr. Williams, is
- 8 there paperwork that you fill out?
- 9 A. Yes, sir.
- 10 Q. Okay, and the people who bring this property to ya they
- 11 have to provide some type of a identification, is that
- 12 correct?
- 13 A. Yes, sir, has to be a South Car -- or a state ID, ---
- 14 Q. Okay.
- 15 A. --- state issued ID.
- 16 Q. Alright. And did you receive property on the 13th of
- 17 December of 2010 earrings specifically?
- 18 A. Yes.
- 19 Q. What time was that, sir?
- 20 A. I think it was at 10:22.
- 21 Q. Excuse me?
- 22 A. 10:22.
- 23 Q. In the morning.
- 24 A. Yes, sir.
- 25 Q. What are your hours of operation, sir?

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHER

- 1 A. From 9:30 until 5:30.
- 2 Q. Okay, and are ya open on Sunday?
- 3 A. No, not on Sunday.
- 4 Q. So you're open Monday through Fri -- Monday through
- 5 Saturday or ---
- 6 A. That's right, Monday through Saturday.
- 7 Q. 9:30 to?
- 8 A. Till 5:30.
- 9 Q. Okay. And you received and gave money -- how much money
- 10 did you give for these earrings you received, sir?
- 11 A. We loaned \$50.
- 12 Q. Okay, and who'd ya give the money to?
- 13 A. To a Gary Lamont Manigan.
- 14 Q. Okay. You have the ticket with you, sir?
- 15 A. I do. I printed a copy, uh, where you can read it better
- 16 and this the original with the signatures written on it.
- 17 Q. And this information on the ticket that's, do they tell
- 18 ya that or do you get it from their license?
- 19 A. No, we have to get it from a license or in this case it
- 20 was a South Carolina beginner permit.
- 21 Q. Okay. Subsequent talking to Mr. Manigan and giving him
- 22 \$50 for those two earrings, uh, did you talk to Ms. Vandahm?
- 23 A. Yes, sir, I do vaguely remember that.
- 24 Q. That woulda been the next day, is that right, ---
- 25 A. I ---

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHEL

1 Q. --- if ---

2 A. --- think so.

3 Q. --- if you remember?

4 A. I think so.

5 Q. Did Ms. Vandahm come into your E-Z Money Pawn Shop, is
6 that the name of it?

7 A. Yes.

8 Q. Where is E-Z Money Pawn Shop?

9 A. It is on John B. White Sr. Boulevard.

10 Q. Okay, close to the Beacon?

11 A. Yes, sir.

12 Q. Right up the street from it or ---

13 A. Two blocks from Beacon. Two blocks above the Beacon
14 goin' up ---

15 Q. Okay. And when Ms. Vandahm came in did she identify any
16 property there, sir?

17 A. You know I honest to goo -- I really can't remember
18 whether she identified it or she just told us that it was
19 missin' and asked us had we took -- taken in any, I don't
20 remember the exact details.

21 Q. Whether she identified it or not you let her look through
22 your paperwork and you let her look at, uh, diamond earrings?
23 what happened?

24 A. Well the diamond earrings would not have been out on the
25 floor because the the gentleman borrowed money on 'em and they

JOHNNIE WILLIAMS - DIRECT EXAMINATION BY MR. WHELCHER

1 was in the back in ---

2 Q. Um-hum.

3 A. --- the vault so there's no way she coulda seen 'em in
4 the showcase.

5 Q. Okay.

6 A. Um, and I do not remember whether she gave me a name or
7 not for us to look up.

8 Q. Okay.

9 A. I just, I just don't remember, that's two year, three
10 years ago.

11 Q. I understand that but at some point either you or she
12 went and got or you went and got the diamond earrings? How
13 did they come out? How'd they come outta the back? Wherever
14 did you store 'em?

15 A. Well, I mean, one of us had to physically go back there
16 and look it up and pull 'em out and bring 'em out.

17 Q. Okay, well she wouldn't be allowed to do that, would
18 she?

19 A. Oh, no.

20 Q. Okay. Did did she identify earrings that you had paid
21 money to Gary Manigan, did she identify those earrings as
22 hers?

23 A. Undoubtebly so yes, sir.

24 Q. Okay. And at that point did you give the earrings to
25 her?

JOHNNIE WILLIAMS - CROSS-EXAMINATION BY MS. POULOS

1 A. No, that's not the way it has to be. The the police need
2 to co -- have to come in and get them to do a confiscation
3 report to get the merchandise and that it stolen.

4 Q. Okay. So did you contact the police?

5 A. No, sir.

6 Q. Okay, but ultimately you gave those earrings to the
7 somebody with city police department.

8 A. Yes.

9 Q. Okay. Do you remember who that was?

10 A. No.

11 Q. Okay. How did Gary Manigan arrive that day if you
12 know?

13 A. I don't know how he arrived.

14 Q. Excuse me?

15 A. You said how did he arrive?

16 Q. Yeah, did he just walk in your store?

17 A. He just walked in.

18 Q. Okay. Did you see him before he walked in the store?

19 A. No, sir.

20 Q. Okay. Answer any questions Ms. Poulos may have, sir.

21 CROSS-EXAMINATION BY MS. POULOS:

22 Q. Thank you, Mr. Williams. You now know that the earrings
23 that were brought to your place of business to be pawned were
24 stolen, correct?

25 A. That is correct.

JOHNNIE WILLIAMS - CROSS-EXAMINATION BY MS. POULOS

- 1 Q. And you paid out money for those ---
- 2 A. Yes, ma'am.
- 3 Q. --- earrings, correct, ---
- 4 A. Yes, ma'am.
- 5 Q. --- to Gary Manigan, correct?
- 6 A. Right.
- 7 Q. So di -- that made you a victim, right?
- 8 A. Uh, yes.
- 9 Q. And you are aware that charges were brought on Gary
- 10 Manigan?
- 11 A. Yes.
- 12 Q. And do you know the disposition of those charges?
- 13 A. I do not.
- 14 Q. Okay. Now you testified that Gary Manigan's name was on
- 15 that pawn slip ---
- 16 A. Right.
- 17 Q. --- and did you say that he used a beginners permit?
- 18 A. It says a South Carolina Beginner Permit.
- 19 Q. Were ya there when Gary Manigan came in?
- 20 A. I don't remember him. I don't remember that
- 21 specifically, no.
- 22 Q. But somebody else from your store coulda ---
- 23 A. Yes, ---
- 24 Q. --- been there?
- 25 A. --- we got seven employees yes, ma'am.

LOUIS NELSON - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. Okay, so you really don't know, uh, you you really don't
2 know if you were there or not when Gary Manigan came in.

3 A. To be honest with you no.

4 Q. Okay, um, so you really don't know who was with him when
5 he came in.

6 A. No.

7 Q. And you really don't know who possibly coulda driven him.

8 A. Right.

9 Q. Okay, thank you.

10 THE COURT: You may step down.

11 (Whereupon the witness left the stand.)

12 MR. WHELCHER: Defense calls Investigator Nelson.

13 (Whereupon, the witness came forward.)

14 LOUIS NELSON, having been first
15 duly sworn, testified as follows:

16 THE CLERK: Thank you, you may be seated.

17 DIRECT EXAMINATION BY MR. WHELCHER:

18 Q. You are the investigator in this case, sir?

19 A. Yes, I am.

20 Q. Okay. Do you recover the diamond earrings from E-Z Money
21 Pawn Shop?

22 A. Yes, sir, I did.

23 Q. And did you get a phone call from Ms. Vandahm that she
24 found her earrings ---

25 A. Yes, I did.

LOUIS NELSON - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. --- in a pawn shop?

2 A. Yes.

3 Q. Okay. And prior to that you had told Ms. Vandahm it
4 might be a good idea for her to go look for her earrings in
5 addition to you 'cuz she knows better what they look like, is
6 that right?

7 A. Yes, sir, it's hard for me to visualize based on a
8 description what they look like.

9 Q. I understand. And they're her rings [sic] so she would
10 know 'em when she saw 'em.

11 A. She'd recognize them a lot faster than I would.

12 Q. Yes, sir, I understand that. Ms. Vandahm called you and
13 you met her at E-Z Money Pawn Shop?

14 A. Uh, Ms. Vandahm called me, I did go to the pawn shop.
15 Uh, I'm not certain that she was there, I I think she was, my
16 memory's a little foggy but I think she was there.

17 Q. I understand. Bottom line is she called you, you went to
18 the pawn shop, she may or may not have been there by then.

19 A. That's correct.

20 Q. Okay, and you obtained the earrings ---

21 A. Yes, sir.

22 Q. --- from the pawn shop ---

23 A. Yes, I did.

24 Q. --- and ultimately returned them to Ms. Vandahm.

25 A. Yes.

LOUIS NELSON - CROSS-EXAMINATION BY MS. POULOS

1 Q. And the paperwork that was filled out at E-Z Money Pawn
2 Shop was a copy that was obtained by you?

3 A. When you say "paperwork" you're referring to ---

4 Q. Where Gary Manigan sold those diamond earrings.

5 A. The pawn ticket itself?

6 Q. Yeah.

7 A. I di -- I received a copy of it, ---

8 Q. Okay.

9 A. --- yes.

10 Q. And you included that in your investigative report.

11 A. Yes, I did.

12 Q. And that's how I found out about it.

13 A. Yes, sir.

14 Q. Okay. Thank you, sir.

15 CROSS-EXAMINATION BY MS. POULOS:

16 Q. Investigator Nelson, was Gary Manigan charged?

17 A. Yes, he was.

18 Q. What was he charged with?

19 A. Possession of stolen goods and obtaining goods by false
20 pretenses.

21 Q. And what was the disposition of those charges?

22 A. He pled guilty.

23 Q. Thank you.

24 REDIRECT EXAMINATION BY MR. WHELCHER:

25 Q. You obtain the warrants for possession of s -- obtaining

LOUIS NELSON - REDIRECT EXAMINATION BY MR. WHELCHER

1 goods by false pretense, excuse me, obtaining money by false
2 pretense, did you get -- did you sign the warrants?

3 A. Yes, sir.

4 Q. Okay, what was the other one?

5 A. Uh, possession of stolen goods.

6 Q. Okay. Prior to those two warrants you had obtained two
7 other warrants for burglary and grand larceny, is that
8 correct?

9 A. Yes, sir.

10 Q. Okay.

11 MS. POULOS: Briefly, Your Honor.

12 RECROSS-EXAMINATION BY MS. POULOS:

13 Q Investigator Nelson, you didn't serve him with those
14 other warrants, did you?

15 A. Not the burglary and the grand larceny, those warrants
16 were never served.

17 Q. Was there any evidence linking Gary Manigan to the scene
18 of this incident?

19 A. No, there wasn't.

20 Q. Thank you.

21 REDIRECT EXAMINATION BY MR. WHELCHER:

22 Q. Didn't Gary Manigan pawn the earrings that belonged to
23 Ms. Vandahm?

24 A. Yes, sir.

25 Q. Okay. And that was done at 10:30 something on ---

LOUIS NELSON - REDIRECT EXAMINATION BY MR. WHELCHEL

1 A. I be -- I believe the pawn ticket stated 10:22 a.m. on
2 the 14th, ---

3 Q. Okay.

4 A. --- 13th I believe it was, ---

5 Q. Okay.

6 A. --- 13th of December.

7 Q. And the Saturday this incident happened was the 11th.

8 A. Yes, sir, I believe that's correct.

9 Q. Twelfth is Sunday, correct?

10 A. Yes, sir.

11 Q. And you were here when Mr. Williams testified earlier
12 they open 9:30 to 5:30.

13 A. Yes, sir.

14 Q. Okay. So about thirty-six hours after Ms. Vandahm's
15 house is broken into Gary Manigan is in possession of her
16 earrings and pawning them with Mr. Williams.

17 A. That would be correct, sir.

18 Q. Okay.

19 MS. POULOS: Nothing further, Your Honor.

20 THE COURT: You may step down.

21 (Whereupon, a discussion was held off the record.)

22 THE WITNESS: Thank you, sir.

23 (Whereupon the witness left the stand.)

24 MR. WHELCHEL: Your Honor, at this time we have a matter
25 of law we need to take up.

MOTIONS AND MATTERS

1 THE COURT: Alright, let me ask the jury to please go to
2 your jury room. Don't talk about the case, I'll bring you
3 back in just a few minutes.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Alright.

7 MR. WHELCHER: Your Honor, Mr. Michael Manigan tells me
8 he's going to testify, uh, I apologize to the Court for not
9 doing this sooner but I forgot about it tell you the truth and
10 I would make a motion at this point we need to settle his
11 record before he testifies, Your Honor, so that we can, we can
12 know what the defense, excuse me, what the State is going to
13 attempt to impeach him with.

14 MS. POULOS: Judge, I was just looking at the summary of
15 his prior record and it does appear that his last conviction
16 was one of the two burglaries 1997. I'm gonna ask him if he
17 admits to the two prior burglaries but I'm I'm not going to
18 ask him about any other charges or any anything else unless
19 Mr. Whelcher opens the door.

20 MR. WHELCHER: Well the problem is, Your Honor, according
21 to my understanding of the rules, I have to have prior written
22 notice if they're going to attempt to impeach my client with
23 convictions that are in excess of ten years old.

24 THE COURT: Well she says she's not gonna ask him about
25 any.

MOTIONS AND MATTERS

1 MR. WHELCHER: She said she's gonna ask him about the
2 burglaries.

3 THE COURT: Well that's an element of the offense. She
4 can ask him if he, if if he admits that he was convicted of
5 those two burglaries, that's an element that ---

6 MS. POULOS: And ---

7 THE COURT: --- she has to prove.

8 MS. POULOS: --- and that's all that I would intend to
9 do, Your Honor.

10 MR. WHELCHER: I don't believe that she can ask him about
11 the elements, Your Honor.

12 THE COURT: She's not asking him about the elements, it
13 is an element and therefore she can ask him if he admits to
14 that element.

15 MR. WHELCHER: That admission's already been offered by
16 the defense and declined, Your Honor. At the beginning of
17 this case we offered to stipulate to those and they wouldn't,
18 they wouldn't agree to a ---

19 THE COURT: I understand that, ---

20 MR. WHELCHER: --- stipulation.

21 THE COURT: --- she's elected to prove it so she has a
22 right to do so.

23 MR. WHELCHER: I still think that she has to, has to
24 notify me or, excuse me, the defendant ten days prior, at
25 least ten days prior in writing if she's going to te --

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1 attempt to impeach him with that.

2 THE COURT: Well, Mr. Whelchel, as she just said, she's
3 not attempting to impeach him with that, she's attempting to
4 get him to admit to a a necessary element of the offense of
5 burglary first degree, that's not an impeachment.

6 MR. WHELCHER: I think we're splitting hairs, Your Honor,
7 it's ---

8 THE COURT: Okay, ---

9 MR. WHELCHER: --- the same thing.

10 THE COURT: --- alright.

11 MR. WHELCHER: It ---

12 THE COURT: Well you and ---

13 MR. WHELCHER: I ---

14 THE COURT: --- I are gonna disagree on that so she's
15 gonna be able to ask him that, I already said that ---

16 MR. WHELCHER: I understand that.

17 THE COURT: --- so that's the end a that.

18 MR. WHELCHER: I I just wanna be heard for the record.
19 I ---

20 THE COURT: Well you have been.

21 MR. WHELCHER: --- I think the problem is Mr. Manigan
22 feels like he's compelled to testify because of the prior
23 convictions that have been entered into it.

24 THE COURT: Well he can make a decision to testify or not
25 based upon any consideration he thinks is appropriate.

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHEL

1 MR. WHELCHEL: As long as my objection's noted on the
2 record her being able to cross-examine him, Your Honor, that's
3 all I need.

4 THE COURT: Everything that you have said in this
5 courtroom has been on the record. We ready for the jury now?

6 MR. WHELCHEL: Yes, sir.

7 THE COURT: Alright, bring 'em in.

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

9 THE COURT: Alright, Mr. Whelchel.

10 MR. WHELCHEL: Defense calls Michael Manigan.

11 THE COURT: Come down to witness chair.

12 (Whereupon, the defendant came forward.)

13 MICHAEL ANDERSON MANIGAN, having
14 been first duly sworn, testified as follows:

15 THE CLERK: Thank you, you may be seated.

16 MR. WHELCHEL: Your Honor, before we begin with
17 Mr. Manigan may Mr. Williams be excused?

18 THE COURT: He may be.

19 MR. WHELCHEL: Thank you, sir.

20 DIRECT EXAMINATION BY MR. WHELCHEL:

21 Q. You're Michael Manigan?

22 A. Yes, sir.

23 Q. In December of 2010, where were you living,
24 Mr. Manigan?

25 A. [REDACTED].

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. Across the street from Ms. Vandahm?

2 A. That is correct.

3 Q. Okay. How long had you and other family members lived on
4 Carlisle Street there, sir?

5 A. Well my family had been there over 23 years, I stayed
6 there for 20 years till up in 2004 till I started purchasin'
7 my own house which was on, uh, Briarwood so I moved out in '04
8 and I returned back in two thou -- no, I moved out in '04, I
9 returned back at 2010.

10 Q. Who lived at that address in Carlisle Street when you
11 weren't there, sir?

12 A. My mother and brother.

13 Q. Okay. When you moved back into Carlisle Street, why did
14 you do that into the home of Carlisle Street?

15 A. Well my mother died in '09 and the house was left to me
16 and, uh, I had been in hospital and I have problem with my
17 pancreas and my liver and other things and the doctor
18 recommended I not be by myself and I couldn't, since I was no
19 longer workin' just had two two jobs that I had of my own, I
20 had a little pressure washin' service and I do photos for
21 weddin's and special events ---

22 Q. All right, sir.

23 A. --- so I decided to, uh, move back home 'cuz I couldn't
24 afford the two houses and my health.

25 Q. Wha'd ya do with the other house that you moved out of?

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 A. Well I got the bank, the bank we got together, we're
2 tryin' to sell sellin' the house, sellin' the house and now
3 it's no longer ---

4 Q. Okay.

5 A. --- mines.

6 Q. So total time how long would you say that you lived there
7 on Carlisle Street?

8 A. Well countin' 20 years and a year I stayed there prior to
9 comin' up here 2 years, I I would say 21 years in that, in
10 that house.

11 Q. Okay. And did you have friends in the neighborhood,
12 sir?

13 A. Yes, sir.

14 Q. Have anybody that was a friend a yours lived up on
15 Oakdale Court?

16 A. Yes.

17 Q. Okay. Do you drive, sir?

18 A. No, sir, I do not.

19 Q. Okay. Have you ever had a driver's license?

20 A. Yes, sir, my driver licen [sic] was suspended in I think
21 it was 2010. I, uh, had just got outta the hospital and I
22 wasn't sleepin' too good when I was in 3-day hospital about my
23 liver and I told my doctor that I hadn't slept in three or
24 four days so he give me a Ambien to take, gave me four of
25 them, say you don't need many 'cuz you might return to work,

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 and I I knew they was sleepin' medicine and I I took one and
2 tried to Zi -- drive to Zachary to get me sumtin' to eat so
3 when I wake up durin' the night I have sumtin' to snack on.
4 Unfortunately on the way back from Zachary the medicine took
5 effect and ---

6 Q. You have a wreck?

7 A. Yes, sir.

8 Q. Okay. You haven't driven since that time?

9 A. Yes, uh, several things I've been havin' prob -- issues.
10 I I've been havin' issue because, uh, I got depressed and I
11 lost my mother and my sister so my liver better, I know I
12 shouldn't a been drinking, I've been drinkin' considerably but
13 I've been gettin' help with the drinkin' and that's been
14 causin' me problems, I just, and that my mom was just like
15 I -- the world to me and my little sister and once I lost them
16 I just, I went on a, on a spiral downfall you know

17 Q. Alright, sir. Would you walk to see your friends up on
18 Oakdale Court?

19 A. Yes, sir.

20 Q. How do ya get there?

21 A. Well, I walk. I walk behind the property that the the
22 property, you know, you go down Carlisle Street and you go
23 down to the cul-de-sac and you come up the back way. See,
24 prior to the renovation of, uh, Carlisle Street, alright, well
25 I don't mean nothin' about what I'm gonna say but it was

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 sumtin' like a slang hood, it was, it was a run down, hou --
2 people didn't take care a their houses 'cuz they didn't own
3 it, they rented it, the renter would just just tear them up
4 except my mother's try to keep hers up 'cuz she was purchin'
5 it and preservation trust took over there and made it a
6 historical district and they blocked the roa -- the road off
7 and start to beautify that place: restorin' the houses and
8 paintin' 'em up and puttin' street lamps on the side a the
9 road, big globes and and makin' a per -- place, you know,
10 makin' this nice neighborhood ---

11 Q. Okay.

12 A. --- and prior to that we used to, when the renter was
13 over there, we just cut through a pass-through, we go up on
14 Oakdale or to the barber shop, we just cut through a pass and
15 it wasn't a problem but since the, uh, preservation trust took
16 over and made the historical district all the houses, you
17 know, historical, the peoples, some a the peoples decide when
18 they moved in to cut the traffic out from goin' through their
19 yard well they put up these privacy fences 6-foot tall, probly
20 about 6-foot tall so we, now we don't cut through it 'cuz
21 they, you know, I don't want nobody cut through my yard but
22 when it was all, you know, just a good neighborhood we just,
23 friends just cut through but now we can't do that so we go
24 down Carlisles, go around the cul-de-sac, down the cul-de-sac
25 so theys fix it up with some brick pavements and ---

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. This cul-de-sac is that where Carlisle used to intersect
2 with Daniel Morgan, sir?

3 A. Yes, used to be a one-way, you know, just ---

4 Q. Okay.

5 A. --- you only can go one way.

6 Q. Okay, go ahead.

7 A. I mean, now they they blocked it off and and you have to
8 go down, you go down and when you go down, you come up the
9 backside. Now these these new, uh, people who purchased these
10 houses they'll put up privacy fence so you have to go up the
11 back of it, back back a the fence and go to Car, uh, Oakdale
12 and you go up through that way, that's that's the way we
13 travel 'cuz we no longer can go through there, it's ---

14 Q. So ---

15 A. --- at ---

16 Q. --- so the people that have been livin' on Carlisle for a
17 long time such as yourshelf ---

18 A. Yes, sir.

19 Q. --- yourself know about this path, whatever ---

20 A. Yes, ---

21 Q. --- it is.

22 A. --- yeah, so then, you know, prior to me moving in '04
23 it's the only way we travelin' 'cuz behind behind these
24 property lines it's a field and I couldn't think the city
25 owned that field and the city will cut that grass 'cuz it get

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 too high, the city will send a tractor out there to cut that
2 grass ---

3 Q. Is that ---

4 A. --- and ---

5 Q. --- where the tree was?

6 A. No, this is the field in behind the property line that
7 they say was all weeded up and everything, this is a, this a
8 path down there, there's a field there and right back the the
9 houses on Carlisle facin' my house the backside of it, I mean,
10 go down out, it's it's a far -- there's a field there, excuse
11 me, and there's a vacant lot there and the city will come
12 actually and cut that field. When when I used to stay there
13 before I moved in '04, I'm not any good at golf but I used to
14 go in that field and knock balls, drive 'em over there till
15 the people in our community action, drive 'em over the highway
16 and, you know, and then drive 'em back over 'cuz that's how I
17 know that field, it's -- if the city, if it grow too high and
18 since I think the city owned that property and therefore they
19 keep it cut.

20 Q. Alright, sir. Did you have an occasion on this Saturday
21 in December of 2010 to be walking on that path, sir?

22 A. Yes, sir, I was.

23 Q. And did you come across a black bag?

24 A. Yes, sir, I did.

25 Q. Where was the bag, sir, when you saw it?

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHEL

1 A. The bag if you look, if you look at the photo where they
2 took took a picture of the tree ball, you'll see that, you'll
3 see a set a headlights will be to your left in that photo,
4 that's where I would play, that's where we play chess at and
5 you come down before that but right before you get to that
6 tree you don't you -- right before you get to that there's a
7 true ball where the tree been knocked over and you just,
8 you'll cut right right through there so the bag was to the --
9 facing Vandahm, his -- her house, facing her house and that
10 that tree ----

11 Q. Back of her house you mean?

12 A. Yeah. It would be to the right behind that stump back
13 over the right as you come down, that's with my back facin'
14 her house but facin' her house it would be to the, let's
15 see, it be to the left with my back facin' the house and to
16 the right if I'm lookin' at her house so it would a be set
17 over here (indicating) on the left side of that picture where
18 you can see the headlights, the headlamps of this car where I
19 play chess, I go out there play chess by the way, I'm pretty
20 good at it, and I walk down through there and you you go down
21 through there and you cut, you cut across there and go down
22 the fence line and that's where the bag were. I I go that way
23 all the time, it's just 'cuz we can't cut through it and you,
24 and it's a long ways, you have to go up Hydrick and go
25 up -- excuse me ---

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. Hold on, sir. I'm showing you State's Exhibit

2 No. 14, ---

3 A. Yes, sir.

4 Q. --- can you look at that for a moment, please.

5 A. Yes.

6 Q. Can ya tell me where the bag was in that picture?

7 A. Hmm, in this picture and you can see the headlights, this
8 is where I was ---

9 Q. Hold on.

10 MR. WHELCHER: Your Honor, ---

11 A. What?

12 MR. WHELCHER: --- can we ask him to step down?

13 THE COURT: Okay, but he'll need to use that
14 microphone.

15 (Whereupon, the defendant left the stand.)

16 MR. WHELCHER: The center one?

17 THE COURT: You want him to show it to the jury or the
18 one over there by the jury?

19 BY MR. WHELCHER:

20 Q. Stand right here (indicating), Mr. Manigan. Don't turn
21 your back to the jury. Hold the picture like that
22 (demonstrating).

23 A. Yes, sir.

24 Q. Tell them where the bag was, ---

25 A. Okay.

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. --- if you can, with that exhibit.

2 A. Ya see those two, the two, the two, uh, headlamps? This
3 is a car that's my rector. T to the, to your left is where I
4 play chess at and I come down the street here (indicating) ---

5 Q. Where was that car parked?

6 A. Up there, I can't think of the number but it's a
7 house ---

8 Q. What street, sir?

9 A. Oakdale.

10 Q. Okay.

11 A. I can't think a who was in the car either but that's
12 where we play chess at, checker sometime, and if if you leave
13 outta his, outta outta his and her house, they married, and
14 you come down through here (indicating), the bag was somewhere
15 over in here (indicating) ---

16 Q. Oh, ---

17 A. --- in this (indicating) area 'cuz you come down, you
18 come down the street, you cross right down through through
19 this (indicating) path and then you go and you cut down
20 through here (indicating). You see that fence? That's the
21 chicken wire and then you'll come to the, uh, 6-foot privacy
22 fence and along that 6-foot privacy fence you walk down the
23 center, the bag was right over here (indicating) and yes, I
24 did look in the bag.

25 Q. Alright, ---

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 A. I ---

2 Q. --- go back and have a seat, sir.

3 A. Yes, sir.

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

5 Q. You left your home on Carlisle Street across the street
6 from Ms. Vandahm's home, correct, ---

7 A. Yes, sir.

8 Q. --- walked down Carlisle Street ---

9 A. That's correct.

10 Q. --- to the cul-de-sac or somewhere in ---

11 A. No.

12 Q. --- there and then up the path behind the houses, across
13 the street, ---

14 A. Yeah, ---

15 Q. --- is that correct?

16 A. --- yeah, you ha -- yes, 'cuz you can't, can't cut
17 through no one 'cuz basically everyone on that side the road
18 have a a privacy fence or some sort of fence where you
19 know ---

20 Q. They do now ---

21 A. Yeah, ---

22 Q. --- or they ---

23 A. --- excuse me.

24 Q. --- did ---

25 A. Sir?

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. --- they did at the time.

2 A. But they didn't at the time but now since since it's it's
3 been turnin', it turned to a nice, a nice, really really nice
4 neighborhood and they really really fixin' it up real good
5 and ---

6 Q. I understand ---

7 A. --- we respect ---

8 Q. --- that, sir.

9 A. --- each neighbor we go down.

10 Q. When you were walking down the path, ---

11 A. Yes, sir.

12 Q. --- would all the, would all the houses on Carlisle
13 Street that were across the street from yours ---

14 A. Yes, sir.

15 Q. --- they woulda been on your right, is that correct?

16 A. Yes, if I'm walkin' down the street, yes.

17 Q. Okay, and when you get to Ms. Vandahm's property or close
18 to it that when you see this black bag?

19 A. Yes.

20 Q. Okay.

21 A. Well yes, it wasn't in front a that Piggly Wigg -- that,
22 uh, chicken wire fence, it was over there to the right after,
23 right after you turn off the road and get to walkin' down
24 through that that vacant, it's a vacant lot right there, it
25 used to be a house but it got caught on fire, so there's a

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHEL

1 vacant lot right there.

2 Q. Okay, when you saw the bag, did you walk over to it or
3 was it right next to the back or what?

4 A. It aint -- well actually it wasn't there when I, when
5 when I first went and played chess it wasn't there but when I
6 come back, head back home it was ---

7 Q. What ---

8 A. --- there.

9 Q. --- time did you go up to play?

10 A. I probly went up there probly about 5, 5:30 when I left
11 outta house to go up there.

12 Q. Daylight or dark?

13 A. It was daylight, ---

14 Q. Okay.

15 A. --- late evenin'.

16 Q. Alright. That lady still out doin' yard work?

17 A. Actually, I never, I never, I didn't see her at all that
18 day, didn't see her ---

19 Q. Okay.

20 A. --- at all.

21 Q. Now when you went you're goin' play what, sir?

22 A. Chess.

23 Q. Chess, okay. And you didn't see the bag when you went up
24 at about 5:30.

25 A. No, sir.

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. Okay. When did you leave to come back?

2 A. When I left and came back it probly were, um, 'bout nine,
3 'bout probly around about nine, little, it was a little bit
4 before give or take, um, but it was about nine 'cuz I know I
5 told 'em I was goin' home, I like to watch the movie comin' on
6 at nine o'clock, so I left my chess board and I went home. I
7 come back down through there ---

8 Q. You see, ---

9 A. --- down, uh, ---

10 Q. --- you see the bag then?

11 A. Yes, that's when I seen it.

12 Q. What ha -- wha'd ya do when you saw the bag?

13 A. Kicked it.

14 Q. Okay, then what?

15 A. I kicked it to make sure what was in it 'cuz, you know,
16 'cuz I told you it wasn't there and and I ---

17 Q. You what?

18 A. --- looked inside a -- I kicked it.

19 Q. I didn't hear what ---

20 A. Sir?

21 Q. --- I didn't hear what you said.

22 A. I said I kicked the bag when I first seened it 'cuz it
23 wasn't there when I went up there prior to me goin' up
24 there.

25 Q. Okay, go head.

MICHAEL ANDERSON MANIGAN - DIRECT EXAMINATION BY MR. WHELCHEL

1 A. I kicked it and I heard like hard plastic clackin' and I
2 I looked in the bag.

3 Q. Okay, did you touch what was in the bag?

4 A. Well yes, I I I looked in there, um, I probly did yes, I
5 believe I did look there. I looked in there and I seen a
6 buncha computer ponents and I, and I looked real hard, I said
7 well, It might be God, God or somebody just threw it in this
8 path 'cuz I had just when through there 'cuz I didn't see any
9 kinda wires. I was lookin' for the sunlight, not the
10 sunlight, the moonlight where I can look in there and I did
11 yes, I -- please.

12 Q. You need some water?

13 (Whereupon, counsel handed the defendant water.)

14 A. Excuse me. Okay.

15 Q. Did you break into this (indicating) lady's house?

16 A. No, sir.

17 Q. Okay. You break into this lady's house with anybody
18 else?

19 A. No, sir, I did not.

20 Q. Okay. How tall are you, sir?

21 A. Say I'm about 6'3.

22 Q. How much do you weigh?

23 A. Two, maybe 220, 225. I picked up a little bit, picked up
24 'bout 10 pounds so I was probly comin' in here I was about
25 215 ---

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

1 Q. Alright, sir.

2 A. --- so about 220, 225.

3 Q. Answer any questions the prosecutor may have, Ms. Poulos,
4 alright?

5 A. Yes, sir.

6 CROSS-EXAMINATION BY MS. POULOS:

7 Q. Mr. Manigan, you lived across the street from the victim
8 Elizabeth Vandahm, correct?

9 A. Yes, that is correct.

10 Q. And you lived in that house for you said twenty somethin'
11 years?

12 A. Yes.

13 Q. Yet in the whole time that you lived across the street
14 you never once met Ms. Vandahm, did you?

15 A. Well the whole time I lived across the street Ms. Vandahm
16 wasn't there when I was livin' there, I moved out in '04.

17 Q. So you didn't live there when she lived there?

18 A. When I have moved out, she moved -- when I buyin' my
19 second, when I buy my first home, my mom was stayin' there, I
20 said I'll get me a place, you know, so I can have some privace
21 so I move, I got my own place in '04 and I moved back in
22 2010 ---

23 Q. Okay, but this ---

24 A. --- but I I would frequently visit my mom to take take
25 her to the store and take her where she needed anything I

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

1 would go and take care of her.

2 Q. Alright, but but on December the 11th, 2010 you were
3 livin' there or staying there, right?

4 A. Yes, I had just moved there.

5 Q. Alright. You have never met Liz up until that point, had
6 you?

7 A. Um, no, I hadn't.

8 Q. You didn't know her.

9 A. No, sir.

10 Q. You didn't social with her.

11 A. No, I don't socialize with anyone over there ---

12 Q. You weren't friends ---

13 A. --- but my friend ---

14 Q. You weren't friends with her were you, sir?

15 A. No, no, no, no.

16 Q. Okay. You had never even been on her property, had
17 you, ---

18 A. Um, no, no, not lately.

19 Q. --- until that day when you broke inside her home,
20 right?

21 A. No, I still haven't been on that property.

22 Q. Oh, you still haven't been that property, okay, um, but
23 you got on that property when you took the trash bag and went
24 walkin' through her backyard after you had gotten in the home,
25 right?

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

1 A. I didn't understand the question.

2 Q. The first time you got on her property was the day that
3 you broke into her home, right?

4 A. No, no, I was comin' down Oakdale Court and I was cuttin'
5 across a vacant lot, ---

6 Q. Oh.

7 A. --- there was a trash bag out there and I kicked the
8 trash bag, no.

9 Q. Mr. Manigan, do you normally go in people's backyards and
10 start snoopin' around in their business?

11 A. No, it's not a backyard. I come down Oakdale Court and I
12 cross a vacant lot ---

13 Q. And that ---

14 A. --- where the tree is not on -- where the tree was
15 tumbled over the tree ball that is a vacant lot and you come
16 down through there and you walk down the side of the fence. I
17 was not on Mrs. Vandang -- Zant -- Ms. -- her property.

18 Q. You heard Ms. Vandahm testify earlier, didn't you?

19 A. Yes, I did.

20 Q. And that bag she clearly testified was on her property
21 line so you were on her property, correct?

22 A. Well it -- I might -- I don't -- I might have been. I
23 don't know who property was, all I know it was back there by
24 the tree ball in the vacant lot [REDACTED]. I don't know whether it
25 was her property ---

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

1 Q. So it might have been ---

2 A. --- the people ---

3 Q. --- her property.

4 A. --- next door property, I don't know who property it was.

5 All I know is we come down that path is what we travel to. I

6 mean, if that's the case when I come down through that path

7 from playin' chess or goin' up through there, I walk, uh, I

8 walk down close to the fence because, you know, they kinda

9 keep the paths worn down so I guess I'm walkin' on everybody

10 property but far as just bein' on her property intentionally,

11 no, no, no, ma'am.

12 Q. Mr. Manigan, you testified that this bag, uh, you just

13 saw it, so you decided that you're gonna just gonna be nosey

14 and start snoopin' around.

15 A. No, no, no. The bag wasn't there prior to me goin' up to

16 play chess, ---

17 Q. Oh.

18 A. --- it was comin', when I came back it was there and I

19 stated earlier that I kicked the bag 'cuz I know it wasn't

20 there and I looked in it. Um, ---

21 Q. Why did you look in it?

22 A. Curiosity, it was ---

23 Q. Curiosity.

24 A. --- it it it wasn't there.

25 Q. Oh, okay, but it was at nine o'clock?

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

1 A. It wasn't -- well it was out there about 'bout ten
2 minutes till, I'm not, I'm not too sure, but it mighta been, I
3 don't know nine, I'm not, I'm really not sure the time but it
4 was give or take ten minutes, fifteen, I don't know but in
5 that, in that area.

6 Q. Do ya normally walk through an area that has trees and
7 brush and debris?

8 A. It's it's no trees, it may be now because, you know, I
9 don't know, I haven't been there in two years 'cuz I been here
10 but no you walk down the fact -- that that path there there's
11 no trees and and and, uh, brush and as I was sayin' earlier,
12 before my nephew used come over my house, my mama's, it's my
13 house now, and they get haircuts and they'll go through that,
14 it -- that that is a well-travel, uh, area there ---

15 Q. It's a well-trimmed area. So Lizabeth Vandahm is lying
16 then when she said that it was a growed up area of debris ---

17 MR. WHELCHER: Objection ---

18 Q. --- and trash.

19 MR. WHELCHER: --- Your Honor, improper for her pit one
20 witness against another, ---

21 THE COURT: Sustained.

22 MR. WHELCHER: --- I would object to it.

23 BY MS. POULOS:

24 Q. Mr. Manigan, you expect this jury to believe that this
25 was a nice clean area?

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

- 1 A. Ma'am, it's not what I expect the jury to believe, it's
- 2 what this young lady aksed me when she put my hand on the
- 3 Bible. She asked me to do one thing and I swore to tell the
- 4 truth. Whether the jury believe what's goin' on, I'm doing'
- 5 what she aksed me, to tell the truth.
- 6 Q. Mr. Manigan, was the trash bag too heavy, is that why you
- 7 left it behind?
- 8 A. Was the trash bag too heavy? It wasn't ---
- 9 Q. Yes.
- 10 A. --- anything in there, I I just I just like I say, I just
- 11 curious, I just looked in there and I, and I left it.
- 12 Q. You leave it 'cuz you heard Liz comin' in, ---
- 13 A. No, no, no, no, ---
- 14 Q. --- pullin' into her ---
- 15 A. --- comin' in.
- 16 Q. --- driveway?
- 17 A. I'm not -- I don't -- I didn't hear -- please, will you
- 18 listen to me. I was comin' down through the paths from
- 19 Oakdale Court and I crossed across their property and I just
- 20 kicked the bag and and I went on 'bout my business.
- 21 Q. And you testified earlier that your license, driver's
- 22 license' had been suspended, 'cuz you were in a wreck? Why
- 23 was it suspended?
- 24 A. It was suspended on the first time for drivin' under
- 25 suspension, drivin' under the influence ---

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

1 Q. Okay. Um, ---

2 A. --- of Ambien, the sleepin' medication that I would use
3 and I total out, total total loss a 2005 Cadillac Escalade
4 that I was purchasin'.

5 Q. Okay, and you testified earlier that you never saw
6 Christy Holcombe the neighbor doin' yard work, correct?

7 A. I have seened her do her yard work 'cuz she does it all
8 the time but far as me hollerin' at Christy, every time
9 Christy, every time Christy do yard work, Christy got a pair a
10 headphones on ---

11 Q. Di ---

12 A. --- and I do not bother Christy.

13 Q. --- did you see her that day?

14 A. No, I did not.

15 Q. You're sayin' that you didn't see her that day.

16 A. No, but she usually cut grass but I didn't see her that
17 day.

18 Q. The the four hours that she was out there this this
19 evening from four o'clock till nine o'clock ---

20 A. Well, like I s ---

21 Q. --- you didn't see her at any point?

22 A. --- as I said earlier before when I went down the road
23 about 5, 5:30 I did not see it. When I come back about ten
24 minutes to nine I saw it, no, I did not see Christy out
25 there.

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

1 Q. So you didn't ask her what she was doin' out there, when
2 she was goin' in and how many yards she was cuttin', ---

3 A. You know I never ---

4 Q. --- you didn't get ---

5 A. --- did, I never asked Christy that question 'cuz Christy
6 got a small yard and then got her, she take her lawn mower and
7 she cut both yards and she do yard work all the time. I don't
8 never question Crispy -- Christy.

9 Q. So, Mr. Manigan, you're basically just sayin' that you
10 were at the wrong place at the wrong time, it was just ---

11 A. No, I wasn't ---

12 Q. --- all a big coincidence, is that what ---

13 A. --- no, I ---

14 Q. --- you're testifying to?

15 A. Actually, I don't know what you consider wrong at the
16 wrong time. I was just walkin' so and just so happened that
17 bag was there. I don't, I don't think it was a wrong place at
18 the wrong time.

19 Q. That that's quite a coincidence, isn't it, Mr. Manigan?

20 A. Well, it -- you may say it is but, um, it's not a
21 coinciden -- a plan coincidence to me it's just I just come
22 through there, it just, it just so happened, it just ---

23 Q. Mr. Mani ---

24 A. --- happened.

25 Q. --- Mr. Manigan, ---

MICHAEL ANDERSON MANIGAN - CROSS-EXAMINATION BY MS. POULOS

1 A. Yes.

2 Q. --- do you deny being convicted of a burglary in the
3 past?

4 A. No, I do not deny it.

5 Q. Do you deny being convicted of two burglaries in the ---

6 A. No, ---

7 Q. --- past?

8 A. --- I do not not deny it.

9 Q. Thank you.

10 A. The reason why I do not deny ---

11 Q. Ca --- that's all I have.

12 A. Oh, thank you.

13 MR. WHELCHEL: Nothing further.

14 THE COURT: Alright, you may step down.

15 (Whereupon, the defendant left the stand.)

16 (Whereupon, a discussion was held off the record.)

17 MR. WHELCHEL: Defense rests, Your Honor.

18 THE COURT: Any reply?

19 MS. POULOS: No, sir, Your Honor.

20 THE COURT: Alright, ladies and gentlemen, that is all of
21 the testimony or other evidence to be offered in the case.
22 What remains to be done are the lawyer's final summations,
23 after which I'll instruct you on the law and then you'll begin
24 deliberations and that likely will take longer than what we
25 have left for the afternoon so I'm gonna excuse you for the

MOTIONS AND MATTERS

1 balance of today, ask that you report back to the courthouse
2 to your jury room at 9:30 in the mornin' and at that time
3 we'll conclude with the lawyer's final summations, my
4 instruction and your deliberations so keep in mind during the
5 over night recess you're still not to discuss the case, not to
6 conduct any investigation, don't do any research, don't permit
7 yourselves to be exposed to any type of media coverage that
8 might relate to the trial. Have a good evening, please report
9 to your jury room at 9:30 in the mornin'.

10 THE BAILIFF: This way, please.

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

13 THE COURT: Would you like to renew your motions?

14 MR. WHELCHER: I would renew my motion for a directed
15 verdict, Your Honor, specifically based on holding by the
16 Supreme Court in the case of the *State vs. Mitchell* that I,
17 uh, presented to the Court earlier. The Supreme Court, again,
18 Your Honor, held that even though there was evidence of entry
19 in that case, all the evidence that they had was
20 circumstantial against Mr. Mitchell. The evidence in this
21 case is similar to, remarkably similar to the evidence against
22 my client, it is all circumstantial evidence and I believe
23 that the proper thing to be done at this point is that for the
24 Court to direct a verdict of not guilty. The Court does not
25 say that that there's no evidence of entry, the Court says

MOTIONS AND MATTERS

1 that there's no substant -- that the evidence of the
2 fingerprint is substantial circumstantial evidence, is not
3 substantial circumstantial evidence, excuse me, and that that
4 is not a enough for this case and that case, Your Honor, to be
5 presented to the jury and based on that decision I would ask
6 that the Court direct a verdict of not guilty in this case.

7 THE COURT: Alright. Ms. Poulos, do you need to be heard
8 any further?

9 MS. POULOS: No, sir, Your Honor, I believe we addressed
10 all of our arguments.

11 THE COURT: Alright, that motion is denied. Alright,
12 ya'll have any requests for instruction?

13 MS. POULOS: Your Honor, um, believe that we would
14 request as a charge to the hand of one is the hand of all. I
15 think there's evidence that ties two people to this crime,
16 they have opened the door and in getting in evidence of Gary
17 Manigan pawning the items, there's clearly fingerprint at the
18 scene of the defendant Michael Manigan as to items that were
19 stolen from inside the home that were found in the bag outside
20 of the property, Your Honor, and and we think that this is
21 sufficient to at least include hand of one hand of all
22 accessory of that nature, Your Honor, we would request ---

23 THE COURT: Okay.

24 MS. POULOS: --- that charge.

25 THE COURT: Any other requests from the State?

MOTIONS AND MATTERS

1 MS. POULOS: Circumstantial evidence, Your Honor, I'm
2 assuming that's a standard charge that you normally give.

3 THE COURT: It will be in this case.

4 MS. POULOS: Yes, sir.

5 THE COURT: Alright, Mr. Whelchel.

6 MR. WHELCHER: Your Honor's already charging
7 circumstantial, I believe I would be opposed to the hand of
8 one is the hand of all, Your Honor, based on my previous, uh,
9 motion on the directed verdict matter, Your Honor.

10 THE COURT: Alright, any other requests?

11 MR. WHELCHER: No, sir.

12 THE COURT: Alright, Court is in recess until 9:30 in the
13 mornin'.

14 (Whereupon, a discussion was held off the record.)

15 (Proceedings January 16, 2013)

16 THE BAILIFF: Thank you, be seated.

17 THE COURT: Alright, any matters we need to address
18 before the jury is brought in?

19 MS. POULOS: Nothing from the State, Your Honor.

20 MR. WHELCHER: No, sir.

21 THE COURT: Alright, bring 'em in, please.

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

23 THE COURT: Good morning, ladies and gentlemen.

24 UNIDENTIFIED JUROR: Mornin'.

25 THE COURT: As you know when we recessed yesterday all of

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1 the evidence had been received and therefore what remains to
2 be done are the lawyer's final summations after which I'll
3 provide you the instruction on the law and then you can begin
4 with your deliberations so please give the lawyers your
5 attention now as they give you their final summations.

6 Mr. Whelchel.

7 MR. WHELCHER: May it please the Court, Your Honor.

8 THE COURT: Yes.

9 MR. WHELCHER: Mr. Foreman, ladies and gentlemen of the
10 jury, I was watching TV last night and as it always happens
11 thoughts about this case popped into my mind while I'm
12 watching TV and some a the testimony that was elicited, some a
13 the testimony that was not elicited and it reminded me of when
14 I was going to school where I grew up. Grew up out in Lone
15 Oak, I don't know if any of you know where that is but it's
16 out behind Heron Circle, and when we walked to school there
17 was a path that we would take through the yards and cut the
18 trip in half then on the rare occasion that somebody new back
19 then would move into Lone Oak we would show 'em where the path
20 was, otherwise they didn't know 'cuz they didn't take the
21 path, point is this: Just because you don't see people on a
22 path and just because you don't know about the path doesn't
23 mean it's not there, doesn't mean it hadn't been bein' used
24 for years. If you get up and leave and drive to work 30 miles
25 away, you don't have a need for the path. If you don't have

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1 friends who live on the next block up or family or whatever or
2 if you don't walk to most of the places you have to go, you
3 don't need the path but you heard the testimony Michael
4 Manigan, he took a path, he put his hands on the computer
5 parts. Was watching TV and Barrett-Jackson show came on and
6 reminded me of rituals that that people have. My father every
7 year in September when the new cars came out we would go down
8 to what used to be called Burwell's, that was in the where the
9 Marriott sits now and check out the new Chevrolets. He wanted
10 a '63 Chevrolet so bad he couldn't stand it but he never
11 bought one. One on Barrett-Jackson last night for \$25,000. I
12 don't fail to think about my father when I see a '63 Chevy,
13 that was a family ritual just like taking a path, some that
14 you do, don't even think about it, you do it habitually.

15 Let's talk about what you did hear and what you didn't
16 hear. The people who are required to bring to you evidence of
17 a burglary and larceny, evidence that proves that that
18 happened beyond a reasonable doubt, prosecution, 'cuz you
19 remember I told ya, the judge told ya, he'll tell ya again,
20 there's no burden of proof whatsoever on my client. There's
21 absolutely no evidence whatsoever that Michael Manigan went
22 into that house. Nobody saw him, nobody testified to it. Now
23 I'm not tellin' ya that the brick and this big, I think the
24 way it was referred to is biz -- big hunk a concrete wasn't
25 thrown through windows but all you got is Michael Manigan

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1 livin' across the street from this lady and you have some
2 photographs. You have a photograph of this door (indicating),
3 State's Exhibits No. 2 and No. 3. Ms. Vandahm testified she
4 stood on her tiptoes she could see in that window. My client
5 told you he's 6'3. Same door with a bucket turned upside
6 down. Question you're asking and I'm asking, he doesn't need
7 that bucket, does that give you a doubt? Now you need to
8 understand something: If you have a reasonable doubt in this
9 case and you don't have to doubt everything, you just have to
10 doubt one particular fact that they're required to prove, one
11 particular element or more than one, it doesn't matter, but if
12 you have a reasonable doubt, that doubt when the judge charges
13 you must be resolved in favor of my client Michael Manigan,
14 that is the law of this case, that is the law in all of these
15 cases 'cuz he is presumed innocent and he has no burden of
16 proof for anything, that's why those doubts must be resolved
17 in his favor. Six-foot three according to his testimony, 220,
18 230 somewhere in there, stands on this (indicating), get in
19 that window, that's what they'd have you believe. Appears to
20 be a footprint on State's Exhibit No. 9, anybody get a better
21 photograph? Anybody measure it? Anybody do anything with it?
22 Anybody who's required to bring to you proof other than a
23 photograph do anything with that? Did ya hear it? no. The
24 kitchen window, the bottom half of the kitchen window, do ya
25 think Michael Manigan crawled up on that (indicating), hauled

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1 himself in that little window at 6 foot 3 at 200 whatever
2 pounds? Is it believable? You have a doubt when you look at
3 that? Do ya have a doubt when you consider all of the
4 testimony that you heard? My client is damned because he
5 lives across the street and has prior convictions for this
6 similar offense, where is the evidence of him entering that
7 home? I'm not talkin' about evidence of touchin' computer
8 parts on a pathway behind the fence line and remember what
9 Mr. Manigan told ya: The neighborhood has changed, new people
10 came in, privacy fences go up, pathways that we used before we
11 can't cut through the yards, gotta go all the way around,
12 there wasn't anything there, they don't use the path. And
13 here's the other thing: If if you believe what the State is
14 trying to get you to believe, listen to me, Michael Manigan
15 after doin' all this damage, standing on this bucket, crawlin'
16 through this (indicating) window, crawlin' his 6 foot 3
17 whatever up on this makeshift, at 6 foot 3 does he even need
18 this ice chest? Look at it. But after doing all a that,
19 taking the property from inside the home, they would have you
20 believe that he walks out the backyard, goes over the hog wire
21 fence and decides, I don't need this stuff in the bag, I'll
22 just leave it right here. That make any sense? Now there
23 were some questions from the prosecutor yesterday about
24 whether or not he was caught in the act, whether or not he was
25 scared to somebody's coming home; they want you to fill in the

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1 gaps 'cuz they don't have testimony, they don't have evidence
2 to show that. You heard no testimony whatsoever about anybody
3 saying, I heard anybody outside. The lady's who's out in the
4 yard said she never heard the dog barkin', she never heard
5 glass breakin', she never heard rocks and bricks thrown, she
6 never heard nothin', she just saw Michael and Gary.

7 Gary Manigan. Burglary occurred on Saturday as it's been
8 testified to sometime between 5 and 5:30 and 10 I think, now
9 this is on the 11th day December 2010, nine days before
10 December 20th which is we all learned at school is the
11 shortest day of the year, the shortest day of daylight and if
12 ya look at the the grass, they'll show ya that about a minute,
13 maybe a little bit longer of daylight is added so we're nine
14 days away from the shortest daylight the entire day, excuse
15 me, the entire year. I don't think there's any question that
16 it was dark, doesn't matter if it was dark. Here's the reason
17 it doesn't matter whether it was dark: 'cuz the only testimony
18 you have to consider, the only uncontroverted testimony that
19 you have to consider is this: Michael Manigan got on that
20 stand and said, I did not do this.

21 You have a fingerprint that we've heard testimony from,
22 from an expert, I forget how many thousands or hundreds she
23 said, I think it was thousands, that she's done in those
24 twenty-two years, but when I asked her where was this property
25 when the print was put on it? I don't know. When was the

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1 print put on this property? I don't know. Burden of proof
2 lies with them to bring to you evidence so strong and so
3 convincing as to remove the presumption of innocence that
4 Michael Manigan has, that all accused people have in our
5 system and our state, evidence so strong and so convincing as
6 to remove the presumption of innocence and to prove to you
7 beyond a reasonable doubt. You can look at these pictures and
8 have doubt, reasonable doubt. You can decide that there's
9 nobody who saw this happen and there's no testimony that he
10 did it, all ya have is a fingerprint found months later and
11 you have a plausible explanation of how that fingerprint got
12 there.

13 Now, notice the first thing happened on Monday mornin'.
14 Do you remember when Mr. Williams was on the stand, and you
15 may have wondered why I was askin' him this, he testified they
16 were open I think Monday through Saturday they open at 9 day,
17 excuse me, at 9:30 in the mornin' on those days. Burglary
18 takes place Saturday night, pawn store not open on Sunday,
19 open at 9:30 on Monday and at 10:22, 10:22 the first hour
20 they're open Gary Manigan comes strollin' in the door, throws
21 down earrings that belong to her (indicating), tells 'em
22 they're his, gets money for 'em and leaves. The only evidence
23 you have in this case of somebody being in possession of
24 Ms. Vandahm's property, yes, the only evidence you have in
25 this case of somebody being in possession of Ms. Vandahm's

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1 property is Gary Manigan who sought to gain, to ha -- make
2 financial gain at her expense within an hour of the close of
3 the pawn shop, him, and there he is.

4 Now, I'm assuming there's gonna be an argument my
5 client's fingerprints were on the monitor, printer, the
6 computer parts, it's true, and you've heard how and why and
7 what you have to do, what they have to do is they have to
8 bring to you evidence in this case that again, so strong and
9 so convincing as to remove all doubt, to remove the
10 presumption of innocence that Michael Manigan enjoys, that
11 Michael Manigan has by operation of law in this state. This
12 isn't some loophole, this is the law of this state, has been I
13 don't know how long, since inception I believe. This is the
14 kinda thing that we started, I told you in my opening, we
15 started that war with the mother country about these kind of
16 very basic things, that in this country, once we made this
17 country, that a man was innocent until proven guilty and
18 presumed innocent under the law and the way you judge this,
19 what you heard here in these two plus days of testimony, the
20 way you determine whether or not you believe something and the
21 judge will tell you you don't have to believe all that a
22 witness says, you can believe part of it, you can believe all
23 of it, you can believe just a little bit of it or none of it,
24 what you do and how you determine that, excuse me, is the
25 exercise of your common sense. That same capacity that you

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1 all have as a collective body and as individuals when you talk
2 to your wives, your husbands, your children, your co-workers,
3 whoever, and they tell you something and you go, Um, I don't
4 know if I believe that, um, somethin's missing there, your
5 common sense, that's how you determine whether or not State
6 has proven to you beyond a reasonable doubt that this happened
7 the way they say it happened and listen to what the judge
8 tells ya, he's gonna tell ya it's, the judge's instruction
9 called "the charge", he's gonna tell ya this case; one, has to
10 be unanimous, all twelve of you have to agree and he's going
11 to tell you that you have to agree and that they have to give
12 you this evidence that I've been telling you about that has to
13 be so strong and so convincing as to remove the presumption of
14 innocence and it has to be so strong, so convincing that it is
15 beyond a reasonable doubt in your minds individually as jurors
16 and as a collective body because your verdict must be
17 unanimous. They have to prove to you Michael Manigan did this
18 and not anybody else and if you have a doubt about whether
19 somebody else did it and I submit that there's plenty of
20 evidence here for you to have reasonable doubt about whether
21 somebody else committed this offense 'cuz we already know that
22 somebody else took Ms. Vandahm's earrings and got 50 bucks for
23 'em. In thirty-six hours after she came home and found what
24 had happened to her house, within an hour of the place openin'
25 up, 50 bucks in Gary Manigan's pocket. You have no testimony

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1 about Gary sharin' that with Michael, you have no testimony
2 whatsoever other than them being across the street. My client
3 lives across the street, Gary's related to him. Told you in
4 my opening my wife teases me you can't help you're related to,
5 can't help who you love but just because of that you can't
6 convict somebody, isn't guilt by association either.

7 It's extremely important for you to understand and pay
8 close attention to what the judge tells you because you have
9 to marry his instruction with the facts in this case and the
10 facts in this case are determined by you, you take what you've
11 heard, you decide who you believe, what you believe and
12 ultimately you decide this: Has the State of South Carolina
13 given me sufficient evidence to prove Michael Manigan guilty
14 of the burglary and the larceny, the taking the property? The
15 only property that you have connected to Michael Manigan is
16 the computer by a fingerprint, he told ya how it got there.
17 There's no evidence he went in. There's some speculation
18 there and they want you to fill in the gaps that they have but
19 there's no testimony, there's no evidence. We submit to you
20 that in this case with these facts that you as jurors have
21 plenty of reason to have reasonable doubt, there's just some
22 of 'em right there (indicating). But you decide, you decide
23 what the facts are in this case, Judge tells you what the law
24 is, you marry the law to the facts and then ultimately you
25 decide. We submit to you that with the evidence, including

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1 the evidence of Mr. Manigan, Gary and his earrings and his \$50
2 first thing Monday mornin' and no evidence co -- submitted to
3 you whatsoever Michael Manigan went in that home. I would
4 submit to you that the proper verdict in this case and the
5 verdict that speaks the truth, 'cuz that's what verdict the
6 word means to speak the truth, we submit to you that the
7 proper verdict in this case based on testimony you've heard
8 and the testimony you haven't heard would be not guilty.

9 Let me remind you of something. Mr. Vandahm got on the
10 stand testify he knew how far it was 'cuz he had measured,
11 somebody had, I knew sooner or later somebody gonna measure
12 that distance and Mr. Vandahm was out there when my client
13 came over with his little dog after the burglary and
14 everything and you heard Charles Hair I think say that, you
15 know, I don't know if I had the bag down there, I don't know
16 if he saw it, but I had gone out and gotten the bag, you also
17 heard him say, When I put the bag down it fell open. Been a
18 buncha questions about whether when they found the bag it was
19 open or closed. Ya pick it up, you know how those bags are,
20 you put 'em down they fall open, they don't fall open, you
21 don't know. All of those things add up and they add up to
22 reasonable doubt and when you find reasonable doubt, the judge
23 will instruct you you must resolve that doubt in favor of
24 Michael Manigan. I submit again, there's plenty of reasonable
25 doubt in this case and the proper jury verdict in this case is

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1 not guilty. Thank you.

2 THE COURT: Ms. Poulos.

3 MS. POULOS: Thank Your Honor. Ladies and gentlemen,
4 what matters at the end a this case, at the end a this day is
5 that you are able to separate the truth from fiction, the
6 truth from fiction and if you're able to do that at the end a
7 the day then you've done your job. The twelve of you have to
8 decide that. I don't, I don't make up these facts, I just
9 take what's given to me, interpret them and present them to
10 you guys in the best way that I know how and that's what I
11 feel like or I hope at least I have done throughout this week.

12 You've heard the saying, "A man's home is his castle",
13 well Liz Vandahm's home was her castle, her haven, a place
14 where she felt comfortable and safe and secure until December
15 the 11th 2010 when Michael Manigan took away that comfort and
16 that safety and that security. This is a case about someone
17 who committed a burglary and thought he just wouldn't get
18 caught but he did get caught, he did get caught in this case.

19 Liz Vandahm went to work at Dillard's. She testified
20 that she goes to work at the same time every day. She
21 completes her shift around twelve or goes into her shift
22 around twelve or one, works all day and comes back around ten
23 or so at night. She's always dressed in all black every day
24 and that day was no different. On that day her father
25 testified that he had been by the home around 5:30 or 6 like

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1 he had done many times throughout the time when she was at
2 work, that was a common thing for him to do is come by there
3 and check on the house and wa -- and check on the dog and he
4 did that that day and he told you that when he went by there
5 there was no glass broken, dog was fine, the dog wasn't
6 agitated, barking, everything was normal, everything was fine
7 when he left at six o'clock. Her neighbor Christy Holcombe
8 testified yesterday, you heard from her, she said that she was
9 working outside from about four o'clock till about nine
10 o'clock, that was several hours that she was outside. She was
11 doing yard work, she was cutting grass, weeding, she was even
12 decorating for Christmas. She even went on Liz's porch and
13 put up some Christmas garland. Everything was fine at that
14 point too, didn't hear any glass breaking. Mr. Whelchel's
15 right, she didn't hear any glass breaking durin' that time,
16 she didn't hear any dogs barking durin' that time, she didn't
17 hear Liz's dog barking because everything was fine.
18 Everything was fine in that house until nine o'clock. But
19 what she did see was this: She saw Michael Manigan standing or
20 sitting on his porch rather across the street. He lived
21 across, right across the street from these ladies and she saw
22 him and what did she testify that he was doing? watching her,
23 watching her work, watching the house, asking her,
24 interrupting her, questions: What are you doin'? How much
25 longer you gonna be out there? How many more yards are you

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1 gonna cut. What did he care? What did he care? He cared
2 because he was casing the joint. He was, he was waiting, he
3 was watching and asking and loitering, why else would he be
4 there? All these unusual questions don't make sense, when you
5 take a step back they do make sense. He was tryin' to figure
6 out when he could make his move and he did and that moment
7 when Christy had gone back home inside at 9 or 9:30 he knew it
8 was show time. By the time Liz had gotten home at 10 or 10:30
9 the job had been done and the evidence was left behind. Liz
10 got back home, she told you she walked in, her dog was barking
11 and goin' crazy, this is somethin' her dog had never had done
12 before. In all the time that she's had her dog, he had never
13 acted like that before but he was on this da -- night because
14 something bad had just happened and that's when she saw what
15 she hoped she probly would never see was her home had been
16 burglarized.

17 Let's talk about Michael Manigan. Christy told you again
18 he, that he sat on his porch at his house across the street
19 watching her house all day pretty much the whole time except
20 for when maybe when he went inside. He knew she left for
21 work, he knew she was dressed in all black, he knew when she'd
22 come back and he was yellin' all these questions from across
23 the street getting antsy, gettin' nervous and again, when
24 Christy finally went inside that's when he knew that it was
25 time to go in and we believe what happened was this: He went

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1 in went all the way around to the back so he couldn't be seen
2 from Carlisle Street. He tried prying open the back door, he
3 couldn't do it, popped open the, popped off the doorknob as
4 you'll see in those pictures, couldn't get in that way, so
5 then he finds, he sees a couple windows. He picks up a brick
6 first in a a bucket that he turned over and that was Liz's
7 bucket, she had collected some bricks and big concrete piece
8 of block that you saw and he picks up a brick and he decides
9 he gonna throw that through the bathroom window but he
10 couldn't get through that way because if you'll remember that
11 window had wooden bars on it, you'll see in those pictures, he
12 couldn't get through that so what other windows? Well there's
13 the kitchen window, so he gets this big 'ol concrete block and
14 he throws that brick, finally success. Well Liz told you that
15 that window was 7 feet above the ground, 7 feet. It doesn't
16 matter whether he was 6'3 or however tall Mr. Whelchel claims
17 that he was, that window was 7 feet above the ground. He had
18 to have some help so what does he do? he gets a table that was
19 in the backyard, he props that up against the window and he
20 still couldn't get up so there's a cooler he sta -- stacks
21 that up on there, climbs up, the window had been broken, he
22 reaches in, opens the latch, pulls open the window and climbs
23 in, now he testified yesterday that he's put on some weight
24 since this happened so he's not the same size as he was, as he
25 is today, obviously was thinner back then, I don't know how

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1 much, he didn't say, but he doesn't look the same he did then,
2 he went in and he, obviously we saw from his -- from the print
3 he left some some dirt, some mud from his shoe behind, he went
4 in, he scrambles around quickly to see what he can find. He
5 goes to her bedroom and he's takin' so -- the jewelry, he
6 takes the earrings and other pieces of jewelry that Liz talked
7 about, he goes into her office and he unhooks the the computer
8 and and monitor and equipment real quickly and then he says,
9 What do I put 'em in, so he goes into the kitchen, opens up
10 the kitchen drawers, pulls out a trash bag real quick, stuffs
11 everything in there, pulls the black ties, out the window he
12 goes, but he had to go out back so he runs out the backyard,
13 he runs out the backyard, bends the chicken wire fence down,
14 climbs over and for some reason decides to take the jewelry
15 and leave the big old heavy computer parts and equipment
16 behind. Why did he leave 'em behind? Was it because it was
17 too heavy, too bulky? I don't know. Was somebody drivin' up?
18 Was he scared he was gonna get caught? It's a whole lot
19 easier to get away with some jewelry in your pockets than big
20 ol' trash bag full of computer parts. He left that behind.
21 Who knows why he left it behind but along with that bag of
22 computer parts and equipment he also left behind somethin'
23 very important: his fingerprints, his fingerprints and a big
24 ol' palm print, a big ol' -- a hand print. For -- the
25 forensic fingerprint analyst yesterday told you it was a dead

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1 match, there's no denying that they're his prints, his
2 fingerprints and his palm print, no denying that whatsoever,
3 and we submit to you that there's absolutely no legitimate
4 reason for his prints to be on there. Michael Manigan was not
5 friends with Liz, he had never met her before, he never
6 socialized with her before, he didn't talk to her, hadn't been
7 in her house, hadn't been probly so much as even on the front
8 porch and really not not much to do with her but on that
9 night, if you remember from the testimony, after the police
10 had already gotten there he decides he's gonna walk over
11 across the street, uh, why? Nobody else was over there
12 besides the police officer and Liz's family and friends.
13 Why'd he go over there? Wasn't friends with her. He went.....
14 over there because he was bein' noisy and he wanted to see
15 what all the police had, you heard that testimony, asking
16 questions. And if you remember to top that all off after the
17 police leave and when Liz is at home by herself, she has just
18 experienced somethin' she probably never thought she'd ever
19 experience, all she wants to do is rest and what does he do?
20 He comes over there at twelve or one o'clock, whatever it was,
21 in the mornin', knocks on her door and asks for a beer? A
22 beer? Really? Somebody who he's doesn't even know he asks
23 for a beer but don't forget about what else he told her, I've
24 been watchin' your house, I've been watchin' your house, she
25 told you that that's what he said, I've been watching your

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1 house. Oh, he was watchin' it alright.

2 The defense wants you to believe that somebody else did
3 this we know that and specifically they're pointing the finger
4 at Gary Manigan. Who's Gary Manigan? his relative. He's not
5 pointing the finger at some random stranger, he's pointing the
6 finger at one of his relatives. I guess that's just another
7 crazy coincidence?

8 They have the pawn shop guy tell you that Gary Manigan
9 signed for the stolen earrings. Well Gary Manigan had to show
10 his driver's license to pawn those earrings. Michael Manigan
11 told ya yesterday he didn't have a driver's license, he said
12 it had been suspended because he had a a charge for DUI after
13 causing a wreck so Gary pawned 'em. Gary Manigan was charged
14 and pled guilty to receiving stolen goods, receiving goods
15 that he knew or had reason to know were stolen. There's no
16 evidence whatsoever that ever tied Gary Manigan to the crime
17 scene but there is evidence that tied Michael Manigan to the
18 crime scene. His fingerprint and palm print were found on
19 stolen items in a bag in Liz Vandahm's backyard. This case,
20 ladies and gentlemen, has two parts, two parts: one is the
21 theft and one is the selling. One Manigan did the stealin',
22 one Manigan did the sellin'. We're not here about the
23 sellin', we're here about the stealing.

24 Defendant testified yesterday, he said he he denied
25 seeing Christy, the the neighbor, he denies that completely.

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1 She she told you she was out there four or five hours but No,
2 I I didn't see her. Really? He denies ever havin' talked to
3 her, asking her questions, he denies all that. His story is
4 that he was cutting through an area after he was comin' back
5 from somewhere up the road at nine o'clock that night, um,
6 that can't really be right because Christy said that she saw
7 him out on his porch and till the time she went in at 9, 9:30
8 so that that that doesn't add up, when he accidentally
9 stumbles on this this black trash bag, that that's his story
10 is that he accidentally stumbled on this trash bag in an area
11 that was pitch black. Ya heard the testimony that because of
12 the storm Duke Power hadn't fixed the power so everything was
13 dark, pitch black, and he's in this area? Somehow he
14 supposedly sees this this trash ba -- trash bag which clearly
15 there was testimony that said that that bag was was closed and
16 when I asked him where exactly the trash bag was, first he
17 said he couldn't really say, he he said first it was Oakdale
18 Court then he said, Well it it mighta been on Liz's property,
19 he he he just wasn't sure, wasn't really sure where it was,
20 but Liz and her father, officer told you that it was on Liz's
21 property well within her property line, it was in her yard,
22 she could see it from standing on her back porch, she said it
23 was in her yard and this was a place that Michael Manigan had
24 absolutely no reason to be on whatsoever. This was an area,
25 he's claimin' he cut through, with a big old tree had fallen

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1 down, where there's brush, debris, all sorts of things and
2 that's the area he wants you to believe that he was just cut
3 through, that that was just some common path? This area
4 (indicating), that's a common path? That's (indicating) a
5 common path? Does that (indicating) look like a common path
6 to you, it's what they want you to believe. This wasn't some
7 public road, little nice little sidewalk or cut path or some
8 nice pretty green field as he tried to make you believe
9 yesterday, that wasn't it at all and he also when I asked him
10 what he did with the the bag, he he said he just kicked it, he
11 just kicked it but somehow his prints got on it so this
12 supposed encounter with this bag just happened to be
13 containing items that had just been stolen in a burglary at
14 that house just moments before, that is some coincidence, that
15 is some huge coincidence. He's had, this incident happened
16 over two years ago, he's had over two years to come up with
17 that story, that's all it is, ladies and gentlemen, it's it's
18 just a story, it's just a story. Take a step back from
19 everything, look at everything that we have here. This wasn't
20 some crazy coincidence, it wasn't a crazy coincidence at all,
21 common sense will tell you that he wasn't -- it it wasn't.

22 Mr. Whelchel says that we're tryin' to get you to fill in
23 the gaps. Well you can fill in the gaps, this -- that's
24 circumstantial evidence, you can fill in the gaps, it's okay
25 to do that and Judge Cole's gonna talk to you about

JURY CHARGE

1 circumstantial evidence. Beginnin' of this trial I told you
2 that circumstantial evidence is sorta like a chain, remember?
3 All the facts and little pieces of evidence are links.
4 Separately they may not matter or may be important but when
5 you add it all up and you put it all together it is. A wise
6 man once told me that if you wanna know which way the storm's
7 blowin', don't look at the trunk, look at the trees, look at
8 the little, the lea -- look at the leaves, look at the little
9 pieces of evidence, and that will tell you exactly which way
10 the storm's blowin'. Michael Manigan went in that home with
11 intent to steal, that's burglary in South Carolina, and he did
12 it at night with two prior burglary convictions on his record,
13 that makes it a burglary first degree. The officers in this
14 case did their job, we've done our job in trying to present
15 this to you in the best way that we know how and now it's time
16 for you guys to do your job. Whether or not you believe any
17 of the witnesses or the defendant, that is solely up to you
18 but all that matters is that you separate the truth from
19 fiction. Justice is about doing the right thing, when you go
20 to back to the jury deliberation room and begin deliberations,
21 I hope that you will use your common sense and let justice be
22 done.

23 THE COURT: Ladies and gentlemen, you have heard and seen
24 all the evidence in the case, you now heard the final
25 summations of the lawyers and therefore it now becomes my duty

JURY CHARGE

1 and obligation to instruct you on the law that's applicable in
2 the case and then you'll be asked to go back and begin with
3 your deliberations and through that process you'll examine all
4 of the evidence, you'll decide the facts, apply the law and
5 arrive at a fair and just decision, whatever that decision may
6 be. As jurors in this case, it is your exclusive duty to
7 determine what the facts are and you do that through your own
8 common sense, examination and evaluation of all of the
9 testimony and other evidence received durin' the course of the
10 trial. It is simply your obligation to give both the State
11 and the defendant a fair and impartial trial based solely upon
12 the evidence and the law that's applicable as as I will have
13 provided it to you.

14 Now in this case as you know the State through the
15 prosecutor by way of these indictments has charged the
16 defendant with two separate and distinct criminal offenses
17 although they are alleged to have arisen out of one particular
18 event or a course of events which the State alleges occurred
19 back on December the 11th of 2010. By way of these
20 indictments the State alleges that Michael Anderson Manigan
21 did here in Spartanburg County on that day wilfully and
22 intentionally enter a dwelling that belonged to Elizabeth Ann
23 Vandahm in Spartanburg County, in the City of Spartanburg,
24 without her consent and with the intent to commit a crime
25 therein, they further allege that the burglary occurred in the

JURY CHARGE

1 nighttime and that it was committed by a person having a prior
2 record for two or more burglary convictions. They also allege
3 in a separate indictment that he committed the crime of
4 larceny alleging that on December the 11th of 2010 he took,
5 stole and carried away personal property that belonged to
6 Elizabeth Ann Vandahm valued at more than \$2,000 but less than
7 \$10,000 dollars. Now as to those allegations and as to each
8 of those charges you know the defendant has entered a plea of
9 not guilty, a plea of not guilty has therefore placed upon the
10 State the burden of proving the allegations set forth in each
11 of those indictments, the burden of proving each of the
12 essential elements that constitute the crimes of burglary in
13 the first degree and grand larceny and, therefore, the burden
14 is upon the State to establish the defendant's guilt to the
15 satisfaction of you twelve jurors beyond a reasonable doubt
16 before any verdict of guilty could be returned. The burden is
17 never upon a defendant or a person accused of a crime to prove
18 that they are not guilty or to prove that they're innocent
19 because in some cases that might not be possible, the burden
20 is always upon the State because they brought the charges
21 against the defendant to establish his guilt to your
22 satisfaction beyond a reasonable doubt.

23 You are instructed that it is a vital important and
24 cardinal rule of law that every defendant in a criminal trial
25 no matter how serious might be the offense for which that

JURY CHARGE

1 person stands charged that person shall always be presumed
2 innocent of that charge and that presumption of innocence
3 remains with any defendant as it does with this defendant from
4 the time that he is placed under arrest and throughout the
5 course of the criminal process and even throughout the course
6 of the actual trial, that presumption of innocence will be
7 with him as you go back into your jury room to begin with your
8 deliberations in this case and that presumption of innocence
9 will be with him in that jury room and it'll be with him
10 forever unless you twelve jurors unanimously determine that
11 his guilt has been proven beyond a reasonable doubt. In other
12 words, after you've considered all of the evidence in the case
13 and decided the facts and applied the law, if you twelve
14 jurors determine that his guilt as to a particular crime has
15 been proven beyond a reasonable doubt then he would no longer
16 be entitled to that presumption of innocence but it's only if,
17 unless and until you are satisfied of his guilt beyond a
18 reasonable doubt that that presumption of innocence would no
19 longer be applicable.

20 Now while the State does have the burden of proving the
21 defendant's guilt beyond a reasonable doubt, that doesn't mean
22 that he has to prove his guilt beyond all doubt or beyond any
23 possible doubt but it does require the State to prove his
24 guilt to your satisfaction beyond a reasonable doubt and the
25 term "reasonable doubt" should be given its plain and ordinary

JURY CHARGE

1 meaning: A reasonable doubt is the kind of doubt that will
2 cause a reasonable person to hesitate to act upon the
3 information provided and the defendant is entitled to any
4 reasonable doubt that arises from the evidence or lack of
5 evidence in a case and if upon any factual issue essential to
6 a finding of a verdict of guilty you have some reasonable
7 doubt as to how that issue should be resolved, it would be
8 your duty to resolve that reasonable doubt in favor of the
9 defendant.

10 Now in this case the defendant has raised what's called
11 the "defense of third-party guilt"; in other words, the
12 defendant claims that it was not he who has committed any
13 crime alleged against him by the State but that it was someone
14 other than him that committed that crime. Now although the
15 defendant has raised the defense of third-party guilt, the
16 burden is not upon the defendant to prove that someone else
17 has committed the crimes that are alleged against him, the
18 burden as I have stated is always on the State to prove the
19 defendant guilty beyond a reasonable doubt, if therefore upon
20 your consideration of the whole case you have a reasonable
21 doubt as to the defendant's guilt, you must resolve that
22 reasonable doubt in his favor and return a verdict of not
23 guilty and if, on the other hand, after you've carefully
24 concerned all of the evidence in the case you've decided the
25 facts, you've applied the law, if you have no reasonable doubt

JURY CHARGE

1 as to his guilt, it will be your corresponding duty to find
2 him guilty of any crime that has been proven to your
3 satisfaction beyond a reasonable doubt.

4 The same law that provides that you are the judges of the
5 facts also provides that I'm the judge of the law and that
6 simply means that nobody's gonna tell you how to arrive at
7 your determination of fact in this case, you do that as I've
8 already stated through the exercise of good judgment and
9 common sense, conscientiously apply it to the testimony and
10 evidence received durin' the course of the trial. You must,
11 however, under your oath as a juror accept the law as I
12 provide it to ya as being the law that you are to apply in the
13 case. In other words, you're not to concern yourself with
14 what you thought the law was before you came to serve as a
15 juror this week or what you think the law ought to be, you
16 must under your oath as a juror accept the law as I provide it
17 to ya as being the law that you are to apply in the case and
18 then you simply take that law and you apply it to the facts as
19 you twelve jurors have determined those facts to be based upon
20 your own common sense, examination and evaluation of the
21 evidence received durin' the course of the trial.

22 Because you are the sole judges of the facts in this case
23 you are therefore necessarily the sole judges of the
24 credibility and the believability of any witness that has
25 testified durin' the course of the trial and you twelve jurors

JURY CHARGE

1 alone will decide what weight, value and effect to give any
2 particular witness's testimony or even portions of that
3 testimony but there are several circumstances that you should
4 should take into consideration in arriving at your assessment
5 as to the credibility of the witness and I'm going to list
6 those factors for ya: You should consider the demeanor of the
7 witness, that is, how the witness appeared to you as the
8 witness testified from the witness stand. Was the witness
9 straightforward in responding to questions or was the witness
10 hesitant or evasive in responding to questions that were asked
11 of that witness, simply put did the witness appear to you to
12 be telling the truth and to have knowledge of the facts to
13 which that witness has testified. You should also consider
14 whether or not the testimony of a witness is consistent or is
15 it inconsistent with that witness's own testimony or with
16 other testimony or other evidence received durin' the course
17 of the trial. You should consider how the witness came to
18 know the facts to which a witness has testified; in other
19 words, what was that particular witness's opportunity and
20 ability to perceive the existence of those facts to which that
21 witness has testified by having previously used his or her
22 senses and then what is the ability of that witness to be able
23 to come into court and to accurately recollect to you as to
24 what they have previously perceived. You should also consider
25 any bias or prejudice or interest a wi -- that a witness might

JURY CHARGE

1 have with regard to a case; in other words, do you find some
2 reason that a particular witness would come into court, would
3 testify one way or another to help or to hurt one side or the
4 other and you may consider any interest that a witness might
5 have in the outcome of the case if you determine that a
6 witness does have such an interest and you find that that
7 interest would bear upon that particular witness's credibility
8 and you should also consider whether or not the testimony of a
9 witness was strengthened or was it weakened by other testimony
10 or other evidence received durin' the course of the trial.
11 Because you are the finders of the fact and because you are
12 the judges with -- of the credibility of each witness, you are
13 permitted to believe as much or as little of what a witness
14 has testified to as you deem is appropriate and, therefore,
15 you may believe everything that a witness testified to, you
16 may choose to believe none of it. You may believe one portion
17 of a witness's testimony and reject some other portion of that
18 same witness's testimony. You may believe one witness as
19 other opposed to several or several as opposed to one but
20 whatever your good judgment and common sense tells you is the
21 most believable and credible testimony is the testimony you
22 should accept and you should reject any testimony or other
23 evidence that you find not to be credible or believable.
24 Again, your sole objective is to simply give both sides a fair
25 and impartial trial and base your verdict solely upon the

JURY CHARGE

1 evidence and the law that is applicable.

2 Now while there are various forms of evidence such as
3 testimony, photographs, documents, charts and other types of
4 physical exhibits, there are really only two types of evidence
5 and either or both of those types of evidence may be used to
6 prove any fact in issue but the two types of evidence are
7 direct evidence and circumstantial evidence. Direct evidence
8 is the testimony of a person who testifies from actual
9 knowledge of that fact, it is testimony by a person who has
10 perceived the existence of the fact by means of their senses
11 and then they come into court and they testify as to what they
12 have previously seen or heard or felt for that matter.

13 Circumstantial evidence on the o -- other hand is the proof of
14 some other fact or set a facts which taken either singly or
15 collectively may prove the existence of a fact in question as
16 a necessary consequence, that is, through an inference and an
17 inference is simply a deduction of fact that may logically and
18 reasonably be drawn from the proof of some other fact or set
19 of facts. In other words, it's not a fact proven by the
20 direct testimony of a witness based upon their personal
21 perception but it is a conclusion which might reasonably be
22 drawn from the proof of some other fact. In other words, you
23 may infer that a particular event occurred or that a
24 particular fact exists based upon the proof of sufficient
25 factual circumstances which would reasonably warrant your

JURY CHARGE

1 arriving at a particular conclusion. The law, however, makes
2 absolutely no distinction between the weight or value to be
3 given to direct evidence as opposed to circumstantial evidence
4 nor is a greater degree of certainty required of
5 circumstantial evidence as opposed to direct evidence.

6 Whatever the type of evidence used to prove any fact in issue
7 you should consider all of the evidence presented durin' the
8 course of this trial and after carefully considering all of
9 that evidence and weighing in your minds if you are not
10 convinced of the guilt of the defendant beyond a reasonable
11 doubt as to a particular charge then you must resolve that
12 reasonable doubt in his favor and return a verdict of not
13 guilty.

14 Now in this case as you know the State has charged the
15 defendant with burglary in the first degree and grand larceny,
16 those are statutory offenses, that just means that the
17 legislature has defined what constitutes burglary in the first
18 degree and grand larceny and so I'm going to read for you the
19 statute and explain those different criminal offenses to ya so
20 that you'll have that understanding as you go back to
21 determine whether or not the defendant has been proven guilty
22 of those crimes beyond a reasonable doubt. Burglary in the
23 first degree is set forth in Section 16-11-311 of the South
24 Carolina Code of Laws and it provides as follows: A person is
25 guilty of burglary in the first degree if the person enters a

JURY CHARGE

1 dwelling without consent and with intent to commit a crime
2 therein and the burglary occurs in the nighttime and/or the
3 burglary is committed by a person with a prior record of two
4 or more convictions for burglary and based upon that
5 particular statute, therefore, before you could return a
6 verdict of guilty as to the crime of burglary in the first
7 degree it would be necessary that the State has established to
8 your satisfaction beyond a reasonable doubt four necessary
9 elements; Number one, the State has to prove that the
10 defendant or an accomplice entered a dwelling, a entry is an
11 indispensable element in the crime of burglary, entry is the
12 act of going into the dwelling; secondly, as a part of that
13 dwelling or or as part of that entry it must be a dwelling and
14 a dwelling is defined as a building or structure which is used
15 or normally used for sleeping, living or lodging by any
16 person; secondly, the State must prove an entry of a dwelling
17 without consent, entering without consent means to enter a
18 dwelling without the consent of the owner or any other person
19 otherwise in lawful possession of the property; thirdly, there
20 must be an entry of a dwelling without consent and with the
21 intent to commit a crime therein. There must be an intent to
22 commit a crime whether or not the crime is actually committed,
23 accomplished or completed. When there is an entering of a
24 dwelling accompanied with an intent to commit a crime, the
25 crime of burglary is complete and a crime of any grade or

JURY CHARGE

1 severity is sufficient to satisfy this particular element of
2 the crime of burglary. The entry of a dwelling without
3 consent and with the intent to commit a crime therein
4 completes the crime of burglary. And the forth element that
5 must be established in order to establish a burglary in the
6 first degree is that either the burglary occurred in the
7 nighttime or the burglary was committed by a person with a
8 record of two or more convictions for burglary. In this case
9 the State is alleging that the crime of burglary is in the
10 first degree because a burglary was committed by a person in
11 the night time and a burglary was committed by a person having
12 two or more convictions for the crime of burglary. You have
13 therefore heard testimony and/or seen evidence regarding the
14 defendant having prior convictions for the crime of burglary.
15 You are instructed that such evidence is offered for and you
16 may only consider it for a very limited purpose. The purpose
17 for which it is offered is to establish a particular degree of
18 burglary in the event you determine that a burglary has been
19 established by the evidence in this case. It is not being
20 offered as proof of the defendant's commission of the crime of
21 burglary itself nor may be it considered by you as evidence
22 that the defendant did commit the crime of burglary for which
23 he now stands trial. If you determine that the State has
24 proven beyond a reasonable doubt that the defendant committed
25 the crime of burglary then you may consider the evidence of

JURY CHARGE

1 prior burglary convictions as it relates to the degree of any
2 burglary proven to have been committed. You are not permitted
3 to consider the evidence of prior burglary convictions for any
4 other purpose, you may not consider such evidence as evidence
5 of bad character nor may you consider it as evidence that the
6 defendant may have acted in accordance with prior conduct. It
7 may only be considered by you in determining the degree of
8 burglary in the event you find beyond a reasonable doubt that
9 the defendant has been proven guilty of the crime of burglary.

10 A second indictment charges the defendant with the crime
11 of grand larceny. Larceny, a larceny is commonly referred to
12 and known as stealing. Larceny is defined in the law as the
13 taking, the stealing and the carrying away of the personal
14 property of another with the intention of permanently
15 depriving the true owner of use and possession of his or her
16 property and converting the property to the takers own use.
17 Grand larceny is defined in the law as the larceny or theft of
18 personal property of another having a value of more than
19 \$2,000.

20 A person may be found guilty of a crime as a principal or
21 as an accomplice. You are instructed that where two or more
22 people act together with a common intent and purpose and they
23 combine, conspire, plan or otherwise agree to the commission
24 of a crime, each person who is present to aid, abet, assist or
25 otherwise participate in the commission of the crime is

JURY CHARGE

1 equally guilty. The act of one is deemed to be the act of all
2 or the hand of one is deemed to be the hand of all and all are
3 guilty of any crime accomplished by the individual efforts
4 made in furtherance of the common plan. Where two or more
5 persons combine for the purpose of committing the crime of
6 burglary, it is not necessary that all of the participants
7 actually enter the dwelling but it must be proven that at
8 least one of the participants did enter the dwelling without
9 consent and with intent to commit a crime therein and that the
10 other or others were present for the purpose of aiding,
11 abetting, assisting or participating with knowledge of that
12 fact. In order for the defendant to be found guilty of a
13 crime under the legal theory of aiding and abetting, it must
14 be proven beyond a reasonable doubt that the defendant was
15 actually present at the scene of the crime for the purpose of
16 aiding, abetting, assisting or participating in the common
17 plan or scheme which culminates in the commission of the
18 crime.

19 Now, ladies and gentlemen, I am not in any way concerned
20 with what your decisions are but I do tell you that the
21 verdict, your decisions, must be unanimous, all twelve of you
22 must be in agreement. Now, Mr. Foreman, as you know when you
23 go back you're gonna be called upon to preside over the jury
24 deliberations simply to ensure that those deliberations are
25 carried out in some orderly fashion, all jurors however are

JURY CHARGE

1 expected to participate in deliberations because the decision
2 is the consensus and unanimous opinion of all twelve jurors.
3 Mr. Foreman, you're gonna have the indictments in the jury
4 room, the indictments are not evidence of anything, they don't
5 establish anything, they're not proof of anything, indictments
6 are simply the means by which any person is brought into this
7 court and formally put on notice as to what crime the State
8 claims they have committed. The indictments will be in the
9 jury room but only because they will serve as the verdict
10 forms. On the back of each indictment in the lower left hand
11 corner you'll see the word "verdict" and it's beneath that
12 word that you'll indicate the jury's unanimous decision,
13 Mr. Foreman, you'll also be asked to sign your name as the
14 foreperson and place the appropriate date, the foreman is the
15 only person, the only juror that needs to actually sign the
16 verdict form. You have two separate indictments, you'll be
17 rendering two separate decisions. Your verdicts may be the
18 same, they may be different, that of course will simply depend
19 upon your determination of the facts and your application of
20 the law as it relates to that particular charge but with
21 respect to each of the indictments you have two potential
22 verdict forms and those potential verdict forms are guilty and
23 not guilty so whatever that decision is, indicate it in the
24 space provided, sign your name as the foreperson, place the
25 appropriate date on the indictment and then notify the bailiff

JURY CHARGE

1 that you've reached a decision and we'll bring you back to
2 receive your verdicts. After you complete the verdict form,
3 don't give those forms to the bailiff, you maintain possession
4 of them, Mr. Foreman, I'll receive them from you after the
5 jury has come back into the courtroom and been seated.

6 During the course of your deliberations there may come a
7 time you, where you have a question about the evidence or
8 about the facts, I'm never permitted to answer questions that
9 relate to issues of fact, those are simply determinations that
10 you have to make based upon your consideration of all the
11 evidence in the case and any reasonable inferences that might
12 be derived from that evidence, also no additional evidence can
13 be received now that you're going back to begin deliberations
14 so every now and then a jury panel wonders if somethin' else
15 exists or they think of somethin' that they wish they had,
16 wonderin' if they can have it and use it in in making their
17 decision, understand that no additional evidence can be
18 received. Even if it does exist, it cannot be received, it
19 cannot be provided to you because now you're going back to
20 begin deliberations and the evidence has closed. Now if,
21 however, you ever have a question about testimony of a witness
22 and you believe that that question can be answered by having
23 testimony replayed in whole or in part, we can bring you back
24 into the courtroom to have testimony, have testimony of a
25 witness replayed either in portions or in its entirety so

JURY CHARGE

1 should that arise, Mr. Foreman, you'll just se -- send a
2 need -- se -- need to send me a note by way of the bailiff
3 that you would like to hear the testimony of a particular
4 witness and the court reporter can locate that testimony and
5 we'll bring you back to the courtroom for the purpose of you
6 rehearing that. I don't have any transcripts to send back
7 with you but you can rehear it in the courtroom should that
8 need arise. If at any time you have a question about the law
9 that is applicable, I am always permitted to answer those
10 questions so if I need to re-instruct you on the law or any
11 portion of it or you need a different explanation or
12 clarification of the law that I provided, if you'll simply
13 make that inquiry by note to me through the bailiff, I'll be
14 happy to bring you back and and provide you any additional
15 assistance with your understanding of the law if that should
16 arise. One, two or three jurors maybe have taken notes during
17 the course of the trial, please understand that that the notes
18 are solely for the benefit of the juror having taken those
19 notes, they are not to be relied upon by any other juror as
20 your recollection as to what a witness testified to or what
21 the evidence is. If you have have a question about testimony,
22 as I've said we can bring you back and have that testimony
23 replayed so do not rely upon another juror's note-taking as
24 your recollection as to what the testimony was unless you just
25 happen to agree with it. I don't know if we have any smokers.

JURY CHARGE

1 on the jury but if we do you are permitted to smoke but ya
2 can't smoke in the jury room, you have to go outside to
3 accomplish that purpose. Anybody wants to smoke during
4 deliberations, let the bailiff know, he'll take ya outside to
5 accomplish that purpose but you are instructed that the the
6 deliberations have to stop and they may only resume when all
7 twelve jurors are present so that all may participate so if at
8 any if any time a juror's absent for some authorized purpose,
9 the deliberations must stop, they may only resume when those
10 jurors are reuniting with the balance of the panel. It's not
11 lunchtime right now but I don't know how long your
12 deliberations are gonna take and nor do you but as you go back
13 to begin deliberations if you get to a point where you believe
14 it appropriate to have your lunch ordered, keep in mind that
15 it takes about an hour, maybe an hour and ten minutes to have
16 lunch ordered, prepared and brought to the jury room for your
17 benefit so just keep that timetable in mind as you go back to
18 begin deliberations and if you need to order lunch, just let
19 the bailiff know and then the clerk will come in and take your
20 lunch orders. I think that covers everything but if it does
21 not I'm sure one of these lawyers will remind me that I have
22 neglected to tell you somethin' and if that's the case, I'll
23 bring you back to provide you with additional information if I
24 need to, so right now I'm gonna ask the twelve primary jurors,
25 I'll ask the two alternates to stay in the courtroom with me,

JURY CHARGE

1 I'll ask the twelve primary jurors to please retire to your
2 jury room but do not begin deliberations until I send you word
3 to do so and if you are to begin deliberations, I'll send you
4 word by way of the bailiff and in that event he'll bring to
5 the jury room all of the exhibits which have been introduced
6 and to you, Mr. Foreman, he'll also bring the indictments
7 which will serve as the verdict form so please retire but
8 await my instruction as to when to begin.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Ms. Thor and Ms. Fowler, that's gonna
12 conclude your service for the trial of this case so I do wanna
13 thank you for the time, the attention that you've devoted to
14 it. I'll ask if you don't mind if you'll please go back down
15 to the jury assembly room, I'm not certain if your service
16 will be needed any further this week but we'll make that
17 determination and let you know in just a few minutes so if
18 you'll please go to the jury assembly room with the bailiff,
19 I'll send word, or by way of the bailiff, whether or not you
20 need to come back or may be excused so thank you again for
21 your participation.

22 (Whereupon, the alternate jurors left the courtroom.)

23 THE COURT: Are there any exceptions taken to the
24 instruction or requests for additions to the instruction by
25 the State?

MOTIONS AND MATTERS

1 MS. POULOS: No, sir, Your Honor.

2 THE COURT: By the defendant?

3 MR. WHELCHEL: None, Your Honor.

4 THE COURT: Let me ask ya'll to verify the exhibits,
5 please, before they go back and also the verdict forms.

6 (Whereupon, a discussion was held off the record.)

7 MS. POULOS: Okay.

8 MR. WHELCHEL: Yeah.

9 MS. POULOS: That's good.

10 THE COURT: Alright, send 'em back. Tell the jury to
11 begin deliberations, notify us when they've concluded. We'll
12 be at ease for fifteen minutes.

13 (Whereupon, the jury began deliberations at 11:00 a.m.)

14 (Whereupon, a recess was taken.)

15 THE BAILIFF: Thank you, be seated.

16 THE COURT: The jury has requested to have the testimony
17 of Officer Hair replayed and for me to define first degree
18 burglary again.

19 (Whereupon, a discussion was held off the record.)

20 THE COURT: Alright, bring the jury in, please.

21 THE BAILIFF: Bring the jury in.

22 (Note from the jury marked Court's Exhibit No. 3 for
23 identification.)

24 (Whereupon, a discussion was held off the record.)

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

MOTIONS AND MATTERS

1 THE COURT: Mr. Foreman, I understand you and your fellow
2 jurors would like to have the testimony of Officer Hair
3 replayed.

4 JURY FOREMAN: Yes, sir, please.

5 THE COURT: And after that I'll instruct you again on the
6 definition of burglary in the first degree, ---

7 JURY FOREMAN: Yes.

8 THE COURT: --- okay? Now the court reporter's gonna
9 play the testimony, it should be loud enough and clear enough
10 for you to hear but if for some reason you can't, just raise
11 your hand, we'll try to make other arrangements.

12 (Whereupon, the testimony of Charles Hair was played for
13 the jury.)

14 THE COURT: Alright, and then you've also asked for me to
15 redefine for you the term "burglary in the first degree".
16 Section 16-11-311 of the Code of Laws defines burglary in the
17 first degree, it is defined as a burglary, excuse me, it is
18 defined as the entry of a dwelling without consent and with
19 intent to commit a crime therein and the burglary occurs in
20 the nighttime or the burglary is committed by a person with
21 two or more convictions for burglary, therefore in order for
22 first degree burglary to be made out there are four essential
23 elements that have to be established to your satisfaction
24 beyond a reasonable doubt; first, it has to be proven that the
25 defendant or an accomplice, which I had previously defined for

MOTIONS AND MATTERS

1 you in explaining accomplice liability, entered a dwelling;
2 secondly, there must be an entry of the dwelling without
3 consent of the owner or person otherwise in lawful possession
4 of the property; thirdly, there must be an entry of a dwelling
5 without consent and with the intent to commit a crime therein,
6 there must be an intent to commit a crime whether or not the
7 crime is actually committed, accomplished or completed and;
8 fourthly, the burglary is committed by a person with a prior
9 record of two or more convictions for burglary or the entering
10 occurred in the nighttime. And I have already explained to
11 you as I have stated the law related to accomplice liability
12 and how you can be found guilty as a principal or as an
13 accomplice in the case of a crime of burglary or any crime for
14 that matter, so burglary is the entering of a dwelling without
15 consent and with intent to commit a crime therein and the
16 burglary occurs in the nighttime or the burglary is committed
17 by a person with two or more prior convictions for burglary,
18 okay. Alright, please retire to your jury room. If you need
19 further instruction as to the law, let me know, I'll be happy
20 to oblige.

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

23 THE COURT: Are there any exceptions taken to the
24 additional instruction?

25 MS. POULOS: No, sir, Your Honor.

MOTIONS AND MATTERS

1 MR. WHELCHER: No, sir.

2 THE COURT: Alright, we'll continue to be at ease while
3 the jury is deliberating.

4 (Note from the jury marked Court's Exhibit No. 4, note
5 from the jury marked Court's Exhibit No. 5 and note from the
6 jury marked Court's Exhibit No. 6 for identification.)

7 THE COURT: Alright, I understand the jury has reached a
8 unanimous decision, are we ready to receive the verdict?

9 MR. WHELCHER: Yes, sir, Your Honor.

10 THE COURT: Okay, bring 'em in.

11 THE BAILIFF: Okay.

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

13 THE COURT: Mr. Foreman, have you and your fellow jurors
14 reached a unanimous decision with respect to each of the
15 separate indictments?

16 JURY FOREMAN: Yes, sir, Your Honor.

17 THE COURT: Have you indicated tho -- those verdicts on
18 the back of the indictments as requested?

19 JURY FOREMAN: Yes, sir, Your Honor.

20 THE COURT: Did you sign your name and date it?

21 JURY FOREMAN: Yes, sir.

22 THE COURT: If you'll please hand those verdict forms up
23 by way of the bailiff.

24 (Whereupon, the jury foreman complied.)

25 THE COURT: You may publish the verdicts.

VERDICT

1 THE CLERK: Case Number 2011-GS-42-3015 the State vs.
2 Michael Anderson Manigan the verdict is guilty, signed by the
3 foreperson, dated January the thirt -- January the 16th of
4 2013.

5 THE COURT: That's the indictment for what?

6 THE CLERK: The indictment for burglary. Indictment
7 Number 2011-GS-42-3016 the State vs. Michael Anderson Manigan
8 for the indictment of grand larceny the verdict is guilty,
9 signed by the foreperson, dated January the 16th of 2013.
10 Ladies and gentlemen of the jury, is this your verdict and
11 still your verdict, if so please raise your right hand. So
12 say you all.

13 THE COURT: Does the defendant wish to have the jury
14 polled?

15 MR. WHELCHER: Yes, sir, Your Honor.

16 THE COURT: Alright, poll the jury please, ma'am.

17 THE CLERK: Yes, sir. Ladies and gentlemen of the jury,
18 I will pose a question to you after which I will ask each of
19 you to stand individually and respond to my question, the
20 question being is this your verdict and still your verdict.
21 Juror 78, Elizabeth Jones?

22 JUROR NUMBER 78: Yes.

23 THE CLERK: Juror 145, Renee Smith?

24 JUROR NUMBER 145: Yes.

25 THE CLERK: Juror 49, Marilyn Gregory?

MOTIONS AND MATTERS

1 JUROR NUMBER 49: Yes.

2 THE CLERK: Juror 82, Kiang Kemp?

3 JUROR NUMBER 82: Yes.

4 THE CLERK: Juror 86, David Kuhn?

5 JUROR NUMBER 82: Yes.

6 THE CLERK: Juror 59, Kathy Harper?

7 JUROR NUMBER 59: Yes.

8 THE CLERK: Juror 175, Doffus Williams?

9 JUROR NUMBER 175: Yes.

10 THE CLERK: Juror 72, Donna Jackson?

11 JUROR NUMBER 72: Yes.

12 THE CLERK: Juror 38, Roddrick Durrah?

13 JUROR NUMBER 38: Yes.

14 THE CLERK: Juror 126, Candi Reece?

15 JUROR NUMBER 126: Yes.

16 THE CLERK: Juror 151, Tommy Stribble?

17 JUROR NUMBER 151: Yes.

18 THE CLERK: And juror 160, Lewis Turner?

19 JUROR NUMBER 160: Yes.

20 THE CLERK: Your Honor, the jury's been polled.

21 THE COURT: Alright, any other matters that need to be
22 addressed with the jury present?

23 MS. POULOS: Nothing from the State, Your Honor.

24 MR. WHELCHER: No, sir.

25 THE COURT: Alright, thank you, ladies and gentlemen, for

MOTIONS AND MATTERS

1 your participation in the trial of this case and your
2 decision. You are not going to have to call back or report
3 back any further. We have non-jury matters that are gonna
4 occupy the Court's time for the rest of the week so I do wanna
5 take this opportunity to sincerely thank you for your
6 willingness to serve as jurors this week and of course for
7 your actual service in the trial of the case. I do sincerely
8 hope that that experience has been an educational and a
9 beneficial experience for you and I do sincerely hope that it
10 has not posed too much of a hardship or inconvenience on ya,
11 so if you'll go back to the jury room one more time, the
12 bailiff will take your badges and your pay voucher for your
13 service this week will be mailed to you at the addresses that
14 appear on your juror summons so if the address that's on your
15 summons is not your correct address, be sure you let the clerk
16 know before you leave what that correct address is so that
17 you'll be certain to receive your pay voucher, okay. Thank
18 you again for your participation.

19 (The following takes place outside the presence of the
20 jury.)

21 THE COURT: Alright, any other matters to address before
22 the imposition of sentence?

23 MS. POULOS: Nothing from the State, Your Honor.

24 MR. WHELCHER: No, sir.

25 MS. POULOS: Your Honor, the the victim would like to

MOTIONS AND MATTERS

1 address the Court at the appropriate time.

2 THE COURT: Okay.

3 (Pause.)

4 MS. POULOS: May may I approach, Your Honor?

5 THE COURT: (No audible response.)

6 (Whereupon, a discussion was held off the record.)

7 THE COURT: Alright, Ms. Poulos.

8 MS. POULOS: Yes, sir, Your Honor, the victim, Elizabeth
9 Vandahm, would like to address the Court regarding sentencing.

10 THE COURT: Alright, yes, ma'am.

11 MS. VANDAHM: I just wanted you to know that (crying)
12 when I bought that house that I was so proud of it and so
13 excited about it and he he took the comfort of being in my
14 home away from me. He lives across the street from me so when
15 he is released I'll have to see him every day and and wonder
16 whether he's still watching my house. He came to my house
17 that night pretending to be a concerned neighbor, knowing that
18 he had broken in and stolen not just my things but my sense a
19 security and I just ask that you sentence him to the full
20 extent as possible so that I don't have to worry every day,
21 that's all. Thank you.

22 THE COURT: Okay, thank you, ma'am. Ms. Poulos, does the
23 defendant have any other criminal history besides the two
24 burglary convictions that were brought out during the trial?

25 MS. POULOS: He has some prior to that, Your Honor, if

MOTIONS AND MATTERS

1 you'd like to hear those.

2 THE COURT: Okay.

3 MS. POULOS: He has 1976 five counts of house breaking
4 and larceny; 1982 receiving stolen goods; 1983 shoplifting;
5 1985 DUI, failure to stop and DUS; 1986 DUS; 1987 DUS and a
6 1994 burglary second degree, attempt to possess crack cocaine;
7 1997 burglary second degree violent, receiving stolen goods
8 and common law robbery.

9 THE COURT: Alright, Mr. Whelchel, does your client agree
10 with the recitation of the criminal history?

11 MR. WHELCHER: Yes.

12 THE COURT: Okay.

13 MR. WHELCHER: Your Honor, Mr. Manigan is 54, he was born
14 and raised here in Spartanburg, he's single and he has no
15 children, uh, never spent any time in the military. The last
16 time he was at school was the ninth grade at the Cummings
17 Street, Cummings Street school down below Wofford College. He
18 worked his primary places, primary places of employment were
19 at Thomas & Howard for 11 years, Land & Sea down in Roebuck
20 for 2 years and his last job of significant employment was at
21 Nestle for 7 years, he started at the bottom rung most, on
22 those three jobs and was working his way up until some of
23 these prior incidents occurred. We would ask the Court be as
24 lenient as possible in under these circumstances.

25 THE COURT: Alright, Mr. Manigan, anything you'd like to

MOTIONS AND MATTERS

1 add?

2 THE DEFENDANT: Yes, sir, the only thing I'd like to add
3 is that I know the jurors of my peers found me guilty but I
4 put my hand on that Bible and I swore to tell the truth. As
5 God is my witness, I'm not guilty, I did not do it. I'm sorry
6 what happened to Ms. Vandahm, I'm I'm sorry but I I'm just,
7 I'm shocked for one thing that they found me guilty. I'm
8 sorry this happened to her but it wasn't I that did that, it
9 wasn't, that's that's not me. These last, since 20 in 2000
10 been volunteering with all kinda organizations: children's
11 shelters, senior citizen, the First Baptist Church feeding
12 people on Thanksgivin', the Pizza Hut, not a Pizza Hut, the
13 Red Lobster which started this, I've been workin' with county
14 counsel, city counsel, county officer, city officers every
15 year durin' Thanksgivin' and Christmas holidays and this is
16 not me. This this is, this, I did not do this. I'm sorry,
17 I'm just, I just don't know what to say, sir, it -- I'm sorry
18 that this happened to her, just got the wrong man. I, honest
19 to God I'm sorry this happened to her, that's all I have to
20 say, sir.

21 MR. WHELCHEL: Your Honor, if I may one thing I neglected
22 to tell you is that he's been in jail since 28, April 2011,
23 uh, 630 days.

24 (Pause.)

25 THE COURT: Alright, on Indictment 2011-3015, that's the

SENTENCE

1 indictment for burglary in the first degree wherein you have
2 been found guilty by the jury, the sentence of the Court is
3 you, Michael Anderson Manigan, be confined to the South
4 Carolina Department of Corrections for a period of 40 years;
5 Indictment 2011-3016 larceny wherein you've been found guilty
6 by the jury, sentence of the Court is you be confined to the
7 South Carolina Department of Corrections for a period of 10
8 years; the defendant is is to be given credit for any time
9 he's entitled to pursuant to 24-13-40 and I recommend that
10 restitution be required of any condition of any early release.

11 Now, Mr. Manigan, you have a right to appeal the verdict
12 of the jury and the sentence of the Court, you must file your
13 notice of in -- your intention to appeal those decisions
14 within ten days of today's date, Mr. Whelchel will give you
15 that advice.

16 THE DEFENDANT: Mr. Whelchel already gonna file my appeal
17 'cuz I do wish to file appeal.

18 THE COURT: Okay, you talk ---

19 MR. WHELCHER: Thank Your Honor.

20 THE COURT: --- to Mr. Whelchel ---

21 THE DEFENDANT: Thank you.

22 THE COURT: --- about that.

23

24

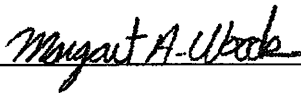
25

CERTIFICATE OF REPORTER

1
2 I, Margaret A. Woods, Court Reporter in and for the State
3 of South Carolina at Large, hereby certify that I reported the
4 preceding case on January 14, 15, 16 at the time and place
5 heretofore set forth; and that the foregoing pages numbered
6 from 8 through 319, inclusive, constitute a true and accurate
7 transcription of my stenographic notes of the said proceeding.

8 I further certify that I am neither attorney nor counsel
9 for, nor related to or employed by any of the parties
10 connected to the action, nor am I financially interested in
11 the action.

12 May 7, 2013

13
14 

15 Margaret A. Woods, Court Reporter
16 in and for the State of South Carolina at Large.
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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 10 2014

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
The Honorable J. Derham Cole, Circuit Court Judge

SC Court of Appeals

Case No. 2011-GS-42-3015, 2011-GS-42-3016

The State, ...Respondent,

v.

Michael Anderson Manigan.....Appellant.

Appellate Case No. 2013-000253

APPELLANT MICHAEL ANDERSON MANIGAN'S FINAL BRIEF

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the trial judge err in denying Manigan's directed verdict motion where, as here, the State failed to submit any direct or substantial circumstantial evidence tending to prove Manigan's guilt beyond a reasonable doubt?

II. Did the trial judge err in charging the jury that "the hand of one is the hand of all" where, as here, the investigating officer conceded there was no evidence tying the alleged accomplice to the crimes?

STATEMENT OF THE CASE

On June 17, 2011, Appellant Michael Anderson Manigan was indicted for first degree burglary and grand larceny. **R.pp.1-6**. In the indictments, the State alleges that, on December 11, 2010, Manigan entered the dwelling of Elizabeth Anne Vandahm with the intent to commit a crime therein and with two prior burglary convictions. **R.pp.1-6**. The State further alleges that Manigan carried away goods belonging to Vandahm, including a computer, printer, and jewelry, valued at more than two thousand dollars. **R.pp.1-6**.

In January 2013, the case was tried to a jury. **R. p.7**. After the State rested, Manigan moved for a directed verdict based on the lack of any direct or substantial circumstantial evidence tying Manigan to the crimes. **R. pp.149:1-154:17**. The trial judge denied the motion. **R. pp.154:19-155:5**. At the close of Manigan's case, Manigan renewed his directed verdict motion, and the trial judge again denied the motion. **R. pp.194:13-195:11**. Subsequently, the trial judge charged the jury that "the hand of one is the hand of all" over Manigan's objection. **R. pp.195:13-196:9; pp.228:20-229:18**.

On January 16, 2013, the jury returned a verdict against Manigan on both charges. **R. p.239:1-12**. On the same day, the trial judge sentenced Manigan to forty (40) years for first-degree burglary and ten (10) years for grand larceny. **R. pp.244:25-245:10**. On January 24, 2013, Manigan appealed his conviction and sentence. **R.p.247**.

FACTS

In 2010, Elizabeth Vandahm resided at [REDACTED] in Spartanburg, South Carolina. R. pp.21:14-22:15. At the time, Anna Christine Holcombe lived next door.¹ R. p.26:2-5; p.91:8-20. Michael Manigan lived across the street from Vandahm and Holcombe. R. p.50:1-14. Manigan's front porch is visible from Vandahm's back yard. R. p.52:3-5.

On Saturday, December 11, 2010, Vandahm left for work around 1:00pm. R. pp.22:16-23:4, p.24:14-17. Vandahm's father testified that he stopped by Vandahm's house between 5:15pm and 6:00pm, but did not notice anything unusual. R. pp.79:17-80:23. In the meantime, Holcombe began cutting her grass around 4:00pm and worked outside until around 9:30pm. R. pp.93:14-94:25. During this time, Holcombe noticed Manigan on his front porch. R. pp.95:16-96:7. Manigan spoke to Holcombe several times, discussing yard work and how much grass Holcombe was cutting. R. p.96:6-8. Manigan's cousin, Gary Manigan, also spoke to Holcombe. R. p.96:16-24. Holcombe testified that she considered Michael Manigan a neighbor and friend. R. pp.96:25-97:3.

When Vandahm arrived home from work around 10:30pm, she entered through the front door, proceeding to the back door to let her dog out. R. p.25:14-19. As she approached the kitchen, she observed broken glass from her kitchen window and a piece of cement lying in the middle of her kitchen floor. R. p.25:14-19. The kitchen window was approximately 7 ½ feet from the ground outside her home. R. pp.27:25-28:3. She believed the cement came from a fence post in her back yard. R. p.40:14-24. In her bathroom, Vandahm noticed a brick and more broken glass. R. p.27:12-16. Vandahm's computer monitor, printer, and jewelry, including a pair of diamond earrings, were missing. R. p.26:12-24. Vandahm called the police and waited at

¹ Holcombe explained that, if she were standing on Carlisle Street, facing Vandahm's house, Holcombe's house would have been the next house to her left. R. p.91:15-20.

Holcombe's house until they arrived. R. pp.25:20-26:5.

Vandahm had a six-foot tall privacy fence enclosing her back yard. R. p.28:17-20. During a severe windstorm a few months prior to the break-in, a large oak tree had uprooted, tearing a gap in the privacy fence. R. p.28:20-25. The gap in the privacy fence was repaired with a four foot chicken wire fence. R. pp.28:20-29:17. Vandahm testified it would have been impossible to climb over the chicken wire fence. R. p.29:15-17.

After the police arrived, Vandahm noticed a trash bag lying in the area behind the chicken wire fence, which Vandahm testified was within her back yard. R. p.36:8-22, p.37:6-13, pp.38:21-39:4. The trash bag contained Vandahm's computer monitor, printer, and keyboard. R. p.36:8-22; State's Exs. 14-17. The area where the trash bag was located contained vines, dead trees, tree stumps, and trash. R. p.52:1-16. Vandahm believed someone had used the area to dump trash and other stuff some time ago. R. p.52:10-16. Holcombe explained that the area contained "a lot of trash and so forth . . . nobody really lived in that area so it was, um, thorns and trash, limbs and oak trees, that's basically all that it is." R. p.92:18-22.

Charles Hair, a police officer with the City of Spartanburg Police Department, responded to Vandahm's call. R. pp.102:24-103:13. Hair determined that the point of entry was Vandahm's kitchen window. R. p.105:19-21. After Vandahm noticed the black trash bag in the area behind the chicken wire fence, Hair retrieved the bag and dusted the monitor and printer for fingerprints. R. p.112:3-16; State's Exs. 19A-19D. He discovered four prints on the monitor and printer. R. p.113:1-114:2. Of relevance here, the first print was lifted from the backside of the computer monitor, and the fourth print was lifted from the front side of the printer. R. pp.113:1-114:2. It was eventually determined that these two prints belonged to Manigan. R. pp.124:24-125:3, pp.127:6-130:21, p.137:5-18; pp.131:10-133:19; Exs. 19A, 19D, 20, 21, 22, 23.

Following the police investigation that night, several neighbors came to help Vandahm board up the windows at her home. R. p.49:18-22. Manigan was one of the neighbors who visited. R. p.50:1-14. Later that night, Manigan returned to Vandahm's home and expressed that he believed the break-in was a shame. R. p.53:12-25.

On Monday, December 13, 2010, Gary Manigan received a loan from E-Z Money Pawn Shop in Spartanburg, secured by Vandahm's diamond earrings. R. pp.156:1-157:13. Although the investigating officer initially obtained warrants against Gary Manigan for burglary and grand larceny, the warrants were never served, and the investigating officer testified there was no evidence linking Gary Manigan to the break-in at Vandahm's residence. R. pp.164:16-165:19.

Manigan testified at trial that he often walks behind Vandahm's privacy fence to visit friends on Oakdale Court. R. p.173:17-23, p.175:7-13. On the night of the break-in, Manigan testified that he came across a black bag in this area while he was returning to his home around 9:00pm. R. pp.176:20-177:25; p.183:1-11. Manigan explained that he initially kicked the bag to see what was in it, since he had not seen it when he left, and that he looked in the bag after he heard a clanking sound. R. pp.183:1-184:11.

As previously discussed, Manigan was indicted for first-degree burglary and grand larceny arising from the break-in at Vandahm's home. R. pp.1-6. After a jury trial, he was convicted on both counts and sentenced to forty years for first-degree burglary and ten years for grand larceny. R. p.239:1-12, pp.244:25-245:10. This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Dawson, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013). The appellate court is bound by the factual findings of the trial court unless they are clearly erroneous. See State v. Patterson, 367 S.C. 219,

224, 625 S.E.2d 239, 241 (Ct. App. 2006).

ARGUMENT

I. The trial judge erred in denying Manigan's directed verdict motion where, as here, the State failed to submit any direct or substantial circumstantial evidence tending to prove beyond reasonable doubt that Manigan committed first-degree burglary or grand larceny.

The trial judge erred in failing to grant a directed verdict to Manigan based on a lack of direct or substantial circumstantial evidence reasonably tending to prove Manigan's guilt beyond a reasonable doubt. Consequently, Manigan's convictions should be reversed.

On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." Id. "However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (emphasis in original). "A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." Id.

"This Court has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." Id. "The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes." State v. Lane, 406 S.C. 118, ___, 749 S.E.2d 165, 167 (Ct. App. 2013), reh'g denied (Nov. 22, 2013).

In the present case, the State relied solely on circumstantial evidence, namely: (1) Manigan's prints on Vandahm's computer monitor and printer within a black bag found in an area containing trash and other stuff on the other side of Vandahm's fence; (2) Manigan's

interactions with Holcombe prior to the burglary; and (3) Manigan's interactions with Vandahm after the burglary.

A long line of South Carolina appellate decisions involving similar circumstances strongly support the reversal of Manigan's convictions in the present case. For instance, in State v. Gilliam, 245 S.C. 311, 313, 140 S.E.2d 480, 481 (1965), the defendant was convicted of housebreaking with intent to steal and grand larceny. "[T]he circumstances relied upon by the State to establish the commission of the crimes charged in the indictment were: The broken pane of glass, the unlocked position of the window latch, the absence of the stamps from an employee's desk, and the defendant's fingerprint found on a fragment of glass outside the building." Id. at 315, 140 S.E.2d at 481.

The Court reversed the convictions, concluding: "The unexplained presence of defendant's fingerprint on a fragment of the broken pane outside the building might inculcate him if the evidence established that the building was feloniously entered and by this means, which, as has been seen, it fails to do." Id. at 315, 140 S.E.2d at 482. The Court further recognized: "We are convinced that the circumstances relied upon by the State, considered together, did not furnish such substantial evidence of the guilt of the defendant as to justify submission of the case to the jury." Id. at 315, 140 S.E.2d at 482.

In State v. Woods, 273 S.C. 266, 266-67, 255 S.E.2d 680, 681 (1979), defendants were also convicted of housebreaking and larceny. The State presented evidence that, on the day Roger Crowe's residence had been broken into, "appellants parked their car along a nearby road, climbed a fence, and entered the woods in the direction of the Crowe residence." Id. at 267, 255 S.E.2d at 681. "Appellants walked along the street in front of the Crowe residence." Id. "Thereafter, appellants returned to their parked car, through the woods they had originally

entered, and drove away from the area.” Id. “Around 6:00 p.m. that evening the majority of the stolen property was located in a clump of undergrowth near the route used by appellants when returning to their parked car.” Id.

The Court reversed appellants’ convictions, explaining: “In the instant case there is evidence sufficient to raise a strong suspicion of appellants’ guilt.” Id. “However, we are not convinced that there is any substantial evidence which reasonably tends to prove their guilt or from which their guilt may be fairly and logically deduced.” Id. “Suspicion, however strong, does not suffice to sustain a conviction.” Id.

In State v. Mitchell, 341 S.C. 406, 408, 535 S.E.2d 126, 127 (2000), the defendant was convicted of first-degree burglary relating to a purported break-in at the residence of Hugh Mathis. Mathis discovered pieces of glass in a spare bedroom at his home, noticed a hole in the glass window, and further noticed that the window was unlocked. Id. He subsequently discovered that two guns were missing. Id. “There was no glass on the exterior of the house, but there was a screen that the officer was able to get an identifiable fingerprint.” Id. “The fingerprint matched that of the defendant.” Id.

The Court of Appeals reversed defendant’s convictions based on a lack of substantial circumstantial evidence, and the Supreme Court affirmed upon certiorari review, recognizing: “The evidence in this case is entirely circumstantial.” Id. at 409, 535 S.E.2d at 127. “The only evidence linking respondent to the burglary is the fingerprint.” Id. “The State did not present any evidence whether the screen was on the window at the time the window was broken or when the screen had been removed.” Id. “The fact that respondent’s fingerprint was on a screen that was propped up against the house does not prove entry where respondent had been in and around the victim’s house as least three times prior to the burglary.” Id.

More recently, this Court overturned a first-degree burglary conviction under circumstances substantially similar to the present case in State v. Lane, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013), reh'g denied (Nov. 22, 2013). In Lane, "[t]he State presented the following evidence to establish Lane committed first-degree burglary: (1) the testimony of [the victim's] neighbor that a burgundy/red 'Mitsubishi Gallant-type car' with a paper tag and primer painted panel was in [the victim's] driveway the day of the theft; (2) testimony that, at times, Lane drove a red/burgundy Mitsubishi Gallant belonging to his girlfriend that matched the description given by [the victim's] neighbor; (3) testimony that Lane drove the Gallant the day of the theft; (4) testimony that a folded piece of paper belonging to Lane was found in [the victim's] driveway that was not originally found by the police but found later outside; and (5) testimony that Lane did not want to talk to police officers the day after the theft and asked his girlfriend's mother to lie to officers concerning his whereabouts." Id.

This Court concluded: "Viewing the foregoing evidence in the light most favorable to the State, we find the State did not present substantial circumstantial evidence to reasonably prove Lane was the person who committed the burglary." Id. "At most, the evidence the State presented raises only a mere suspicion that Lane committed the crime." Id.

In South Carolina, it is well established that fingerprint evidence, even fingerprint evidence near the point of entry of the scene of a crime, is insufficient to establish the guilt of an accused beyond a reasonable doubt. See Gilliam, 245 S.C. at 315, 140 S.E.2d at 482 (fingerprints on broken glass at point of entry not enough); Mitchell, 341 S.C. at 409, 535 S.E.2d at 127 (fingerprint on window screen outside point of entry insufficient to support conviction); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) ("[R]espondent's fingerprint on the coffee cup lid tab establishes he was in the borrowed BMW on the same day the victim was last

seen alive. The fact that the BMW was found abandoned in Tennessee, the same state where respondent was located after his stay in Savannah, raises a suspicion of guilt but is not evidence that respondent killed Dr. Cox.”). Here, there is even stronger support for a directed verdict, as the only fingerprint evidence was located on items within a black trash bag behind a chicken wire fence well away from the point of entry.

Likewise, evidence of a defendant’s mere presence in the general area where a crime has been committed is insufficient to support a conviction on substantial circumstantial evidence. For instance, in State v. Walker, 349 S.C. 49, 54, 562 S.E.2d 313, 315 (2002), the State relied on a videotape of the defendant harvesting marijuana on a third party’s property to support a conviction for cultivating or attempting to cultivate marijuana on the land of another. The Court reversed the denial of a directed verdict motion, recognizing: “[A]part from his presence in the area, there is no evidence connecting Petitioner with the cultivation of the marijuana.” Id.; see also State v. Johnson, 291 S.C. 127, 129, 352 S.E.2d 480, 482 (1987) (“Mere presence at the scene of a crime is insufficient to convict one as a principal on the theory of aiding and abetting.”).²

Finally, Manigan’s proximity to the property taken from Vandahm after the crime is also insufficient to support Manigan’s conviction. For instance, in Odems, 395 S.C. at 588, 720 S.E.2d at 51, the Court recognized: “The State’s case against Petitioner relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars and the stolen goods; (2) Petitioner

² Here, there is no evidence placing Manigan at the scene of the crime. Holcombe testified she observed Manigan on his front porch across the street and spoke to Manigan several times on the day of the burglary, but never testified that she observed Manigan on or around Vandahm’s property. Manigan’s fingerprints were found in a black trash bag on the other side of Vandahm’s chicken wire fence, which Vandahm testified was impossible to climb.

fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him.”

The Court reversed the petitioner’s conviction, explaining: “The State’s key circumstantial evidence: (1) Petitioner’s location in the getaway car a relatively short time after the robbery; (2) Petitioner’s flight from law enforcement; and (3) Petitioner’s attempt to enlist the assistance of an uninvolved individual, do not point to his guilt for the crimes charged to the exclusion of every other reasonable hypothesis—namely, the notion that he did in fact join [one of the burglars] at a gas station following the crime.” *Id.* at 590-91, 720 S.E.2d at 52-53.

In short, the State’s evidence of Manigan’s guilty is entirely circumstantial. At most, it raises merely a suspicion of Manigan’s guilt. It does not rise to the level of substantial circumstantial evidence. Consequently, Manigan’s convictions should be reversed.

II. The trial judge erred in charging the jury that “the hand of one is the hand of all” where, as here, the investigating officer conceded there was no evidence tying the alleged accomplice to the crimes.

The trial judge erred in charging the jury that “the hand of one is the hand of all” where, as here, the investigating officer conceded that there was no evidence tying the alleged accomplice—Gary Manigan—to the crimes. This error also warrants reversal.

“The evidence presented at trial determines the charged jury instruction.” *State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002). “The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict.” *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). “It is error to give instructions which are calculated to confuse or mislead the jury.” *Id.* “If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury.” *Blurton*, 352 S.C. at 208, 573 S.E.2d at 804. “Only law applicable to the case should be charged to the jury.” *Id.* “Instructions that do not fit the facts of the case may serve only to confuse the jury.” *Id.*

Under the “hand of one is the hand of all” theory of accomplice liability, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). “To admit evidence under this theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown.” Id.

In the present case, Holcombe testified that she spoke with Michael and Gary Manigan while cutting her grass prior to the burglary. Gary Manigan later deposited Vandahm’s diamond earrings with a pawn shop in return for a loan. Nevertheless, the officer investigating Gary Manigan refused to serve warrants for burglary or larceny on Gary Manigan, explaining that there was no evidence tying Gary Manigan to the burglary.

Under these circumstances, the trial judge’s charge to the jury on “the hand of one is the hand of all” theory of accomplice liability served only to confuse the jury. No evidence supports this charge in light of the investigating officer’s conclusion that Gary Manigan was not involved in the burglary or larceny. Consequently, the trial judge should not have charged the jury on the “hand of one is the hand of all.” This legal error also warrants reversal.

Conclusion

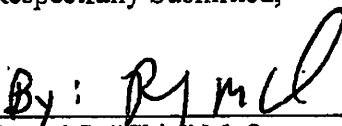
The trial judge committed reversible error in denying Manigan’s motions for a directed verdict. There was no direct or substantial circumstantial evidence establishing Manigan’s guilt. At most, the State’s evidence raised a mere suspicion of Manigan’s guilt.

In addition, the trial judge committed reversible error in charging the jury on the “hand of one is the hand of all” theory of accomplice liability. The investigating officer unequivocally testified that he determined not to serve warrants on Gary Manigan for burglary or larceny due to

the lack of evidence supporting such charges. Moreover, this unsupported charge served to confuse the jury, again warranting reversal.

Based on the foregoing, Manigan contends that his convictions should be REVERSED. In the alternative, if the Court determines only that the trial judge erred in charging the jury on accomplice liability, this Court should REVERSE the trial judge and remand for a new trial.

Respectfully Submitted, ~

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December 10, 2014
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2011-GS-42-3015, 2011-GS-42-3016

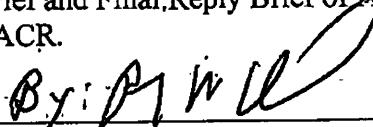
The State, ... Respondent,

v.

Michael Anderson Manigan Appellant.

CERTIFICATE OF COUNSEL

I hereby certify that the Final Brief and Final Reply Brief of Appellant Michael Anderson Manigan comply with Rule 211(b), SCACR.

By: 
Daniel S. ("Chip") McQueeney, Jr.

December 10, 2014
Charleston, South Carolina

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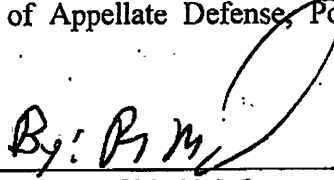
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v.

Michael Anderson Manigan, ... Appellant.

PROOF OF SERVICE

I certify that I have served the **Final Brief and Final Reply Brief** on Respondent The State of South Carolina, by depositing a copy in the United States Mail, postage prepaid, on December 10, 2014, addressed to its counsel of record, Julie Kate Keeney, Assistant Attorney General, at Post Office Box 11549, Columbia, SC 29211-1549 and to Robert M. Dudek, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211-1549.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorables J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-000253

THE STATE,

Respondent,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL**I.**

The trial judge properly denied Appellant's motion for a directed verdict because the State presented substantial circumstantial evidence from which the jury could fairly and logically find Appellant guilty of first-degree burglary and grand larceny.

II.

The trial judge properly gave the jury an instruction regarding "the hand of one is the hand of all" where there was evidence supporting that Appellant and a co-participant acted together to burglarize the victim's home and steal from her.

STATEMENT OF THE CASE

In June of 2011, a Spartanburg County Grand Jury indicted Appellant for first-degree burglary and grand larceny. On January 14, 2013, Appellant proceeded to trial. Richard H. Whelchel represented Appellant at trial, and Assistant Solicitor Timi Poulos represented the State at trial. On January 16, 2013, the jury found Appellant guilty of both charges. The Honorable J. Derham Cole sentenced Appellant to forty years of imprisonment for the first-degree burglary conviction and ten years of imprisonment for the grand larceny conviction.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On December 11, 2010, Appellant broke into his neighbor's, Elizabeth Ann Vandahm ("Victim"), home and stole various items. Earlier that day, Victim left her home in order to go to work. (R. p. 22.) When Victim left her home, everything was in normal condition. (R. p. 23.)

At trial, Anna Holcombe, Victim's neighbor, testified that she was doing yard work in her own yard and in Victim's yard on the day of the burglary. (R. p. 91; R. pp. 93-94.) According to Holcombe, Appellant and Gary Manigan, Appellant's nephew ("Nephew"), were watching Holcombe do yard work. (R. pp. 95-96.) Appellant and Nephew kept interrupting Holcombe's yard work by asking her how long she was planning on being outside. (R. p. 96.) Holcombe never had any dealings with Appellant. (R. p. 96.) Appellant sat on his porch for the majority of the time that Holcombe was outside. (R. p. 97.)

When Victim returned home from work, at approximately 10:30 p.m., she noticed glass on her kitchen floor. (R. p. 25.) She also saw a big piece of cement on her kitchen floor. (R. p. 25; R. p. 33.) Victim's computer monitor, printer, and beer were missing. (R. p. 26; R. p. 28; R. p. 35.) In addition, Victim's jewelry, including a pair of diamond earrings, were missing. (R. p. 26.) When Victim went to her bathroom, she saw glass and a brick on her bathroom floor. (R. p. 27; R. p. 32.) Her bathroom window was broken. (R. p. 27; R. p. 32.) Further, Victim noticed that someone tried to pry open her backdoor. (R. p. 27; R. p. 47.)

After the police arrived at her home, Victim found a trash bag, which contained her stolen computer monitor and printer, in her backyard behind her "hog wire fence." (R. pp. 36-37.) The trash bag appeared to be one of her trash bags. (R. p. 37.) According

to Officer Charles Hair, the hog wire fence was easily bendable; the fence would not have kept anyone from going in and out of the yard. (R. p. 108.) Officer Hair was able to lift fingerprints from the stolen computer monitor and printer. (R. pp. 112-113.)

While the police were still at Victim's home, Appellant came to her home. (R. p. 50.) Appellant asked Victim a lot of questions, including if she knew if the police had found anything yet. (R. p. 51.) Victim had never met Appellant before this occasion. (R. p. 52.)

Around 2:00 a.m., after everyone had left, Appellant came back to Victim's house and knocked on the door. (R. p. 53.) Appellant asked Victim for a beer and told her that "it was shame what had happened to [her] house and that he watches [her] and that he watches [her] house." (R. p. 53.)

According to Investigator Lou Mathis Jones, the palm print found on the stolen computer monitor and the fingerprint found on the stolen printer, which were found in a trash bag located in Victim's backyard, belonged to Appellant. (R. p. 133.)

According to Victim, prior to the burglary, Appellant had never been inside her home. (R. p. 50.) There was no reason for Appellant to have touched anything inside her home, including her computer monitor or printer. (R. pp. 49-50.) Further, there was no reason for Appellant to have ever been in her backyard. (R. p. 51.)

On December 13, 2011, two days after the burglary, Nephew sold Victim's stolen diamond earrings to a pawn shop for \$50. (R. pp. 156-157; R. p. 159.)

ARGUMENT

I.

The trial judge properly denied Appellant's motion for a directed verdict because the State presented substantial circumstantial evidence from which the jury could fairly and logically find Appellant guilty of first-degree burglary and grand larceny.

Appellant was indicted for was first-degree burglary¹ and grand larceny.² On appeal, Appellant only claims that the State failed to prove that Appellant was the one that committed the crimes. Appellant does not claim that the State failed to prove any of the actual elements of the crimes. However, the State presented direct and substantial circumstantial evidence of Appellant's guilt, which included the following: 1) Victim's home was broken into; 2) Victim's computer monitor, printer, beer, and jewelry were stolen; 3) Appellant and Nephew watched Victim's neighbor, Holcombe, do yard work for a long period of time; 4) Appellant and Nephew kept asking Holcombe when she would be finished doing her yard work; 5) on the night of the burglary, the police found a fingerprint on Victim's stolen printer, which was found in Victim's backyard; 6) the fingerprint matched Appellant's fingerprint; 7) on the night of the burglary, the police found a palm print on Victim's stolen computer monitor, which was found in Victim's backyard; 8) the palm print matched Appellant's palm print; 9) the stolen printer and monitor were found in a black trash bag that came from inside Victim's home; 10) prior

¹ A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . (2) the burglary is committed by a person with a prior record of two or more convictions for burglary. . . . S.C. Code Ann. § 16-11-311 (A)(2).

² Larceny is the felonious taking and carrying away of the goods of another against the owner's will or without the owner's consent. State v. Condrey, 349 S.C. 184, 191, 562 S.E.2d 320, 323 (Ct. App. 2002). If the value of the goods unlawfully taken and carried away during a theft exceeds \$2,000, the theft constitutes the felony offense of grand larceny. See S.C. Code Ann. § 16-13-30 ("Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny.").

to the burglary, Appellant had never been inside Victim's home; therefore, there was no reason for his fingerprint and palm print to be on her computer monitor or printer; 11) there was no reason for Appellant to be in her backyard; 12) around 2 a.m. on the night of the burglary, Appellant knocked on Victim's door, asked her for a beer, told her it was shame what happened to her house, and told her that he "watches [her] and that he watches [her] house"; 13) Nephew sold Victim's diamond earrings to a pawn shop two days after the burglary; and 14) Appellant had two prior burglary convictions.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). When an appellate court is reviewing the denial of a directed verdict motion in a case solely involving circumstantial evidence, this Court has instructed:

When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.**

Id. at 594, 606 S.E.2d at 478 (citations omitted) (emphasis in original).

Accordingly, an analysis of the trial judge's ruling hinges on whether all of the circumstantial evidence taken together was sufficient for the jury to reasonably infer the defendant's guilt for the crimes beyond a reasonable doubt. *Id.* at 595, 606 S.E.2d at 478. Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." *State v. Nix*, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

Analysis

In burglary and larceny cases, proof that the defendant was in recent possession of stolen property supports an inference that the defendant was the person who stole the property and creates a question of fact for the jury to resolve. See *State v. Lyles*, 211 S.C. 334, 339, 45 S.E.2d 181, 183 (1947); *State v. Cooper*, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983) (instructing that the inference to be drawn from recent possession of stolen property is an evidentiary fact as opposed to a rebuttable presumption and constitutes circumstantial evidence of guilt); *State v. Campbell*, 131 S.C. 357, ___, 127 S.E. 439, 440-41 (1925) (holding that the trial judge properly submitted the charges for housebreaking and grand larceny to the jury where the State presented evidence that the defendant was in possession of the stolen property and noting that in burglary and larceny cases, recent possession of stolen property is an evidentiary fact that the jury can use to find guilt); *McNamara v. Henkel*, 226 U.S. 520, 525 (1913) ("Possession of [recently stolen property] in these circumstances tended to show guilty participation in the burglary. This is but to accord the evidence, if unexplained, its natural probative force.").

In State v. Mitchell, our Supreme Court held that the defendant was entitled to a directed verdict for the burglary in the first degree charge. State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). When the victim arrived at his home, he noticed that his beer was missing from his refrigerator. Id. at 408, 535 S.E.2d at 127. Six days later, the victim went into his spare room and noticed glass on the floor. Id. When the victim pushed the blinds back, he noticed a hole in the glass of his window, and the window was unlocked. Id. According to the victim, the defendant had been inside victim's home on a couple of occasions. Id. The defendant helped unload some furniture into victim's home. Id. In addition, the defendant attended a social gathering at victim's home. Id. When the officer inspected the victim's home, he noticed that there was no glass on the exterior of the house, but there was a fingerprint on the screen. Id. The fingerprint matched the defendant's fingerprint. Id.

In finding that the defendant was entitled to a directed verdict for the burglary charge, our Supreme Court noted that the State failed to present any evidence on whether "the screen was on the window at the time the window was broken or when the screen had been removed." Id. at 409, 535 S.E.2d at 127. Further, "the fact that [the defendant's] fingerprint was on a screen that was propped up against the house does not prove entry **where [defendant] had been in and around the victim's house at least three time prior to the burglary.**" Id. (emphasis added).

In State v. Gilliam, our Supreme Court held that the defendant was entitled to a directed verdict for the housebreaking charge and grand larceny charge. State v. Gilliam, 245 S.C. 311, 315, 140 S.E.2d 480, 482 (1965). In reaching its conclusion, the Court noted:

The evidence casts no light on whether the pane of glass was broken and the window unlatched from the outside in the nighttime or from the inside during business hours. The custodian of the stamps did not testify and no foundation was laid by evidence for an inference of theft from the fact that they were 'missing' from his desk. The unexplained presence of defendant's fingerprint on a fragment of the broken pane outside the building **might inculcate him** if the evidence established that the building was feloniously entered and by this means, which, as has been seen, it fails to do.

Id., 245 S.C. at 315, 140 S.E.2d at 482 (emphasis added).

In this case, the trial judge properly denied Appellant's directed verdict motion because substantial evidence was presented establishing Appellant's guilt for each element of burglary in the first degree and grand larceny. Specifically, the following evidence was presented: 1) Victim's home was broken into; 2) Victim's computer monitor, printer, beer, and jewelry were stolen; 3) Appellant and Nephew watched Victim's neighbor, Holcombe, do yard work for a long period of time; 4) Appellant and Nephew kept asking Holcombe when she would be finished doing her yard work; 5) on the night of the burglary, the police found a fingerprint on Victim's stolen printer, which was found in Victim's backyard; 6) the fingerprint matched Appellant's fingerprint; 7) on the night of the burglary, the police found a palm print on Victim's stolen computer monitor, which was found in Victim's backyard; 8) the palm print matched Appellant's palm print; 9) the stolen printer and monitor were found in a black trash bag that came from inside Victim's home; 10) prior to the burglary, Appellant had never been inside Victim's home; therefore, there was no reason for his fingerprint and palm print to be on her computer monitor or printer; 11) there was no reason for Appellant to be in her backyard; 12) around 2 a.m. on the night of the burglary, Appellant knocked on Victim's

door, asked her for a beer, told her it was shame what happened to her house, and told her that he "watches [her] and that he watches [her] house"; 13) Nephew sold Victim's diamond earrings to a pawn shop two days after the burglary; and 14) Appellant had two prior burglary convictions.

Further, this case is distinguishable from Mitchell. Unlike the defendant in Mitchell, Appellant had never been into Victim's home prior to the burglary. Further, the fingerprint found in Mitchell was on a screen that was propped up against the exterior of the house. Mitchell, 341 S.C. at 408, 535 S.E.2d at 127. Here, Appellant's fingerprint was found on the stolen goods that came from inside the Victim's home. Moreover, the police found the fingerprint on the stolen goods on the same night of the burglary. Thus, the State presented evidence that Appellant was in recent possession of the stolen property. See Campbell, 131 S.C. at 357, 127 S.E. at 440-41 (noting that in burglary and larceny cases, recent possession of stolen property is an evidentiary fact that the jury can use to find guilt); State v. Miller, 287 S.C. 280, 284, 337 S.E.2d 883, 886 (1985) (finding Miller's recent possession of stolen property was "competent circumstantial evidence of larceny" and further finding the fact that Miller sold the stolen property for a fraction of its actual value supported the jury's guilty verdict).

In summary, the State presented substantial circumstantial evidence of Appellant's guilt. Accordingly, Appellant's convictions and sentences should be affirmed.

II.

The trial judge properly gave the jury an instruction regarding “the hand of one is the hand of all” where there was evidence supporting that Appellant and a co-participant acted together to burglarize the victim’s home and steal from her.

The trial judge did not err in giving the “hand of one is the hand of all” charge because there was evidence in the record supporting the charge.

Analysis

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). The trial judge is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). “Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error.” State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

Under “the hand of one is the hand of all” theory, one who joins with another to accomplish an illegal purpose is criminally liable for everything done by his accomplice incidental to the execution of the common plan. State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). “A formally expressed agreement is not necessary to establish the conspiracy. It may be shown by circumstantial evidence and the conduct of the parties.” Condrey, 349 S.C. at 194, 562 S.E.2d at 325.

In this case, the State presented evidence that Appellant and Nephew were in close proximity of Victim’s home prior to the burglary. Both Appellant and Nephew kept bothering Victim’s neighbor, Holcombe, regarding when Holcombe was going to be finished with her yard work. Appellant and Nephew’s behavior supports the inference that they were casing Victim’s home prior to the burglary.

Further, the State presented evidence that two of Victim's windows were broken, and the objects used to break the windows were found inside the Victim's home. Additionally, someone attempted to pry Victim's backdoor. The fact that there were multiple windows broken and someone tried to pry the backdoor supports an inference that there was more than one person involved in the burglary. Moreover, the police found Appellant's fingerprint and palm print on Victim's stolen property, which according to Victim, he had no right to touch considering he had never been inside her home prior to the burglary.

Finally, the fact Nephew sold Victim's stolen earrings supports an inference that Nephew was also involved in the burglary. Appellant's fingerprint and palm print on the stolen goods was circumstantial evidence that he was also involved in the burglary. See State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) (the State need not show a "formal expressed agreement" to prove that parties agreed and combined to achieve an illegal purpose, but may prove the agreement "by circumstantial evidence and the conduct of the parties"). Based upon their recent possession of stolen goods, the jury was entitled to infer that both men stole the goods. See, e.g., Cooper, 279 S.C. at 302, 306 S.E.2d at 599 (when one is found in possession of recently stolen property, the jury may infer circumstantially that he broke in and stole the property); see also State v. Irvin, 270 S.C. 539, 542-43, 243 S.E.2d 195, 196-97 (1978) (the trial judge properly denied a directed verdict as to both defendants where the State established the occurrence of a housebreaking and larceny and relied upon the defendants' possession of recently stolen items and the permissible inference that the defendants were the thieves). Thus, if the jury concluded that both men stole the goods, they could reasonably infer that the men stole those goods pursuant to a common plan.

The jurors were entitled to an instruction on “the hand of one is the hand of all” so that it would be clear that, even if the State could not definitively prove which one of the two men physically entered the victim’s home and removed his property, Appellant was still guilty if they concluded that he and Nephew acted pursuant to, and carried out, a common plan to burglarize and rob the victim. See Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011) (holding that a charge on the hand of one is the hand of all is appropriate where the evidence is equivocal as to which of several persons acting in concert physically committed the crime). Therefore, since there was evidence in the record from which the jury could infer that Appellant and Nephew acted together to burglarize Victim’s home and steal from her, the trial judge did not err in providing the jury with an instruction on “the hand of one is the hand of all.” See State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (if *any evidence* exists to support a charge, it should be given, and the trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence).

Further, the trial judge charged the jury on third party guilt. (R. pp. 220-221). Thus, Appellant suffered no prejudice from the hand of one is the hand of all charge. See State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) (noting that appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result).

Accordingly, Appellant’s convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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December 8, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-000253

THE STATE,

Respondent,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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December 8, 2014

STATE OF SOUTH CAROLINA

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Appeal from Spartanburg County
 Honorable J. Derham Cole, Circuit Court Judge
 Appellate Case No. 2013-000253

THE STATE,

Respondent,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
 This 8th day of December, 2014.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2011-GS-42-3015, 2011-GS-42-3016

The State, ...Respondent,

v.

Michael Anderson Manigan.....Appellant.

Appellate Case No. 2013-000253

APPELLANT MICHAEL ANDERSON MANIGAN'S FINAL REPLY BRIEF

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STATEMENT OF THE ISSUES IN REPLY

I. Is the State's reliance on cases involving the recent possession of stolen property misplaced where, as here, Manigan explained the circumstances under which he found the trash bag; where, as here, any member of the general public had open and unimpeded access to the trash bag; and where, as here, the surrounding circumstances fail to establish substantial circumstantial evidence of guilt beyond a reasonable doubt?

II. Does the State fail to establish that the trial judge's charge on the "hand of one is the hand of all" is supported by the evidence?

STATEMENT OF FACTS IN REPLY

As a preliminary matter, the State recites several purported facts which do not fully reflect the cited testimony. For instance, the State asserts that "Appellant and Nephew kept interrupting Holcombe's yard work by asking her *how long she was planning on being outside.*" State's Br. p.3 (emphasis added). Nevertheless, Holcombe's *actual* testimony reflects that Appellant Michael Manigan ("Manigan") asked about how much grass Holcombe was planning to cut, not how long she was *planning on being outside*:

Q. Did he [Michael Manigan] say anything to you?

A. He spoke to me several times, um, asking about how many yards I was gonna cut that day and cutting grass, yard work.

Q. Was he asking general questions about yard work or was he asking questions, um, can you be a little bit more specific into what questions he was asking[?]

A. Um, about how many yards I was gonna cut and how long it was gonna take, um, because I was cutting it, I was cutting so much grass and I kept getting interrupted and kept havin' to turn my lawn mower off so —

R. p.96:6-21. Likewise, while Holcombe testified that she never had any *dealings* with Manigan, she immediately afterward confirmed that Manigan was her friend and neighbor:

Q. Had you had any dealings with the defendant Michael Manigan before?

A. No.

Q. Did you—were you friends with him?

A. Um, I would say neighbors and friends—

Q. Did—

A. —yes.

R. pp.96:22-97:3.

Finally, while there is evidence supporting the State's assertion that the black trash bag containing Vandahm's computer monitor and printer was found in Vandahm's back yard, the testimony was also clear that the trash bag was in a portion of Vandahm's backyard which remained unenclosed. **R. p.36:8-22, p.37:6-13, pp.38:21-39:4.** There was no way to distinguish this area from the adjacent, vacant lot. In this respect, Vandahm confirmed that this area contained vines, dead trees, tree stumps, and trash. **R. p.52:1-16.** She also believed that someone had used the area to dump trash and other stuff some time ago. **R. p.52:10-16.** Holcombe similarly explained that the area included "a lot of trash and so forth . . . nobody really lived in that area so it was, um, thorns and trash, limbs and oak trees, that's basically all that it is." **R. p.92:18-22.**

REPLY ARGUMENT

I. The State's reliance on cases involving the recent possession of stolen property is misplaced where, as here, Manigan explained the circumstances under which he found the trash bag; where, as here, any member of the general public had open and unimpeded access to the trash bag; and where, as here, the surrounding circumstances fail to establish substantial circumstantial evidence of guilt beyond a reasonable doubt.

The State contends that Manigan's fingerprints on property belonging to Vandahm within a trash bag located in the unenclosed portion of Vandahm's backyard, adjacent to a vacant lot, provide substantial circumstantial evidence of Manigan's guilt. This contention mischaracterizes the applicable law, which establishes that all surrounding circumstances must be considered in determining whether mere possession creates sufficient evidence to establish guilt beyond a reasonable doubt.

Here, Manigan offered a reasonable explanation for how his fingerprints came to be found on the goods; the trash bag containing the goods lay in an area full of trash and other debris to which the public generally had access; and other circumstances fail to establish Manigan's guilt beyond a reasonable doubt. Accordingly, Manigan's convictions should be reversed.

"The principle has long been recognized in this State that, where one is found in possession of recently stolen property, a rebuttable inference or presumption of fact arises that he is the thief." State v. Dewitt, 254 S.C. 527, 530, 176 S.E.2d 143, 145 (1970). "The foregoing inference is one of fact and not of law." Id. "It is evidentiary in nature and not conclusive." Id. "Upon the proof of possession of recently stolen goods, the law permits the inference of guilt unless the jury finds a reasonable explanation of such possession from all of the evidence presented at the trial." Id. "[T]his presumption is to be considered by the jury merely as an evidential fact, *along with the other evidence in the case*, in determining whether the State has carried the burden of satisfying the jury beyond a reasonable doubt of the defendant's guilt." Id. (citations and internal quotation marks omitted) (emphasis added); see also State v. Hilliard, 129 S.C. 452, 125 S.E. 132 (1924) ("The inference to be drawn from possession depends upon the circumstances of each case.").

The State ignores subsequent case law explaining that mere possession, even combined with the presence of a witness at the crime scene and a familial connection to the principal perpetrator, is not always sufficient to establish substantial circumstantial evidence of a crime.

For instance, in State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001), the Supreme Court explained, in the context of an arson case, that the "circumstantial evidence relied upon by the State is not substantial and merely raises a suspicion of guilt." This evidence

included the defendant's—Lollis'—placement of valuables in a storage room which was damaged by the fire and Lollis' possession of the storage key to such room on the day of the fire.

Id.

The Court reversed the trial judge's refusal to direct a verdict, explaining: "Even viewing the circumstantial evidence in the light most favorable to the State, the evidence presented does not reasonably tend to prove Lollis' guilt." Id. "*Lollis presented a plausible explanation for placing valuables in the storage room on the day of the fire—he was trying to protect them from drywall dust as he remodeled his home.*" Id. (emphasis added). "Lollis' mere possession of a storage key is not substantial circumstantial evidence he asked, aided, or procured Burgess to burn the dwelling." Id. "*The possession of the key only indicates Lollis had access to the storage room on the day of the fire, it in no way demonstrates he aided Burgess with the fire.*" Id. (emphasis added)

"Lollis fully admits he was visiting the storage room when the fire occurred that morning." Id. "However, placing valuables in a storage room, without any other evidence linking him to the fire, *does not indicate he aided his wife in destroying their home, especially when he offered a valid reason for placing the items in storage, and Burgess confessed she acted alone.*" Id. (emphasis added). "Therefore, the possession of the key does nothing more than arouse suspicion of Lollis' guilt, and is an improper basis to deny a motion for directed verdict." Id.¹

In State v. Bostick, 392 S.C. 134, 141-42, 708 S.E.2d 774, 778 (2011), the Supreme Court similarly rejected an assertion that the defendant's—Bostick's—purported possession of stolen items supplied substantial circumstantial evidence of guilt—this time in a murder case. The Court explained: "[W]e believe the State's evidence here raised only a suspicion of guilt by

¹ Likewise, the Court's decision in Lollis rebuts the State's assertion that Manigan's relationship to Gary Manigan adds sufficient circumstantial evidence to support a guilty verdict.

Bostick.” Id. “No direct evidence linked Bostick to the crime scene or the items found in the burn pile.” Id. “Moreover, there was no testimony tending to establish that Bostick had control over the burn pile.” Id.

The Court continued: “When the State closed its case against Bostick, the following pieces of circumstantial evidence of his guilt had been presented: (1) [The victim’s] car keys, calculator, and other items from her home were found in the Bostick family’s burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick’s mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick’s jeans excluded about ninety-nine percent of the population, the blood could not be matched to [the victim’s] DNA.” Id. “The evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime.” Id. “Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt.” Id.

Furthermore, in State v. Odems, 395 S.C. 582, 588, 720 S.E.2d 48, 51 (2011), the Supreme Court again reversed the denial of directed verdict motion—this time in a case charging the defendant—Odems—with burglary. The Court explained: “The State’s case against Petitioner relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars *and the stolen goods*; (2) Petitioner fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him.” Id. (emphasis added).

“Even when viewed in the light most favorable to the State, the circumstantial evidence presented does not reasonably tend to prove Petitioner’s guilt.” Id. “The sole eyewitness in

Petitioner's case described only two men at the scene." *Id.* "A forensic investigator testified that she collected twelve sets of fingerprints in the car and from the stolen goods." *Id.* "These sets included prints from both Dawkins and Bell, but not Petitioner." *Id.* "Dawkins testified during the State's case-in-chief and *explained how Petitioner ended up in the car with the stolen goods even though he did not participate in the burglary*" *Id.* (emphasis added).

In the present proceeding, the evidence purportedly tying Manigan to the burglary and grand larceny included: (1) his conversation with Holcombe prior to the burglary; (2) Gary Manigan's conversation with Holcombe prior to the burglary; (3) Manigan's fingerprints on the goods found within a black trash bag lying in the unenclosed area behind Vandahm's house, which contained trash and other debris; (4) Manigan's conversations with Vandahm after the burglary; and (5) Gary Manigan's possession of Vandahm's stolen diamond earrings.

As in Lollis, Bostick, and Odems, this evidence is insufficient to support a guilty verdict, especially where, as here Manigan articulated a plausible, uncontroverted reason for his fingerprints being found on the goods within the trash bag. Likewise, the fact that the trash bag here was accessible to the public generally also warrants a reversal of the convictions. *Cf. Walton v. State*, 404 So. 2d 776, 777 (Fla. Dist. Ct. App. 1981) ("The inference of guilty taking that accompanies the possession of recently stolen goods is limited by the further requirement that possession be personal, that it involve a distinct and conscious assertion of possession by the accused, and that possession must be exclusive."); Castle v. Com., 83 S.E.2d 360, 364 (Va. 1954) ("The mere fact that stolen articles are found on the premises of a man of a family or in a place to which others have free access, without a showing of his actual conscious possession thereof, discloses no more than a *prima facie* constructive possession which alone is not sufficient to justify an inference of guilt."); People v. Ridley, 376 N.E.2d 43, 45 (Ill. Ct. App.

1978) ("Constructive possession is enough to convict for theft . . . , but if the place where the goods were found was equally accessible to others who were capable of having committed the theft, an inference of defendant's guilt cannot be made from that fact alone.").

Finally, even if Manigan's fingerprints established exclusive possession, the other surrounding circumstances fail to establish Manigan's guilt beyond a reasonable doubt. There is no evidence tying Manigan to the crime scene during the time in which the burglary occurred. As a resident of the neighborhood, it can hardly be said that his presence nearby constitutes evidence of guilt. Likewise, there is no evidence of any agreement with Gary Manigan to commit grand larceny or burglary, as "the existence of a familial relationship" is insufficient as a matter of law. See Odems, 395 S.C. at 588, note 3, 720 S.E.2d at 51. Finally, there is no evidence that Manigan's presence at Vandahm's house after the burglary distinguishes him from every other neighbor whom Vandahm testified visited her at the time.

Under these circumstances, the trial judge erred in refusing to grant a directed verdict in favor of Manigan for first degree burglary and grand larceny.

II. The State fails to establish that the trial judge's charge on the "hand of one is the hand of all" is supported by the evidence.

Both Lollis and Odems support Manigan's position that his mere familial relationship to the purported principal of a particular crime provides insufficient evidence of a criminal conspiracy or accomplice liability. See State v. Lollis, 343 S.C. 580, 585, 541 S.E.2d 254, 257 (2001) ("[P]lacing valuables in a storage room, without any other evidence linking him to the fire, does not indicate he aided his wife in destroying their home, especially when he offered a valid reason for placing the items in storage, and Burgess confessed she acted alone. Therefore, the possession of the key does nothing more than arouse suspicion of Lollis' guilt, and is an improper basis to deny a motion for directed verdict."); State v. Odems, 395 S.C. 582, 588, 720

S.E.2d 48, 51 (2011) (“[T]he State failed to present evidence of any agreement or collusion between Petitioner, Dawkins, and Bell. The existence of a familial relationship between the three individuals does not affect the validity of Dawkins’s testimony or the analysis of the State’s circumstantial evidence.”).

This is especially the case where, as here, the investigating officer unequivocally testified that there was no evidence linking Gary Manigan to the first-degree burglary or the grand larceny. Trial Tr. pp.238:16-239:19. The State relied on this officer’s testimony in an attempt to show that Manigan, not his nephew, committed the crimes: “The only evidence that we have in this case links Michael Manigan, his fingerprints were found at the scene, excuse me, on property in the victim’s backyard in a closed trashbag.” Trial Tr. p.68:22-24. “Gary Manigan’s prints were not found anywhere, they weren’t even found on the stolen property, Your Honor.” Trial Tr. pp.68:24-69:1. “There’s absolutely no other evidence that ties Gary Manigan to this case” Trial Tr. p.69:1-2.

Here, there is no evidence of criminal conspiracy or accomplice liability sufficient to charge the jury on the “hand of one is the hand of all.” Under these circumstances, this charge served only to confuse the jury, which should have considered only whether substantial circumstantial evidence supported *Michael* Manigan’s convictions.

Conclusion

Based on the foregoing, Manigan contends that the trial judge committed reversible error in denying his motions for a directed verdict and charging the jury on the “hand of one is the hand of all.” Consequently, Manigan’s convictions should be REVERSED.

In the alternative, if the Court determines only that the trial judge erred in charging the jury on accomplice liability, this Court should REVERSE the trial judge and remand for a new

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
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SC Court of Appeals

Case No. 2011-GS-42-3015, 2011-GS-42-3016

The State, ...Respondent,

v.

Michael Anderson Manigan.....Appellant.

CERTIFICATE OF COUNSEL

I hereby certify that the Final Brief and Final Reply Brief of Appellant Michael Anderson Manigan comply with Rule 211(b), SCACR.

By: [Signature]
Daniel S. ("Chip") McQueeney, Jr.

December 10, 2014
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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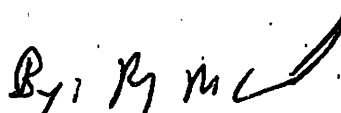
The State, ...Respondent;

v.

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PROOF OF SERVICE

I certify that I have served the **Final Brief and Final Reply Brief** on Respondent The State of South Carolina, by depositing a copy in the United States Mail, postage prepaid, on December 10, 2014, addressed to its counsel of record, Julie Kate Keeney, Assistant Attorney General, at Post Office Box 11549, Columbia, SC 29211-1549 and to Robert M. Dudek, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211-1549.



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Michael Anderson Manigan, Appellant.

Appellate Case No. 2013-000253

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2016-UP-022
Heard September 15, 2015 – Filed January 20, 2016

AFFIRMED

Daniel Simmons McQueeney, Jr., of Mount Pleasant, and
Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Julie Kate Keeney, Assistant Attorney
General Mary Williams Leddon, and Staff Attorney
Susannah Rawl Cole, all of Columbia, for Respondent.

PER CURIAM: Michael Manigan appeals his convictions for first degree
burglary and grand larceny, arguing the trial court erred in (1) denying his directed

verdict motion because the State failed to submit any direct or substantial circumstantial evidence tending to prove his guilt and (2) charging the jury that "the hand of one is the hand of all" because the investigating officer conceded there was no evidence tying the alleged accomplice to the crimes. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

(1) As to whether the trial court erred in denying his directed verdict motion: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) (stating the trial court is concerned with the existence or nonexistence of evidence, not its weight, when ruling on a motion for a directed verdict); *State v. Brannon*, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010) ("A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged."); *State v. Lynch*, 412 S.C. 156, 171, 771 S.E.2d 346, 354 (Ct. App. 2015) (providing on appeal from the denial of a directed verdict, this court must view the evidence in the light most favorable to the State); *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) ("[I]f there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); *State v. Lane*, 410 S.C. 505, 506-07, 765 S.E.2d 557, 558 (2014) (reversing this court's holding that the State failed to present substantial circumstantial evidence to reasonably prove Lane was the person who committed the burglary for which he was charged, but rather the evidence presented by the State raised only a mere suspicion that Lane committed the burglary, and holding the State presented substantial circumstantial evidence of Lane's guilt, and the case was properly submitted to the jury); *State v. Larmand*, Op. 27562 (S.C. Sup. Ct. filed Dec. 23, 2015) (Shearouse Adv. Sh. No. 50 at 19) ("[W]e must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer Respondent's guilt."); *id.* (holding that given the deferential standard of review, the State presented sufficient circumstantial evidence of premeditation and a common plan or scheme such that the trial judge properly denied Respondent's motion for a directed verdict).

(2) As to whether the trial court erred in charging the jury that "the hand of one is the hand of all": *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004) (stating the trial court is required to charge only the current and correct law of South Carolina); *id.* at 665, 594 S.E.2d at 472-73 ("A jury charge is correct if it contains the correct definition of the law when read as a whole."); *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003) ("In reviewing jury charges for error, [this court] must consider the [trial] court's jury charge as a whole in light of the evidence and issues presented at trial."); *id.* at 319, 577 S.E.2d

at 464 ("A jury charge which is substantially correct and covers the law does not require reversal."); *id.* at 318, 577 S.E.2d at 463-64 ("If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error."); *State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) ("This Court will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion."); *Adkins*, 353 S.C. at 319, 577 S.E.2d at 464 ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant."); *State v. Langley*, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999) (holding under "the hand of one [is] the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose"); *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) ("In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties."); *State v. Dewitt*, 254 S.C. 527, 530, 176 S.E.2d 143, 145 (1970) ("The presumption or inference of guilt from possession of recently stolen goods is simply an evidentiary fact to be taken into consideration by the jury, along with the other evidence in the case, and to be given such weight as the jury determines it should receive.").

AFFIRMED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2011-GS-42-3015, 2011-GS-42-3016

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SC Court of Appeals

The State, ...Respondent,

v.

Michael Anderson Manigan, ...Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Michael Anderson Manigan ("Manigan") hereby petitions for a rehearing of this Court's unpublished opinion affirming his convictions and sentences on charges of first-degree burglary and grand larceny. See State v. Manigan, Op. No. 2016-UP-022 (Ct. App. filed Jan. 20, 2016).

"In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument." Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). "In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." Rule 220(b), SCACR.

As a preliminary matter, Manigan asserts that this Court overlooked the factually-intensive nature of Manigan's contention that the trial judge erred in denying his directed verdict

motion because there was no direct or substantial circumstantial evidence supporting the charges. Furthermore, Manigan avers that this Court misapprehended Manigan's argument that the trial judge erred in charging the jury on accomplice liability where, as here, no evidence supported the charge.

For each of these reasons, Manigan respectfully requests that this Court grant rehearing and reverse his convictions and sentences.

Factual and Procedural Background

On June 17, 2011, Manigan was indicted for first-degree burglary and grand larceny arising from a break-in at the home of Elizabeth Vandahm in Spartanburg, South Carolina. **R.pp.1-6.** At trial, the State relied solely on circumstantial evidence, namely: (1) Manigan's prints on Vandahm's computer monitor and printer within a black trash bag found in an area containing trash and other stuff on the other side of Vandahm's backyard fence; (2) Manigan's interactions with a neighbor prior to the burglary; and (3) Manigan's interactions with Vandahm after the burglary. After the State rested, Manigan moved for a directed verdict based on the lack of any direct or substantial circumstantial evidence tying Manigan to the crimes. **R.pp.149:1-154:17.** Manigan renewed the motion at the close of the evidence, and the trial judge denied both motions. **R.pp.194:13-195:11; pp.194:13-195:11.**

While the State's indictments did not charge Manigan with accomplice liability and while an investigating officer testified that there was no evidence tying Gary Manigan, a relative, to the crimes, the State also requested and received a jury charge on "the hand of one is the hand of all" over Manigan's objection. **R.pp.195:13-196:9; pp.228:20-229:18.** The jury found Manigan guilty, and the trial judge sentenced Manigan to forty years for first-degree burglary and ten years for grand larceny. **R. p.239:1-12, pp.244:25-245:10.**

On appeal, Manigan argued that the trial judge erred in denying his directed verdict motion because there was no direct or substantial circumstantial evidence identifying him as the perpetrator. In addition, Manigan asserted on appeal that the trial judge committed an error of law in charging the jury on the “hand of one is the hand of all” because there was no evidence supporting the charge. On January 20, 2016, this Court affirmed the trial judge pursuant to an unpublished decision.

ARGUMENT

I. This Court overlooked Manigan’s argument that the trial judge erred in denying Manigan’s directed verdict motion based on a lack of any direct or substantial circumstantial evidence tending to prove beyond reasonable doubt that Manigan committed the charged crimes.

The analysis of whether the State produced substantial circumstantial evidence supporting a criminal conviction often turns on the facts of each case: “We recognize in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive; therefore, the holdings in [two previous appellate decisions] are limited to their peculiar facts.” State v. Bennett, Op. No. 27600 (S.C. Sup. Ct. filed Jan. 6, 2016) (Shearouse Adv. Sh. No. 1 at 16, 20 note 1). Nevertheless, this Court’s unpublished decision accurately recites the legal standards applicable to the Court’s analysis, but omits any application of the law to the specific facts involved in the present case. Under these circumstances, rehearing should be granted.

Manigan respectfully contends that a factually-intensive review compels a directed verdict with respect to the State’s charges against him. In Bennett, the Supreme Court of South Carolina clarified “the framework of a court’s inquiry in determining whether substantial circumstantial evidence exists to require the denial of a directed verdict.” Id. at 18. “On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State.” Id. “The Court’s review is limited to considering the

existence or nonexistence of evidence, not its weight.” Id.

“When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because *suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof.*” Id. (emphasis added). “Nevertheless, a court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” Id.

“Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.” Id. at 19. “This objective test is founded upon reasonableness.” Id. “Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” Id.

Therefore, the dispositive issue in this appeal is whether the State produced sufficient evidence to allow a reasonable juror to conclude beyond a reasonable doubt that Manigan committed the crimes charged or whether the State failed to produce evidence rising above a mere suspicion of guilt. See State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (“This Court has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.”); State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984) (“By bringing the case, the State assumes the burden of proving that the accused was at the scene of the crime when it happened and that he committed the criminal act.”).

Manigan contends that several appellate decisions in South Carolina compel a directed verdict under factual circumstances which are similar to and sometimes stronger than the facts

relied upon by the State to convict Manigan. See, e.g., State v. Gilliam, 245 S.C. 311, 315, 140 S.E.2d 480, 482 (1965) (“We are convinced that the circumstances relied upon by the State, considered together, did not furnish such substantial evidence of the guilt of the defendant as to justify submission of the case to the jury.”); State v. Woods, 273 S.C. 266, 267, 255 S.E.2d 680, 681 (1979) (“In the instant case there is evidence sufficient to raise a strong suspicion of appellants’ guilt. However, we are not convinced that there is any substantial evidence which reasonably tends to prove their guilt or from which their guilt may be fairly and logically deduced. Suspicion, however strong, does not suffice to sustain a conviction.”); State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (“The fact that respondent’s fingerprint was on a screen that was propped up against the house does not prove entry where respondent had been in and around the victim’s house as least three times prior to the burglary.”); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) (evidence creates only suspicion of guilt); State v. Walker, 349 S.C. 49, 54, 562 S.E.2d 313, 315 (2002) (“[A]part from his presence in the area, there is no evidence connecting Petitioner with the cultivation of the marijuana.”); State v. Johnson, 291 S.C. 127, 129, 352 S.E.2d 480, 482 (1987) (“Mere presence at the scene of a crime is insufficient to convict one as a principal on the theory of aiding and abetting.”).

On the other hand, the cases relied upon by this Court in its unpublished decision include far more factual support of the guilt of the accused than the evidence relied upon by the State in the present case. See State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) (emphasizing the following evidence supported the *corpus delicti* of murder and the defendant’s involvement in the crime: (1) victim’s active social life, and interactions and communications with friends, neighbors and family; (2) victim had not been seen or heard from by anyone since August 6, 1998; (3) victim’s change in attitude once defendant began living with her; (4) testimony that

victim planned to ask defendant to move out; (5) defendant's handling of his vehicle on the day victim disappeared, which was consistent with disposal of a body; (6) items missing from victim's apartment after her disappearance; (7) defendant's use of victim's property soon after she disappeared; (8) inconsistencies between defendant's statements and other evidence; and (9) defendant's apparent personal injuries shortly after victim's disappearance); State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015) (conviction supported by defendant's use of victim's property after the crime, testimony that defendant was last person to see victim alive, defendant's inconsistent statements, and defendant's actions in fleeing the police); State v. Lane, 410 S.C. 505, 765 S.E.2d 557 (2014) (evidence sufficient to withstand directed verdict where defendant acknowledged driving vehicle associated with crime and where piece of paper issued to defendant from local unemployment office found at crime scene).

In this case, Manigan did not flee police, but instead offered his sympathy to Vandahm while the police were conducting their investigation. There was no testimony tying Manigan to a getaway vehicle or to the Vandahm residence where the break-in occurred. Manigan did not make inconsistent statements to the police or other witnesses. There is no evidence Manigan exercised control over Vandahm's property after the break-in—the stolen items were not found in his possession or on premises under his control. While Manigan's prints were located on computer equipment belonging to Vandahm, this equipment was found in a trash bag in an area with trash and other debris outside of the fence enclosing most of Vandahm's back yard.¹

While the State also contends that Manigan's conduct prior to and after the break-in was

¹ Viewed in a light most favorable to the State, the testimony established that the trash bag was located within Vandahm's back yard; however, it is undisputed that the trash bag lay in the small portion of her back yard which was outside the fence. Objectively, it is undisputed that there was no discernable difference between this area and the vacant lot lying behind Vandahm's house, which contained trash and other debris.

suspicious, appellate courts have consistently recognized that a mere suspicion is insufficient to allow a reasonable juror to find a defendant guilty beyond a reasonable doubt. See Odems, 395 S.C. at 590, 720 S.E.2d at 52 (“Petitioner’s overall actions may appear suspicious, but mere suspicion is insufficient to support a guilty verdict.”). Likewise, the only evidence tying Manigan to Gary Manigan, who was in possession of Vandahm’s earrings after the crime, was a neighbor’s testimony that she interacted with both Gary and Michael Manigan a few hours prior to the break-in.

As an additional matter, this Court relies on State v. Larmand, Op. No. 27562 (S.C. Sup. Ct. filed Aug. 12, 2015) to affirm Manigan’s convictions. In Larmand, unlike the present case, the State produced *competing testimony* regarding defendant’s explanations for the evidence against him: “Although Respondent presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties’ *competing explanations*.” Id. (emphasis added). Furthermore, while the Supreme Court of South Carolina in Larmand warned against citing *primarily* to the testimony of the defendant in reversing the decision to deny a directed verdict, the Larmand decision does not purport to require a defendant’s testimony to be disregarded entirely: “While the court of appeals should have considered the evidence in the light most favorable to the State, it instead *primarily* cited to Respondent’s and Lemire’s testimony, including their explanations for their actions.” Id. (emphasis added). “In doing so, the court of appeals incorrectly *minimized the circumstantial evidence the State presented regarding premeditation and an agreement between Respondent and Lemire*.” Id. (emphasis added).

Thus, Larmand applies the same standard articulated by the Court in Bennett: The appellate court should view the evidence in a light most favorable to the State. Nothing in Larmand or Bennett requires an appellate court to ignore undisputed testimony. Here, Manigan’s

explanation was undisputed. There was no competing testimony.

Put simply, the State's evidence of Manigan's guilt is entirely circumstantial. At most, it raises a mere suspicion of Manigan's guilt. It does not rise to the level of substantial circumstantial evidence as required under Bennett. Consequently, this Court should grant rehearing and reverse Manigan's convictions.

II. This Court misapprehended Manigan's argument that the trial judge erred in charging the jury that "the hand of one is the hand of all." No evidence supported such a charge.

"The evidence presented at trial determines the charged jury instruction." State v. Blurton, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002). "The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). "It is error to give instructions which are calculated to confuse or mislead the jury." Id. "If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury." Blurton, 352 S.C. at 208, 573 S.E.2d at 804. "Only law applicable to the case should be charged to the jury." Id. "Instructions that do not fit the facts of the case may serve only to confuse the jury." Id.

Under the "hand of one is the hand of all" theory of accomplice liability, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). "To admit evidence under this theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown." Id.

Here, a neighbor testified that she spoke with Manigan and his relative, Gary Manigan, while cutting her grass prior to the burglary. Gary Manigan later deposited Vandahm's diamond earrings with a pawn shop in return for a loan. Nevertheless, the officer investigating Gary

Manigan refused to serve warrants for burglary or larceny on Gary Manigan, explaining that there was no evidence tying Gary Manigan to the burglary. Under these circumstances, the trial judge should not have charged the jury on accomplice liability. The investigating officer conceded that Gary Manigan was not involved in the crimes and, in any event, there is no evidence supporting a common plan or scheme by Gary and Michael Manigan.

Manigan respectfully contends that the cases cited by this Court do not change this analysis or the result. For instance, while Manigan contends that the evidence did not support the charge, Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004) and State v. Adkins, 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003) address whether the jury charges improperly involved a comment on the facts (Sheppard) or whether the charges were properly worded (Adkins)—not whether they should have been given in the first place. The decision in State v. Stanko, 402 S.C. 252, 741 S.E.2d 708 (2013) did not involve the sufficiency of the evidence or accomplice liability, but instead recognized that a charge on the inference of malice from use of a deadly weapon was no longer supported by the law.

While this Court also relies upon State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), the facts in Langley emphasize the lack of substantial circumstantial evidence supporting an accomplice liability charge in the present case: “The State used the following evidence to establish appellant’s guilt: appellant and Derrick left the house together; appellant’s cellular telephone was found at the crime scene; Simon testified either appellant or Derrick shot the victim; and Tyrone testified that immediately after the incident, Simon told him appellant shot the victim.” Here, the State relies solely on a neighbor’s conversation with Michael and Gary Manigan prior to the crime to support an accomplice liability charge. See also State v. Gibson, 390 S.C. 347 701 S.E.2d 766 (Ct. App. 2010) (“In order to demonstrate that Adams and Jacques

intended to join together in a common design to achieve an illegal purpose, the State maintains: (1) Adams called Jacques to the scene; (2) when Jacques arrived he went inside the bar and Adams pointed out the group of Winnsboro men, rather than leaving straight away; (3) Williams testified Adams approached Jacques's white sedan in the parking lot and retrieved a gun moments before the shooting; and (4) although separately, the two men fled the scene after the shooting.”).

Finally, State v. Dewitt, 254 S.C. 527, 176 S.E.2d 143 (1970), does not involve accomplice liability and, in any event, there is no evidence that Michael Manigan was in possession of any stolen good—unlike the line of cases which include DeWitt, there is no evidence that the goods were found within Manigan's exclusive possession or that they were found on premises controlled by him. With respect to Gary Manigan, the investigating officer conceded that Gary Manigan was not involved in the crime. As a result, the “hand of one is the hand of all” charge could serve only to confuse and mislead the jury.

Under these circumstances, this Court should respectfully grant Manigan's petition for rehearing and reverse the trial judge's decision to charge that the “hand of one is the hand of all.”

Conclusion

For the foregoing reasons, this Court should grant rehearing and reverse Manigan's convictions.

Respectfully Submitted,

By: RS McQueeney

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February 4, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2011-GS-42-3015, 2011-GS-42-3016

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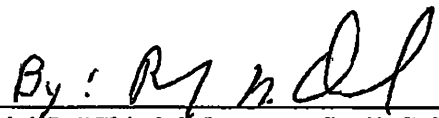
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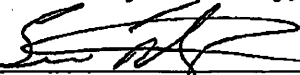
Michael Anderson Manigan.....Appellant.

PROOF OF SERVICE

I certify that I have served Appellant's **Petition for Rehearing** on Respondent The State of South Carolina, by hand delivery and/or depositing a copy in the United States Mail, postage prepaid, on February 4, 2016, addressed to its counsel of record, Attorney General Alan McCrory Wilson, Assistant Attorney General Julie Kate Keeney, Assistant Attorney General Mary Williams Leddon, and Staff Attorney Susannah Rawl Cole at Post Office Box 11549, Columbia, SC 29211-1549.

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SUBSCRIBED AND SWORN TO before me
this 4th day of February, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

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SC Court of Appeals

THE STATE,

Respondent,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

APPELLATE CASE NO. 2013-000253

Opinion No. 2016-UP-022

RETURN TO PETITION FOR REHEARING

On January 20, 2016, this Court affirmed Appellant's conviction for first degree burglary and grand larceny. Appellant submitted a Petition for Rehearing on February 5, 2016, arguing this Court overlooked or misapprehended several points. To the contrary, this Court properly affirmed Appellant's conviction for the reasons discussed below.

I.

In his Petition for Rehearing, Appellant contends that this Court overlooked the factually intensive nature of Appellant's argument the trial court erred in denying his directed verdict. Appellant also contends this Court misapprehended Appellant's argument the trial judge erred in charging the jury on accomplice liability.

Regarding the sufficiency of the evidence for a directed verdict argument, Appellant cites *State v. Bennett*, Op. No. 27600 (S.C. Sup. Ct. filed Jan. 6, 2016) for the proposition this Court must conduct another factually intensive review of the case at hand to determine "whether the evidence presented [in the light most favorable to the State] is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt."

Appellant presents the same arguments presented in his Final Brief. Essentially, Appellant argues the State failed to present sufficient evidence of his guilt. However, the record reflects the State presented direct and substantial circumstantial evidence of Appellant's guilt, which included the following: 1) Victim's home was broken into; 2) Victim's computer monitor, printer, beer, and jewelry were stolen; 3) Appellant and Nephew watched Victim's neighbor, Holcombe, do yard work for a long period of time; 4) Appellant and Nephew continued to ask Holcombe when she would be finished doing her yard work; 5) on the night of the burglary, the police found a fingerprint on Victim's stolen printer, which was found in Victim's backyard; 6) the fingerprint matched Appellant's fingerprint; 7) on the night of the burglary, the police found a palm print on Victim's stolen computer monitor, which was found in Victim's backyard; 8) the palm print matched Appellant's palm print; 9) the stolen printer and monitor were found in a black trash bag that came from inside Victim's home; 10) prior to the burglary, Appellant had never been inside Victim's home; therefore, there was no reason for his fingerprint and palm print to be on her computer monitor or printer; 11) there was no reason for Appellant to be in her backyard; 12) around 2 a.m. on the night of the burglary, Appellant knocked on Victim's door, asked her for a beer, told her it was shame what happened to her house, and told her that he "watches [her] and that he watches [her] house"; 13)

Nephew sold Victim's diamond earrings to a pawn shop two days after the burglary; and 14) Appellant had two prior burglary convictions.

Moreover, Appellant attempts to distinguish his case from *State v. Larmand*, Op. No. 27562 (S.C. Sup. Ct. filed Aug. 12, 2015), by suggesting the State is required to offer competing testimony concerning Appellant's plausible explanation for the evidence against him. However, Appellant assumes his explanation for his fingerprints being on the stolen property was plausible. Appellant had never been into Victim's home prior to the burglary. The police found the stolen property the same night as the burglary, within a few hours of the crime. Appellant never mentioned finding the property to the police or the victim when he was present during the investigation at the victim's house that evening. A reasonable juror could certainly conclude Appellant was guilty from the State's case in chief. The explanation offered by the defense -- Appellant was returning from a chess match in another neighborhood and happened upon the plastic bag, touched the contents, and returned the bag to the ground -- lacked credibility.

In summary, the State presented substantial circumstantial evidence of Appellant's guilt sufficient to allow a reasonable juror to find the defendant guilty, pursuant to the analysis set forth in *Bennett*. Accordingly, Appellant's convictions and sentences should be affirmed.

II.

The trial judge did not err in giving the "hand of one is the hand of all" charge because there was evidence in the record supporting the charge.

The law to be charged is determined by the evidence presented at trial. *State v. Holland*, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). The trial judge is required to charge only the current and correct law of South Carolina. *State v. Buckner*,

341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." *State v. Jackson* 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

Under "the hand of one is the hand of all" theory, one who joins with another to accomplish an illegal purpose is criminally liable for everything done by his accomplice incidental to the execution of the common plan. *State v. Langley*, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). "A formally expressed agreement is not necessary to establish the conspiracy. It may be shown by circumstantial evidence and the conduct of the parties." *State v. Condrey*, 349 S.C.184,194, 562 S.E.2d 320, 325 (Ct. App. 2002)..

In this case, the State presented evidence that Appellant and Nephew were in close proximity of Victim's home prior to the burglary. Both Appellant and Nephew kept bothering Victim's neighbor, Holcombe, regarding when Holcombe was going to be finished with her yard work. Appellant and Nephew's behavior supports the inference they were casing Victim's home prior to the burglary.

Further, the State presented evidence that two of Victim's windows were broken, and the objects used to break the windows were found inside the Victim's home. Additionally, someone attempted to pry Victim's backdoor. The fact that there were multiple windows broken and someone tried to pry the backdoor supports an inference that there was more than one person involved in the burglary. Moreover, the police found Appellant's fingerprint and palm print on Victim's stolen property, which according to Victim, he had no right to touch considering he had never been inside her home prior to the burglary.

Finally, the fact Nephew sold Victim's stolen earrings supports an inference that Nephew was also involved in the burglary. Appellant's fingerprint and palm print on the stolen goods was circumstantial evidence that he was also involved in the burglary. *See State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) (the State need not show a "formal expressed agreement" to prove that parties agreed and combined to achieve an illegal purpose, but may prove the agreement "by circumstantial evidence and the conduct of the parties"). Based upon their recent possession of stolen goods, the jury was entitled to infer that both men stole the goods. *See State v. Cooper*, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983)(when one is found in possession of recently stolen property, the jury may infer circumstantially that he broke in and stole the property); *see also State v. Irvin*, 270 S.C. 539, 542-43, 243 S.E.2d 195, 196-97 (1978) (the trial judge properly denied a directed verdict as to both defendants where the State established the occurrence of a housebreaking and larceny and relied upon the defendants' possession of recently stolen items and the permissible inference that the defendants were the thieves). Thus, if the jury concluded that both men stole the goods, they could reasonably infer that the men stole those goods pursuant to a common plan.

The jurors were entitled to an instruction on "the hand of one is the hand of all" so that it would be clear that, even if the State could not definitively prove which one of the two men physically entered the victim's home and removed his property, Appellant was still guilty if they concluded that he and Nephew acted pursuant to, and carried out, a common plan to burglarize and rob the victim. *See Barber v. State*, 393 S.C. 232, 712 S.E.2d 436 (2011) (holding that a charge on the hand of one is the hand of all is appropriate where the evidence is equivocal as to which of several persons acting in concert physically committed the crime). Therefore, since there was evidence in the

record from which the jury could infer that Appellant and Nephew acted together to burglarize Victim's home and steal from her, the trial judge did not err in providing the jury with an instruction on "the hand of one is the hand of all." *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (If any evidence exists to support a charge, it should be given, and the trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.).

Further, the trial judge charged the jury on third party guilt. (R. pp. 220-221). Thus, Appellant suffered no prejudice from the hand of one is the hand of all charge. *See State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) (noting appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result). Accordingly, Appellant's convictions and sentences should be affirmed.

In sum, this Court correctly found the trial court judge committed no reversible error and affirmed Appellant's conviction and sentence for first degree burglary and grand larceny.

CONCLUSION

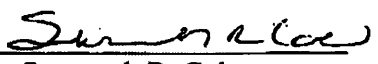
This Court did not misapprehend or overlook any issues of fact or law. Therefore, Appellant's Petition for Rehearing should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

SUSANNAH R. COLE
Staff Attorney

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

By: 
Susannah R. Cole
Bar # 68383

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

February 11, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

FEB 11 2016

SC Court of Appeals
Respondent

THE STATE,

vs.

MICHAEL ANDERSON MANIGAN,

Appellant.

APPELLATE CASE NO. 2013-000253

Opinion No. 2016-UP-022

PROOF OF SERVICE

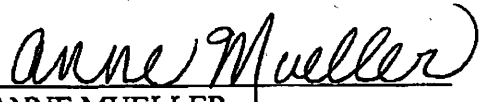
I, Anne Mueller, certify that I have served the within Return to Petition for Rehearing, with proof of service, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Daniel S. McQueeney, Jr., Esquire
Post Office Box 2498
Mount Pleasant, SC 29465

Mr. Robert M. Dudek, Esquire
SCCID, Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 11th day of February, 2016.


ANNE MUELLER
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

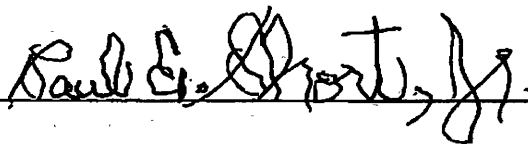
v.

Michael Anderson Manigan, Appellant.

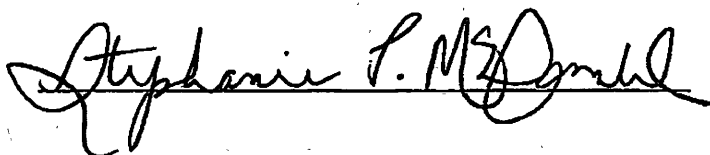
Appellate Case No. 2013-000253

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Daniel Simmons McQueeney, Jr., Esquire
Julie Kate Keeney, Esquire
Mary Williams Leddon, Esquire
Susannah Rawl Cole, Esquire

FILED

March 24, 2016

The Supreme Court of South Carolina

The State, Respondent,

v.

Michael Anderson Manigan, Petitioner.

Appellate Case No. 2016-000860

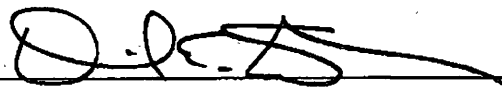
Lower Court Case Nos. 2011GS4203015 and
2011GS4203016

ORDER

Petitioner's counsel was granted an extension until May 16, 2016, to serve and file the petition for a writ of certiorari and appendix. By letter dated May 17, 2016, counsel has now indicated that the petition and appendix will not be filed. Accordingly, this matter is hereby dismissed based on petitioner's failure to timely serve and file the petition for a writ of certiorari and appendix as required by Rule 242 of the South Carolina Appellate Court Rules.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

May 18, 2016

cc: Robert Michael Dudek, Esquire
Daniel Simmons McQueeney, Jr., Esquire
Alan McCrory Wilson, Esquire
Susannah Rawl Cole, Esquire
The Honorable Jenny Abbot Kitchings
The Honorable M. Hope Blackley



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 27, 2016

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Michael A. Manigan
Lower Court Case No. 2011GS4203015, 2011GS4203016
Appellate Case No. 2013-000253

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Daniel Simmons McQueeney, Jr., Esquire
Julie Kate Keeney, Esquire
Mary Williams Leddon, Esquire
Susannah Rawl Cole, Esquire

FORM 5

STATE OF SOUTH CAROLINA

County of SpartanburgMichael A. Manigon

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-42-4025

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, OAB -
430 Oak Lawn Rd., Pelzer S.C. 29669
2. Name and location of Court which imposed sentence Spartanburg County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-95-42-03015
 - (b) 2011-95-42-03016

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 16, 2013/2016-203015 - 40 Years
- (b) January 16, 2013/2016-203016 - 10 Years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 2016-up-022
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
- (b) _____

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M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Due Process
- (b) Ineffective Assistance of Counsel
- (c) See attached pages & Issues
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages & Issues
- (b) Reserve the right to amend
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for Rehearing on Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- iv. _____

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 M. J. BLASKLEY
 CLERK OF COURT
 1000 N. BROAD ST.
 COLUMBIA, SC 29201

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Feb 11, 2016
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. NA
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NA
- ii. _____
- iii. _____

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M. HOPE BLACKLEY
CLERK OF COURT
CLERK OF COURT

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a)  (b)  (c) 

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? Yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Spartanburg County Public Def. PH12-42
ADK191
Richard H. Welchel, S.C. Bar #57

ii. Daniel Chip McQueeney Jr.
P.O. Box 2498 Mount Pleasant SC 29465

iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Richard H. Wheelchel. - Trial
- ii. Daniel C. McQueeney Jr - Direct Appeal & Rehearing

iii.

Revised 3/2003

19. State clearly the relief you seek in filing this application:

Vacation of sentence and/or remand
for new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Michael A. Marigan, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside, correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael A. Marigan ✓

SWORN to and subscribed before me this 3rd
day of November, 2016.

Nancy C. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

RECEIVED

NOV 03 2016

P.C.I. MAILROOM

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael A. Manigan, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael A. Manigan
Applicant

SWORN or affirmed to and subscribed before me this

3rd day of November, 2016.

Nancy C. Murchant
Notary Public

My Commission Expires: 1-23-2022

CLERK OF COURT
 SPARTANBURG COUNTY
 2016 NOV 10 PM 12:42
 M. HOPE BLACKLEY

RECEIVED

NOV 03 2016

P.C.I. MAILROOM

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Michael A. Manigan, #243544,

Applicant,

v.

State of South Carolina,

Respondent.

2016-CP-42-4023

**SUPPLEMENTAL MEMORANDUM OF
LAW IN SUPPORT OF
PCR APPLICATION**

COMES NOW the Applicant of the matter captioned above, respectfully presenting the following Supplemental Memorandum of Law in answer to questions #10 and #11 of the Form 5, Post-Conviction Relief (PCR) application provided herewith.

I.

LEGAL CITATION

The Applicant alleges and can prove that he was denied effective assistance of trial counsel. Applicant submits that the extensive record speaks for itself as to the competency of counsel. Trial counsel for Applicant was not diligent in his representation and did not perform within the wide range of reasonable professional assistance.

In Strickland v. Washington, 466 U.S. 668, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. 104 S.Ct. 2064. Applicant submits that counsel's performance was deficient and his performance prejudiced him.

The Applicant can prove that trial counsel's conduct so undermined the proper functioning of the adversarial process that

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M. HOPE R. A. KIRBY
CLERK OF COURT
SPARTANBURG, SC

the trial could not have been relied upon as having produced a just result. Strickland v. Washington, supra. Counsel's performance prejudiced the Applicant to the point where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The Applicant will present questions of law and fact requiring a hearing and new trial.

Applicant contends and can show that his conviction and sentence was in violation of the U.S. and State Constitution and the laws of this state.

The Applicant is asserting 5th, 6th, and 14th Amendment violations which sets forth a prima facie violation of U.S. Constitutional rights. Applicant's grounds are of constitutional dimensions and fundamental defects alleged herein are standards that establish a complete miscarriage of justice and are inconsistent with the rudimentary demands of fair procedure. Therefore, the following acts and omissions by counsel constituted ineffective assistance of counsel:

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L. BOPZ BLACKLEY

II.

GROUNDS

A. In violation of the U.S. Constitution, Amendment VI, Applicant was denied substantial constitutional right to Effective Assistance of Counsel in the following ways:

1. Counsel failed to object to trial court's jury instruction on first degree burglary and grand larceny.
2. Counsel failed to request lesser included offense for first degree burglary and grand larceny.
3. (a) Counsel failed to request exclusion of name and basic nature of Applicant's prior convictions;
- (b) Counsel failed to request the trial court to conduct a Colf analysis on impeachment value of Applicant's prior convictions when his credibility was a crucial issue in this case;
- (c) Under SCRCrimP, Rules(s) 403 & 404(b), counsel failed to request trial court's determination regarding Applicant's prior convictions of similar nature.

4. (a) Counsel failed to object to trial court's erroneous jury instruction and supplemental charge.
- (b) Counsel failed to prepare and argue a complete defense of third party guilt.
- (c) Counsel failed to argue correct Direct Verdict standard.

B. Through many of the claims mentioned above, counsel's performance was further deficient by failing to argue and protect Applicant's procedural and substantial Due Process rights in violation of U.S. Constitution, Amendment XIV.

III. SUPPORTING FACTS & ARGUMENT

1. Failure to Object to Jury Instruction -- Applicant contends that the trial court erred in charging the jury that it could find that the offense occurred on December 11, 2010 as opposed to what the indictment for first degree burglary stated. Applicant alleges the trial court's error abridged his right to a fair trial and was a comment on the facts in violation of Article 21 of the South Carolina Constitution.

The pertinent portion of Applicant's original indictment states as follows:

"That the Defendant, Michael Anderson Manigan, did in Spartanburg County, on or about December 10, 2010, willfully and intentionally enter the dwelling belonging to Elizabeth Anne Vandahm, located at [REDACTED] Spartanburg, South Carolina without consent and with the intent to commit a crime therein, and that the defendant did enter the dwelling either:

- (1) the defendant did enter in the night; and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threaten the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms,
- (6) committed the crime while possessing a prior record of two or more convictions for burglary or nousebreaking or a combination of both, in violation of section 16-11-311, Code of Laws of South Carolina (1976) as amended.

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

After jury selection, the solicitor confirmed that he would seek to prove the offense occurred on December 11, 2010, not on or about December 11, 2010. The indictment was not physically altered to reflect striking of the words "on or about."

During the trial, the alleged victim and other witnesses testified that the alleged incident occurred on Saturday, December 11, 2010. Applicant did not have a chance to defend on the basis of alibi.

A defendant is entitled to be sufficiently apprised of the offense charged so that he can adequately prepare his defense. State v. Hardee, 279 S.C. 409, 413 305 S.E.2d 521, 524 (1983).

While it is true that the State need not prove the exact date set forth in the indictment unless time is an essential element of the offense or is made a part of the description of it, the State should not be allowed to prove a different date than that set forth in the indictment where the defendant relies upon the defense of alibi, unless the defendant is held to have had knowledge that the State would attempt to prove a different date upon trial. State v. Pierce, 263 S.C. 23, 27 207 S.E.2d 414, 416.

Although the indictment in this case was not physically modified, the record shows the State and trial court amended the indictment to specify a certain date, December 11, 2010, and presented its proof accordingly. The indictment was orally amended from "on or about December 11, 2010" to "December 11, 2010." The miscue of failing to physically alter the indictment is not dispositive. Under the circumstances of this case, the trial judge's charge constituted error of which trial counsel failed, depriving the Applicant of his right to a fair trial. Applicant was also denied the right to due process of law in that he never had an opportunity to offer an alibi defense.

If it were not for trial counsel's acts and omissions, the outcome of Applicant's trial would have been different. Trial counsel failed to object to both indictments before the jury was sworn.

2. Failed to Request Lesser Included Offense -- Trial counsel failed to request the lesser included offense for first degree burglary and grand larceny. Trial counsel's actions prejudiced the Applicant and unduly subjected him to federal law violations. In Keeble v. United States, 412 U.S. 205, 93 S.Ct. 1993, the Supreme Court stated although the lesser included offense doctrine developed at common law to assist the prosecution in cases where the evidence failed to establish some element of the offense originally charged, it is now beyond dispute that the Applicant is entitled to an instruction on a lesser included offense if the evidence such as the case at bar would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater. See Sansone v. United States, 380 U.S. 343, 85 S.Ct. 1004 (1965), Berra v. United States, 351 U.S. 131, Stevenson v. United States, 162 U.S. 313. Applicant should have been granted, through trial counsel's request, a lesser charge to the jury, because the evidence warranted it.

The U.S. Supreme Court ruled in Stevenson, supra, that case where some of the elements of the crime charged, themselves, constitute a lesser crime, the Applicant, if the evidence justified it, would no doubt be entitled to an instruction which would permit a finding of guilt of the lesser offense. In Spaziano v. Florida, 468 U.S. 447, 104 S.Ct. 3154 (1984), the absence of a lesser included instruction increases the risk that the jury will convict ... simply to avoid setting the defendant free. The goal of the 'Beck Rule' in other words is to eliminate the distortion of the fact finding process that is created when the jury is forced into an all-or-nothing choice between burglary, first and innocence. Beck v. Alabama, 447 U.S. 625.

Applicant asserts that trial counsel's failure to request and trial court's failure to charge the jury on the lesser included offense for burglary, first not only subjected him to due process rights violations under the 14th Amendment, but also clearly subjected him to equal protection rights violation under the 5th Amendment of the U.S. Constitution. As the result of the Supreme Court ruling mandates, the very same constitutional equal

protection rights should have been afforded to the Applicant.

There is a reasonable probability that had trial counsel requested a lesser included offense, there is a reasonable probability that the outcome would have been different.

3. Failure Regarding Similar Prior Convictions -- In this case, as in any other in which the prior conviction is for an offense likely to support conviction on some improper basis, the only reasonable conclusion was that the risk of unfair prejudice did substantially out-weigh the discounted probative value of the prior convictions, and it was an abuse of discretion to admit the testimony when an alternative was available. The introduction of evidence that reveal the names and basic nature of a defendant's prior convictions in a prosecution unfairly prejudices the defendant within the meaning of Rule 403 and 404(b). See Old Chief v. U.S., 519 U.S. 172, 117 S.Ct. 644.

On several occasions during trial, several witnesses flagrantly violated applicant's rights under SCRE, Rule(s) 403 and 404(b), by attacking Applicant's character. The prejudicial effect of the misconduct cannot be disputed as this case turned largely on the jury's credibility determinations of several witnesses who testified.

Rule(s) 403 and 404(b) requires (1) a proper evidentiary purpose; (2) relevance under 402; (3) a weighing of the probative value of the evidence against its prejudicial effect under 403; and a limiting instruction concerning the purpose for which the evidence may be used. The record does not support the finding of probative value which would support effectiveness of counsel. Without a determination, it robs the Applicant of the rule protection. These rules (403 & 404(b)) were never mentioned or considered by the trial court.

A decision to admit Applicant's prior convictions without safeguards would be an error of law amounting to an abuse of discretion. State v. Scrivens, 529 S.E.2d 71 and State v. Smicklewich, 234 S.E.2d 230. Trial counsel's acts and omissions fell below the professional norms for attorneys. This issue could

have been preserved for appeal.

The trial judge did not have the benefit of the guidance recently provided in Colf and Scrivens, supra. The record does not reflect that the trial judge engaged in any meaningful analysis of the relevant factors, or that the court balanced the probative effect to the accused.

Error which substantially damages the Applicant's credibility as in the case at bar, cannot be held harmless. The testimony by witnesses went to his character and propensity to engage in criminal conduct, not to 'motive'. And, in any event, the prejudicial effect of the extrinsic evidence/testimony out-weighed any probative value in violation of Lyle and 404(b).

4. Failure to Object to Erroneous Jury Instruction: -- The trial court gave a 'hand-of-one; hand-of-all' jury charge at the end of the trial which was erroneous. The State chose to indict Applicant for burglary, first and grand larceny as a principle. The indictments gave no indication of the State's theory or any specifics involved in the burglary, first, other than that alleged in the indictment. Gary Manigan, and alleged co-defendant was also charged as the principle on the same charge.

Both of Applicant's indictments specifically stated that the Applicant committed the burglary, first and grand larceny on or about December 10, 2010 as the principle. See Indictments. Neither indictment included the other defendant's name in it to place each other on notice that they were co-defendants. Nor did the State charge the defendants with criminal conspiracy.

For reasons not appearing in the record, by indicting the Applicant only for the two charges and not indicting Gary Manigan and Applicant for conspiracy, the State assumed the burden of proving that Applicant and alleged co-defendant, Gary Manigan were: (1) each at the scene of the crime when it happened; and (2) that each committed the criminal acts. See State v. Mayfield, 235 S.C. 11, 109 S.E.2d 716, 724 (1959). If the nature of the crime is such that the presence of the accused at the place and time of its commission is essential to his guilt, the burden is

upon the State to prove beyond a reasonable doubt that he was then and there present. The on or about scenario does not place the Applicant and Gary Manigan together at the same time.

The prosecution failed to properly allege or prove a conspiracy or aid and abet theory under which both defendant's could be found guilty of burglary, first and grand larceny. Gary Manigan's burglary and grand larceny charges were dropped, while he was charged with receiving stolen goods. Had the State charged the alleged co-defendants with conspiracy, it could have pursued convictions against both defendants under the 'hand-of-one, hand-of-all' theory. However, with the charges dropped against Gary Manigan, there was no alleged co-defendant to charge to the jury 'hand-of-one; hand-of-all' theory. Under this theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incident to the execution of the common design and purpose. State v. Wootner, 276 S.C. 258, 277 S.E.2d 696 (1981). To admit evidence under this theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown, which did not occur in this case. The State did not charge both defendants with conspiracy so this approach was unavoidable.

While a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense, and the State presents evidence which convicts under a different theory than that alleged. Thomason v. State, 892 S.W. 8, 11 (TexCrim.App. 1998)[392 S.C. 434] citations omitted.

"The court may not substantially amend the indictment through its instruction to the jury." Stirone v. United State, 361 U.S. 212, 217 S.Ct. 270; United States v. Miller, 471 U.S. 130.

The Fourth Circuit has held that regardless of whether a defendant objects, Stirone demands reversal when a constructive amendment has occurred. See United States v. Floresca, 38 F.3d 706, 713 (4th Cir. 1994)(en banc), stating that it would be unfair to deprive a defendant of the grand jury protection;

TRIAL COUNSEL FAILED TO ARGUE THE CORRECT DIRECT VERDICT STANDARD.

There is a reasonable probability that if trial counsel would have argued the correct governing legal principles of direct verdict, there is a reasonable probability the outcome would have been different.

The analysis of whether the State produced substantial circumstantial evidence supporting a criminal conviction often turns on the facts of each case: "We recognize in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive; therefore, the holding in [two previous appellate decisions] are limited to their peculiar facts." State v. Bennett Op. No. 27600 (S.C. Sup. Ct. filed Jan. 6, 2016) (Shearouse Adv. Sh. No. 1 at 16, 20 note 1). Nevertheless, this Court's unpublished decision accurately recites the legal standards applicable to the Court's analysis, but omits any application of the law to the specific facts involved in the present case. Under these circumstances, rehearing should be granted.

Manigan respectfully contends that a factually-intensive review compels a directed verdict with respect to the State's charges against him. In Bennett, the Supreme Court of South Carolina clarified "the framework of a court's inquiry in determining whether substantial circumstantial evidence exists to require the denial of a directed verdict." Id. at 18. "On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." Id. "The Court's review is limited to considering the

existence or nonexistence of evidence, not its weight." Id.

"When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because *suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof.*" Id. (emphasis added). "Nevertheless, a court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." Id.

"Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." Id. at 19. "This objective test is founded upon reasonableness." Id. "Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." Id.

Therefore, the dispositive issue in this appeal is whether the State produced sufficient evidence to allow a reasonable juror to conclude beyond a reasonable doubt that Manigan committed the crimes charged or whether the State failed to produce evidence rising above a mere suspicion of guilt. See State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) ("This Court has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict."); State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984) ("By bringing the case, the State assumes the burden of proving that the accused was at the scene of the crime when it happened and that he committed the criminal act.").

Manigan contends that several appellate decisions in South Carolina compel a directed verdict under factual circumstances which are similar to and sometimes stronger than the facts

relied upon by the State to convict Manigan. See, e.g., State v. Gilliam, 245 S.C. 311, 315, 140 S.E.2d 480, 482 (1965) ("We are convinced that the circumstances relied upon by the State, considered together, did not furnish such substantial evidence of the guilt of the defendant as to justify submission of the case to the jury."); State v. Woods, 273 S.C. 266, 267, 255 S.E.2d 680, 681 (1979) ("In the instant case there is evidence sufficient to raise a strong suspicion of appellants' guilt. However, we are not convinced that there is any substantial evidence which reasonably tends to prove their guilt or from which their guilt may be fairly and logically deduced. Suspicion, however strong, does not suffice to sustain a conviction."); State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) ("The fact that respondent's fingerprint was on a screen that was propped up against the house does not prove entry where respondent had been in and around the victim's house as least three times prior to the burglary."); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) (evidence creates only suspicion of guilt); State v. Walker, 349 S.C. 49, 54, 562 S.E.2d 313, 315 (2002) ("[A]part from his presence in the area, there is no evidence connecting Petitioner with the cultivation of the marijuana. State v. Johnson, 291 S.C. 127, 129, 352 S.E.2d 480, 482 (1987) ("Mere presence at the scene of a crime is insufficient to convict one as a principal on the theory of aiding and abetting.").

On the other hand, the cases relied upon by this Court in its unpublished decision include far more factual support of the guilt of the accused than the evidence relied upon by the State in the present case. See State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) (emphasizing the following evidence supported the *corpus delicti* of murder and the defendant's involvement in the crime: (1) victim's active social life, and interactions and communications with friends, neighbors and family; (2) victim had not been seen or heard from by anyone since August 6, 1998; (3) victim's change in attitude once defendant began living with her; (4) testimony that

victim planned to ask defendant to move out; (5) defendant's handling of his vehicle on the day victim disappeared, which was consistent with disposal of a body; (6) items missing from victim's apartment after her disappearance; (7) defendant's use of victim's property soon after she disappeared; (8) inconsistencies between defendant's statements and other evidence; and (9) defendant's apparent personal injuries shortly after victim's disappearance); State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015) (conviction supported by defendant's use of victim's property after the crime, testimony that defendant was last person to see victim alive, defendant's inconsistent statements, and defendant's actions in fleeing the police); State v. Lane, 416 S.C. 505, 765 S.E.2d 557 (2014) (evidence sufficient to withstand directed verdict where defendant acknowledged driving vehicle associated with crime and where piece of paper issued to defendant from local unemployment office found at crime scene).

In this case, Manigan did not flee police, but instead offered his sympathy to Vandahm while the police were conducting their investigation. There was no testimony tying Manigan to a getaway vehicle or to the Vandahm residence where the break-in occurred. Manigan did not make inconsistent statements to the police or other witnesses. There is no evidence Manigan exercised control over Vandahm's property after the break-in—the stolen items were not found in his possession or on premises under his control. While Manigan's prints were located on computer equipment belonging to Vandahm, this equipment was found in a trash bag in an area with trash and other debris outside of the fence enclosing most of Vandahm's back yard.¹

While the State also contends that Manigan's conduct prior to and after the break-in was

¹ Viewed in a light most favorable to the State, the testimony established that the trash bag was located within Vandahm's back yard; however, it is undisputed that the trash bag lay in the small portion of her back yard which was outside the fence. Objectively, it is undisputed that there was no discernable difference between this area and the vacant lot lying behind Vandahm's house, which contained trash and other debris.

suspicious, appellate courts have consistently recognized that a mere suspicion is insufficient to allow a reasonable juror to find a defendant guilty beyond a reasonable doubt. See Odems, 395 S.C. at 590, 720 S.E.2d at 52 ("Petitioner's overall actions may appear suspicious, but mere suspicion is insufficient to support a guilty verdict."). Likewise, the only evidence tying Manigan to Gary Manigan, who was in possession of Vandahm's earrings after the crime, was a neighbor's testimony that she interacted with both Gary and Michael Manigan a few hours prior to the break-in.

As an additional matter, this Court relies on State v. Larmand, Op. No. 27562 (S.C. Sup. Ct. filed Aug. 12, 2015) to affirm Manigan's convictions. In Larmand, unlike the present case, the State produced *competing testimony* regarding defendant's explanations for the evidence against him: "Although Respondent presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' *competing explanations*." Id. (emphasis added). Furthermore, while the Supreme Court of South Carolina in Larmand warned against citing *primarily* to the testimony of the defendant in reversing the decision to deny a directed verdict, the Larmand decision does not purport to require a defendant's testimony to be disregarded entirely: "While the court of appeals should have considered the evidence in the light most favorable to the State, it instead *primarily* cited to Respondent's and Lemire's testimony, including their explanations for their actions." Id. (emphasis added). "In doing so, the court of appeals incorrectly *minimized the circumstantial evidence the State presented regarding premeditation and an agreement between Respondent and Lemire.*" Id. (emphasis added).

Thus, Larmand applies the same standard articulated by the Court in Bennett: The appellate court should view the evidence in a light most favorable to the State. Nothing in Larmand or Bennett requires an appellate court to ignore undisputed testimony. Here, Manigan's

explanation was undisputed. There was no competing testimony.

Put simply, the State's evidence of Manigan's guilt is entirely circumstantial. At most, it raises a mere suspicion of Manigan's guilt. It does not rise to the level of substantial circumstantial evidence as required under Bennett. Consequently, this Court should grant rehearing and reverse Manigan's convictions.

TRIAL COUNSEL FAILED TO ARGUE THAT APPLICANT'S DUE PROCESS RIGHTS WERE VIOLATED.

"The evidence presented at trial determines the charged jury instruction." State v. Blurton, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002). "The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). "It is error to give instructions which are calculated to confuse or mislead the jury." Id. "If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury." Blurton, 352 S.C. at 208, 573 S.E.2d at 804. "Only law applicable to the case should be charged to the jury." Id. "Instructions that do not fit the facts of the case may serve only to confuse the jury." Id.

Under the "hand of one is the hand of all" theory of accomplice liability, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). "To admit evidence under this theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown." Id.

Here, a neighbor testified that she spoke with Manigan and his relative, Gary Manigan, while cutting her grass prior to the burglary. Gary Manigan later deposited Vandahm's diamond earrings with a pawn shop in return for a loan. Nevertheless, the officer investigating Gary

Manigan refused to serve warrants for burglary or larceny on Gary Manigan, explaining that there was no evidence tying Gary Manigan to the burglary. Under these circumstances, the trial judge should not have charged the jury on accomplice liability. The investigating officer conceded that Gary Manigan was not involved in the crimes and, in any event, there is no evidence supporting a common plan or scheme by Gary and Michael Manigan.

Manigan respectfully contends that the cases cited by this Court do not change this analysis or the result. For instance, while Manigan contends that the evidence did not support the charge, Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004) and State v. Adkins, 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003) address whether the jury charges improperly involved a comment on the facts (Sheppard) or whether the charges were properly worded (Adkins), whether they should have been given in the first place. The decision in State v. Stango, 462 S.C. 252, 741 S.E.2d 708 (2013) did not involve the sufficiency of the evidence or accomplice liability, but instead recognized that a charge on the inference of malice from use of a deadly weapon was no longer supported by the law.

While this Court also relies upon State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), the facts in Langley emphasize the lack of substantial circumstantial evidence supporting an accomplice liability charge in the present case: "The State used the following evidence to establish appellant's guilt: appellant and Derrick left the house together; appellant's cellular telephone was found at the crime scene; Simon testified either appellant or Derrick shot the victim; and Tyrone testified that immediately after the incident, Simon told him appellant shot the victim." Here, the State relies solely on a neighbor's conversation with Michael and Gary Manigan prior to the crime to support an accomplice liability charge. See also State v. Gibson, 390 S.C. 347 701 S.E.2d 766 (Ct. App. 2010) ("In order to demonstrate that Adams and Jacques

intended to join together in a common design to achieve an illegal purpose, the State maintains: (1) Adams called Jacques to the scene; (2) when Jacques arrived he went inside the bar and Adams pointed out the group of Winnsboro men, rather than leaving straight away; (3) Williams testified Adams approached Jacques's white sedan in the parking lot and retrieved a gun moments before the shooting; and (4) although separately, the two men fled the scene after the shooting.").

Finally, State v. Dewitt, 254 S.C. 527, 176 S.E.2d 143 (1970), does not involve accomplice liability and, in any event, there is no evidence that Michael Manigan was in possession of any stolen good—unlike the line of cases which include DeWitt, there is no evidence that the goods were found within Manigan's exclusive possession or that they were found on premises controlled by him. With respect to Gary Manigan, the investigating officer conceded that Gary Manigan was not involved in the crime. As a result, the "hand of one is the hand of all" charge could serve only to confuse and mislead the jury.

Under these circumstances, this Court should respectfully grant Manigan's petition for rehearing and reverse the trial judge's decision to charge that the "hand of one is the hand of all."

Conclusion

For the foregoing reasons, this Court should grant rehearing and reverse Manigan's convictions.

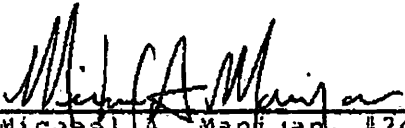
IV.

CONCLUSION

Based upon the forgoing material facts and law argued above, Applicant's conviction and sentence should be vacated.

Respectfully submitted,

Date: Nov. 03, 2016
Greenville County


Michael A. Mantigan, #243544
Perry Correctional Institute
430 Oaklawn Rd. / Q2B
Pelzer, SC 29669

CLERK OF COURT
SPARTANBURG COUNTY
2016 NOV 10 PM 12:43
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Michael A. Manigan, #243544,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-4025

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on November 10, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the June 2011 term of the Grand Jury for Spartanburg County for burglary – 1st degree (dwelling) (2011-GS-42-3015) and grand larceny (2011-GS-42-3016). On January 14, 2013, Applicant proceeded to trial while represented by Richard H. Whelchel, Esq. Timi Poulos, Esq. prosecuted the case. On January 16, 2013, Applicant was found guilty as indicted of both charges and sentenced by the Honorable J. Derham Cole to imprisonment of forty years for burglary – 1st degree and ten years for grand larceny, to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by Daniel Simmons McQueeney, Jr., Esq. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion filed January 20, 2016. State v. Manigan, Op. No. 2016-UP-022 (S.C. Ct. App. 2016). Applicant petitioned for rehearing, but was denied by order on March 24, 2016. The Remittitur was returned on May 27, 2016.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections, and the PCR application. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel – Due Process

- a. "Counsel failed to object to trial court's jury instruction on first degree burglary and grand larceny."
- b. "Counsel failed to request lesser included offense for first degree burglary and grand larceny."
- c. "Counsel failed to request exclusion of name and basic nature of Applicant's prior convictions."
- d. "Counsel failed to request the trial court to conduct a Colf analysis on impeachment value of Applicant's prior convictions when his credibility was a crucial issue in this case."
- e. "Under SCRCrimP, Rule(s) 403 & 404(b), Counsel failed to request trial court's determination regarding Applicant's prior convictions of similar nature."
- f. "Counsel failed to object to trial court's erroneous jury instruction and supplemental charge."
- g. "Counsel failed to prepare and argue a complete defense of third party guilt."
- h. "Counsel failed to argue a correct direct verdict standard."
- i. "Through many of the claims listed above, Counsel's performance was further deficient by failing to argue and protect Applicant's procedural and [substantive] Due Process rights

in violation of the U.S. Constitution,
Amendment XIV.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRCP. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of ineffective assistance of counsel.

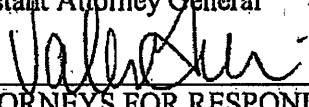
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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Telephone: (803) 734-3737

July 13, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

MICHAEL MANIGAN #243544

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

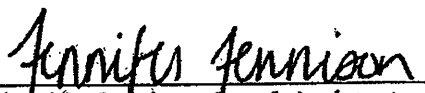
2017-CP-42-4025

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Wade Richey, Esquire
 Richey & Richey, PA
 PO Box 10916
 Greenville, SC 29603-0916

DATED this the 14th day of July, 2017.


 Jennifer Jennison, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

} IN THE COMMON PLEAS COURT

3 Michael A. Manigan,
4 Applicant,

} TRANSCRIPT OF RECORD
2016-CP-42-4025

5 -vs-

6 The State.

} November 15 and 17, 2017
Spartanburg, South Carolina

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8
9
10
11 B E F O R E:

12 HONORABLE G. THOMAS COOPER, JUDGE

13
14
15 A P P E A R A N C E S:

16 RODNEY W. RICHEY, ESQUIRE
17 Attorney for the Applicant

18 VALERIE GIOVANOLI, ESQUIRE
19 Attorney for the State

20
21
22
23 Linda D. Moffitt
24 Circuit Court Reporter
25

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30

No exhibits entered into evidence.

1 (Proceedings November 15, 2017)

2 MS. GIOVANOLI: For the record, this is Michael
3 Manigan vs. the State of South Carolina.

4 THE COURT: All right. Ms. Giovanoli, you may
5 proceed.

6 MS. GIOVANOLI: Thank you, Your Honor.

7 Michael Manigan vs. the State of South Carolina,
8 Docket No. 2016-CP-42-4025.

9 We are before the Court on an application for post
10 conviction relief.

11 To spare you the procedural history, I just wanted to
12 go ahead and request a continuance on behalf of the state.
13 My witness has called in sick, and, unfortunately, we are
14 not ready to proceed.

15 However, there is another matter. Mr. Manigan had
16 filed a pro se letter requesting to relieve Mr. Rodney
17 Richey, and I just wanted to address this motion while
18 we're here on the record.

19 THE COURT: Is that correct -- is that correct?

20 THE APPLICANT: Your Honor --

21 THE COURT: Is that correct?

22 THE APPLICANT: Yes, sir. May I -- may I say
23 something, sir? I --

24 THE COURT: Just a moment. Yeah. Let's proceed with
25 that. Yes. Mr. Manigan, I'll be glad to hear from you.

1 THE APPLICANT: Mr. Richey first come to see me, I
2 took his professionalism the wrong way. And no sooner than
3 I wrote that letter I wanted to get it back, so I couldn't
4 get it back. But I want to retract that. No way I want
5 another counsel. I don't want to file no motion to relieve
6 him of this.

7 THE COURT: Okay.

8 THE APPLICANT: I want -- I want him where he at now,
9 beside me. I need him, sir.

10 THE COURT: All right. Where are you housed?

11 THE APPLICANT: Sir?

12 THE COURT: Where do you stay? Where are you housed?

13 THE APPLICANT: Perry -- Perry Correctional Facility.

14 THE COURT: Okay. What are you in for?

15 THE APPLICANT: A burglary first, a grand larceny.

16 THE COURT: Okay. Do you understand the state wants a
17 continuance?

18 THE APPLICANT: Yes, sir.

19 THE COURT: You got any objection to that?

20 THE APPLICANT: No, sir. I -- I sure don't, sir.

21 THE COURT: Okay. They want to bring your lawyer, and
22 your lawyer is sick today apparently.

23 THE APPLICANT: Yes, sir. I -- okay, sir.

24 THE COURT: All right.

25 THE APPLICANT: All right, sir.

1 THE COURT: His motion to -- with -- motion to relieve
2 counsel is withdrawn.

3 MS. GIOVANOLI: Thank you, Your Honor.
4 Motion for continuance?

5 THE COURT: Let me ask -- just a minute.
6 Is it Mr. Whelchel?

7 MS. GIOVANOLI: Whelchel, yes, Your Honor.

8 THE COURT: Whelchel,
9 Any chance of getting him in this week?

10 MS. GIOVANOLI: I can attempt to contact him, but I
11 can't speak to his availability at this point.

12 THE COURT: This gentleman is about to jump out of his
13 chair for some reason.

14 MS. GIOVANOLI: Okay. And this is Mr. Russell Ghent
15 from the Seventh Circuit solicitor's office.

16 MR. GHENT: Your Honor, may it please the Court.

17 I checked on his whereabouts and was told by two
18 people in his office he'd called in sick. I'll be glad to
19 check and find out the nature of his illness and whether
20 he'd be available during the rest of the week.

21 THE COURT: That'd be a big help.

22 MR. GHENT: Yes, sir.

23 THE COURT: I'd like to move forward with this case.

24 MR. GHENT: Yes, sir.

25 THE COURT: We've got two more days.

1 MR. GHENT: Would Your Honor allow me to go ahead and
2 step out and see if they know?

3 THE COURT: Certainly.

4 MR. GHENT: Thank you, Your Honor.

5 THE COURT: Let's just wait and see if...

6 (Pause.)

7 MS. GIOVANOLI: Your Honor, I have -- James Irby is on
8 Thursday, and there's three experts in that case and three
9 other lay witnesses. Ms. Blanchette expected it to be
10 almost a full day's hearing. So we already have three
11 others to work around with that.

12 THE COURT: I know.

13 (Pause.)

14 MR. GHENT: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. GHENT: I've asked someone to check with the
17 public defender to see if he can find out the nature of
18 Mr. Whelchel's illness. He is my age. He was a classmate.
19 He's not someone who just calls in because he is not --

20 THE COURT: No. I mean, is he still -- is he a public
21 defender?

22 MR. GHENT: Yes, sir, yes, sir.

23 THE COURT: Okay. All right.

24 MR. GHENT: I'll find out something for Your Honor.

25 THE COURT: All right. Or let Ms. Giovanoli and

1 Mr. Richey know.

2 MR. GHENT: Yes, sir.

3 THE COURT: How about your client? How about Mr.
4 Manigan? Can we keep him here?

5 MS. GIOVANOLI: Under your order, I believe so, Your
6 Honor.

7 (Pause.)

8 MR. RICHEY: He's at Perry, which is over in
9 Greenville County. They normally bring them the day of.

10 THE COURT: Okay. Well, that's fine. He doesn't have
11 that far to travel. I just -- I didn't want the state to
12 have to transport him back to the coast and then back up
13 here Friday.

14 MR. RICHEY: Yes, sir.

15 THE COURT: But if he's at Greenville -- and I'm sure
16 he'd just as soon sleep in his own bed in Greenville as he
17 would in the Spartanburg County Detention Center.

18 THE APPLICANT: Yes, sir. Yes. I rather.

19 THE COURT: All right. Well, Friday. We may have you
20 back on Friday.

21 THE APPLICANT: Okay, sir.

22 THE COURT: Good luck to you, sir.

23 THE APPLICANT: Thank you, sir.

24 THE COURT: If not, I don't know when.

25 END OF PROCEEDINGS NOVEMBER 15, 2017

1 (Proceedings November 17, 2017)

2 THE COURT: You may proceed.

3 MS. GIOVANOLI: Thank you, Your Honor.

4 This is the case of Michael Manigan vs. the State of
5 South Carolina, Docket No. 2016-CP-42-4025.

6 We're before the Court on an application for post
7 conviction relief filed November 10th of 2016.

8 Applicant was indicted in June of 2011 for burglary
9 first degree and grand larceny.

10 On January 14th of 2013 applicant proceeded to trial
11 while represented by Richard H. Whelchel.

12 On January 16th of 2013 applicant was found guilty as
13 indicted of both charges and sentenced by the Honorable J.
14 Derham Cole to imprisonment for 40 years for burglary first
15 degree and ten years for grand larceny to be served
16 concurrently.

17 Applicant filed a timely notice of appeal. The appeal
18 was perfected. The South Carolina Court of Appeals
19 affirmed applicant's conviction.

20 Thereafter applicant filed an application for post
21 conviction relief alleging various claims of ineffective
22 assistance of counsel.

23 The state is present and ready to proceed. Applicant
24 is also present. He's represented by Mr. Rodney Richey to
25 whom I will hand it over.

Michael A. Manigan
Direct examination by Mr. Richey

1 THE COURT: Mr. Richey.

2 MR. RICHEY: We call Mr. Manigan.

3 MICHAEL A. MANIGAN, having
4 been first duly sworn, testified as follows:

5 THE COURT: Have a seat in the witness box and state
6 your full name for the record.

7 DIRECT EXAMINATION BY MR. RICHEY

8 Q State your name.

9 A Michael Anderson Manigan.

10 Q Mr. Manigan, were you convicted in Spartanburg County?
11 Were you convicted in Spartanburg County?

12 A Yes, sir.

13 Q And what were you convicted for?

14 A First degree burglary and grand larceny.

15 Q Who represented you on those charges?

16 A Mr. Welchel.

17 Q Okay. And what type of sentence did you receive?

18 A Forty years for burglary and ten years for grand
19 larceny.

20 Q Okay. And you filed an application for post
21 conviction relief because you believed that your lawyer did
22 not properly represent you, is that correct?

23 A Yes, sir, it is.

24 Q Okay. And this was a burglary. And what was supposed
25 to have happened in the burglary? Just briefly.

Michael A. Manigan
Direct examination by Mr. Richey

1 A Briefly?

2 Q Yeah. What happened in the burglary?

3 A Well, the lady house allegedly was broken into and --
4 and some stuff was in a pass where a lot of trash was
5 stored at. It's like a -- it's not a trash dump, but
6 people disregard junk there.

7 And when I went through that pass that night it wasn't
8 none there. And maybe an hour or couple of hours later
9 when we -- that's where we played cards and chess at. When
10 I come back through that pass there was a bag in that area
11 in the pass, and I kicked it and it made a sound. So I
12 looked inside of it and I seen it was a computer screen and
13 something. But I left it.

14 THE COURT: What kind of screen?

15 THE WITNESS: It was a computer monitor or something,
16 but I left it. I didn't -- I didn't pick it up. I didn't
17 take it with me. I left it where it was.

18 A And when -- by me looking in it, I touched something
19 in that bag, and that's how my print got in there. And --
20 and during the trial that's what -- that's what -- that's
21 what -- that's how I got charged with the burglary, because
22 that print was in there.

23 Q And you actually had two trials, right?

24 A Yes. The first trial was a mistrial.

25 Q And you believed that your counsel didn't properly

Michael A. Manigan
Direct examination by Mr. Richey

1 represent you. Did you testify at trial?

2 A Not at the first one, no, sir.

3 Q Okay. You testified at the second one.

4 A Yes, sir.

5 Q And did your lawyer discuss with you the pros and cons
6 about testifying?

7 A No, sir.

8 Q Okay. And you have grounds that your counsel failed
9 to conduct an analysis about your -- about your prior --
10 about impeachment of your prior record, is that correct?

11 A Yes, sir.

12 Q Okay. Can you tell me what you mean? Under 404,
13 correct?

14 A Well, under Rule 403 and 404(b) he didn't -- it's an
15 impeachment court analyst, but he didn't -- he didn't --
16 there was a probate value where you're trying to weigh it
17 and see what should you -- should you -- should it be
18 admissible or not.

19 He didn't -- he didn't do that -- the rule 404 -- 403
20 and 404(b) wasn't even mentioned or considered in this
21 case. He didn't -- he didn't -- did none of that. He
22 didn't -- he didn't weigh no probate value or try to find
23 out should it be admissible or not. He didn't --

24 Q As to your prior record.

25 A Yes. He didn't do that.

Michael A. Manigan
Direct examination by Mr. Richey

1 Q Okay. And in this case there was a cousin or somebody
2 involved, supposedly involved, is that correct?

3 A Well, he -- they say he wasn't involved in it. He
4 wasn't -- he was not involved in it. They -- they
5 claimed -- said in court that he was not involved in it.
6 He just had -- he had received some stolen goods, earrings,
7 from somewhere, and he pawned them.

8 Q And that was part of the -- the supposed burglary,
9 stuff from the burglary, correct?

10 A Yes, sir.

11 Q And were -- were you charged -- let me ask you this.
12 Did you believe that the -- that your counsel did not
13 represent you because he failed to object to the jury
14 instructions?

15 A Yes, sir, that, failed to object to the jury
16 questioning and...

17 Q And what was that?

18 A Excuse me?

19 Q What was that?

20 A Well, it was that one jury instruction he failed to
21 object to, was the hand of one, the hands of all. But
22 there's several issues I have, but the hands of one is the
23 hands of all clearly -- criminal conspiracy saying that
24 one -- one or two or more conspired to commit a crime.

25 So my indictment says it was first degree burglary and

Michael A. Manigan
Direct examination by Mr. Richey

1 grand larceny. The indictment didn't say criminal
2 conspiracy. My indictment didn't say hand of one, hand of
3 all.

4 I'm the only one been charged. So in order for it to
5 be hands of one, hands of all, have to be two or more
6 conspired together for criminal -- in a criminal act.

7 Q Okay. And that other person, was the other person
8 supposed to have been the cousin because he had the stuff?

9 A Yeah. He had -- he had received some earrings from
10 someone.

11 Q And did you ask your lawyer to prepare a defense of
12 third-party guilt?

13 A Yes, but he didn't. He didn't offer third-party
14 guilt. No, sir. He did not.

15 Q And who -- who was the third party that -- that you
16 were alluded to could have been responsible for this crime?

17 A Actually, I don't know, sir.

18 Q Go ahead.

19 A I don't know who it was. I know if he said it wasn't
20 my nephew and it wasn't me, it had to be a third party
21 because I -- it wasn't me. That's what I was asking to put
22 up the argument for.

23 Q Okay. And -- and you did not have any of the items
24 from the house, is that correct?

25 A No, sir, no, sir. Nothing.

Michael A. Manigan
Direct examination by Mr. Richey

1 Q And the only person that had the items was a cousin,
2 correct?

3 A Yes. He had some earrings.

4 Q Did you -- well, did you -- did you believe your
5 counsel should have requested the lesser charge of first
6 degree burglary?

7 A Yes. You know, the case it boils -- it warrants a
8 lesser charge, because, well, by with the lesser charge I
9 could be convicted of a lesser or acquitted or degraded.
10 But by not getting me a lesser charge that -- that -- that
11 raises a greater risk that the jury will convict.

12 But without that it's just like the Beck rule. It's a
13 -- it's a -- it's eliminated fact-finding process. You
14 know, it's all or nothing. You just get charged with
15 burglary first or innocent.

16 So with the lesser -- lesser included offense it could
17 be -- I could be found guilty of that or acquitted of
18 the -- of the greater one. But my attorney didn't -- he
19 didn't. He didn't exercise that -- he didn't exercise
20 that.

21 Q Do you believe he should have objected to the
22 indictments under the hand-of-one-hand-of-all theory?

23 A Yes, sir. I sure do, sir.

24 Q Did your -- did you attorney gather any information
25 that you were not at the scene of this crime?

Michael A. Manigan
Direct examination by Mr. Richey

1 A No, sir.

2 Q Did you provide him with any?

3 A Yes. I -- well, I know the people. You know, I don't
4 understand. I know the peoples. And, no, they -- that
5 print that was on that bag back in that field, yes, I was
6 in that field, but I was not in that house. Whether it was
7 print, latent. They say it was latent prints everywhere,
8 but it wasn't mine.

9 So that print in that -- on that piece of equipment
10 out there in that field where trash at don't constitutes --
11 constitute me being inside or in that premises or on that
12 premises.

13 Q Was there any other evidence to connect you to the
14 crime?

15 A Just that print out there in that field where that bag
16 was, that field of trash.

17 Q Were you offered any plea offers in this case?

18 A Yes.

19 Q What was that?

20 A I think it was 20 years.

21 Q And did you turn it down?

22 A Yes, sir.

23 Q And can did you tell me why you turned it down?

24 A Because why should I accept a plea of 20 years for
25 something I didn't do? So I wanted to turn it down.

Michael A. Manigan
Direct examination by Mr. Richey

1 Q And did you tell your lawyer that?

2 A Yes.

3 Q After you got the first mistrial, is that when you got
4 the offer, or was that before the second trial?

5 A Might have been before the first one. I can't -- I
6 can't recall.

7 Q Do you believe if the lawyer had effectively
8 represented you you would have been found not guilty?

9 A Yes, sir.

10 Q Are you asking this Court to grant you a new trial?

11 A Yes, sir.

12 Q And just one last thing. This -- this thing on
13 third-party defense where you're alleging it was somebody
14 else that you knew or didn't know --

15 A I didn't know. Talking about I didn't know.

16 Q This wasn't about the cousin.

17 A No, sir.

18 Q Okay. Thank you. Answer any questions.

19 A Sir, I also want to bring up the fact about the
20 incorrect -- not the -- not using the correct
21 direct-verdict standard where he done offered direct
22 standard -- you know, the correct verdict or direct --
23 excuse me.

24 Q Take your time.

25 (Pause.)

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 A That he did not -- that he did not argue the correct
2 direct -- direct-verdict standard. He didn't -- he didn't
3 argue that standard. He didn't object and he didn't argue
4 that.

5 By that print being in that field in that bag, that
6 don't constitute being in the house. I want that -- that
7 that bag was in a field. I come through a field and looked
8 in a bag. That -- just because my print was on that bag,
9 because anyone could've went through that field.

10 I want it to be known that even though a print was on
11 that bag it wasn't -- my print was not in that house. So
12 that did not put me on that premises.

13 Q Right. Just because it was on the bag, that doesn't
14 mean it was in the house. There was none on the house.

15 A None.

16 Q Okay. Thank you. Answer questions the attorney
17 general has for you.

18 CROSS-EXAMINATION

19 BY MS. GIOVANOLI

20 Q Good afternoon, Mr. Manigan.

21 A Good afternoon.

22 Q You've testified today to your version of events.
23 Didn't you testify the same way at trial, that you were
24 walking down a path?

25 A Yes.

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 Q That's what you presented to the jury.

2 A Yes.

3 Q Correct? But you testified that your lawyer never
4 talked to you about testifying, is that correct?

5 A Yes. He did talk to me about testifying.

6 Q Okay. Earlier during direct testimony you said that
7 he did not.

8 A I said he did not -- I did not testify in the first
9 trial.

10 Q No. But then you also testified that Mr. -- your
11 trial attorney did not discuss the pros and cons of
12 testifying with you, is that correct?

13 A I don't remember, ma'am. I -- I know that I didn't
14 testify in the first trial, and in that second trial I was
15 instructed to give up -- if a pass, they had a picture and
16 they showed the picture on the screen, and he said get up
17 there and show them where that pass where you coming
18 through and that pass -- so I can prove to them that I
19 wasn't on nobody's property.

20 So, yes. I did -- he did tell me to get up there, and
21 he give me a picture. And I'm thinking this was the
22 courtroom. And he made me stand over there in front of
23 that jury and hold up a picture and point to them and say
24 this is what -- this is the pass that I crossed and this is
25 where -- where the car headlights -- this is where I come

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 across that pass.

2 I -- I'm -- I'm thinking this was the place, the
3 courtroom. And I stood right there because, he told me get
4 up and go over there and stand and talk to him. We
5 talked -- he did discuss that.

6 Q So you wanted to testify so you could tell your jury
7 your side of the story.

8 A No. He told me to go up there and show them where
9 that pass was so they can know that -- so, see, what they
10 said it was on this lady's property.

11 Q Okay. So you wanted to tell the jury your story.

12 A No. I didn't want to tell them nothing. I was --
13 but --

14 Q Okay. Your testimony is you wish you hadn't
15 testified.

16 A Yes.

17 Q Okay. Now, you testified and you're alleging that
18 your lawyer failed to ask for a 403 and 404(b) or cost
19 analysis of the prior --

20 A Impeachment, probate value, weigh it and see -- and
21 weigh it and see what the probate was admissible, weigh the
22 cons out and see, because that is attacking my character
23 and making -- when you just -- it attacks my character.

24 Q But you're aware that your two prior burglaries
25 convictions are actually elements of this crime. That's

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 what made your -- your charge burglary first. Do you
2 understand that?

3 A No. I didn't.

4 Q The -- the two prior burglary convictions weren't used
5 to impeach you. They were used for the elements of the
6 burglary first crime.

7 A well, had I knew they was going to do that I'd -- I'd
8 a did whatever I could to not bring that in to them and
9 present that. I -- I would -- I'd -- whatever I had to do
10 to do that, I would. I would have.

11 Q And your lawyer actually tried not to have that
12 presented. In the trial he actually tried to stipulate to
13 the prior convictions, and the state did not stipulate to
14 that.

15 A I can't remember. I don't -- I can't recall, ma'am.

16 Q Okay. well, it's all in the record.

17 A Okay, ma'am. Because, like I said, I can't recall.

18 Q So you testified that you wanted your lawyer to argue
19 for third-party guilt but he didn't. Is that correct?

20 A Yes, ma'am.

21 Q Do you remember the pretrial hearing he actually made
22 a motion to have third-party guilt introduced into this
23 case and he called five different witnesses in support of
24 that argument? Do you remember that?

25 A He called five different witnesses?

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 Q That's right. He called the victim; he called the
2 officer; he called the pawn shop store worker, an
3 investigator and a neighbor. This is all testimony
4 proffered in support of his argument for a
5 third-party-guilt charge. Do you not remember that?

6 A I -- I remember people calling to the stand. The
7 prosecution called witness but I -- I don't remember no
8 third-party guilt. No, ma'am. I -- I can't say I do,
9 ma'am.

10 Q Are you aware that the third-party-guilt jury charge
11 was actually read at trial?

12 A Yes. I think so, ma'am.

13 Q You testified in your direct that there was no
14 evidence that connected you to the crime except that
15 fingerprint on the bag outside, is that correct?

16 A Yeah, yeah, in that property, yes.

17 Q Okay. So correct if I'm wrong, but during trial this
18 was the evidence that was elicited by the state. The
19 victim's home was broken into, is that correct?

20 A Uh-huh.

21 Q The victim's computer monitor, printer and beer and
22 jewelry was stolen, is that correct?

23 A Yes.

24 Q They elicited testimony that the defendant -- which
25 was you -- and the nephew watched victim's neighbor doing

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 yard work same day for a long period of time.

2 A Ma'am --

3 Q Was there evidence presented at trial of that?

4 A Also, ma'am, I live in the neighborhood. So if I'm
5 sitting on my front porch and she over in her -- in her
6 front yard cutting grass, ma'am, that's not -- I'm not
7 conspiring or watching over there. This is neighborhood.
8 I have that right to sit on my porch and converse with my
9 nephew or wave at people go up and down the street. I did
10 not case anything, ma'am.

11 Q Okay. But they presented evidence that you were out
12 there watching her house that day.

13 A No. I was out there on my porch. They one said I
14 watching house. I was not watching no house. I was out on
15 the porch. By me looking around I may looked at her house,
16 my neighbor house and several other houses in that
17 neighborhood.

18 Q And the state also elicited testimony that you and
19 your nephew talked to the neighbor who was doing yard work
20 and asked her multiple times when she would be done.

21 A They said that at trial, but, ma'am, I don't remember
22 asking her that. That lady's in the yard all the time. So
23 I would not be asking -- asking her no question like that.

24 Q And then you conceded that the night of the burglary
25 the police found a fingerprint on the stolen printer found

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 in the victim's back yard.

2 A Then, again, it wasn't in the victim's back yard. It
3 was in a field over her fence where some other trash was.
4 That's the reason why Mr. Welch told me to explain to them
5 where that bag was. And it had a picture of that field.
6 And I stood up right there and -- and showed them where
7 that bag was this in that field. It was not in her back
8 yard. It was in a field if, as you said.

9 Q Okay. And then --

10 A You should have on record that that was a place of
11 trash in a field behind a fence.

12 Q That was your testimony.

13 A No, no, no. That's what's -- that's what's in the
14 thing. They also said it was vines and woods and falling
15 limbs in that area.

16 Q And that was your testimony at trial, correct?

17 A Yes, ma'am.

18 Q Okay. So, also, let's see. There was also evidence
19 elicited by the solicitor that prior to the burglary you
20 had never been inside the victim's home, is that correct?

21 A Still haven't.

22 Q You still haven't been there.

23 A No.

24 Q Right. And then also there was evidence elicited that
25 there's no reason for you to be in the victim's back yard

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 where the bag was found.

2 A And then, again, ma'am, you keep saying the back yard.
3 It was not the back yard. Where her fence stop at, it was
4 over there in another field with other trash and debris,
5 was in a path. It was not in the back yard.

6 She have a 6-foot privacy fence. In order for it to
7 be in her back yard I had to go over that privacy fence and
8 be in her back yard. That was on the -- the back, because
9 I seen in that path is on the other side in a vacant lot in
10 a field.

11 Q Okay. And then you also went to the victim's house at
12 2:00 a.m. after the burglary and talked to the victim, is
13 that right?

14 A No, ma'am. I -- I didn't go back -- I seen her, and I
15 asked her that I would watch out if anything out of the
16 norm come on -- out of the norm happened or something,
17 we'll watch out. That said the same thing to the neighbor
18 next door and the neighbor across the street and the
19 neighbor to the left.

20 Q And you --

21 A But we don't have -- we don't have a neighborhood
22 watch. And I say we'll watch out for one another.

23 Q And you told her that that night at 2:00 a.m. --

24 A Yeah.

25 Q -- when you went over and asked for --

Michael A. Manigan
Cross-examination by Ms. Giovanoli

1 A It's -- and --

2 Q And you told her -- let me finish my question and then
3 you can answer it. You told her it's a shame your house
4 was broken into. You asked for a beer and you told her --

5 A No. I don't remember asking for no beer. I just said
6 it was a shame the house was broken into. I don't know --
7 I don't know if she drink beer or not.

8 Q And then your nephew sold the victim's diamond
9 earrings to a pawn shop two days later, is that correct?

10 A That's what -- that's what the pawn guy said, yes, it
11 is.

12 Q And there was also evidence elicited that you had two
13 prior burglaries, which made this a burglary first.

14 A Yes. I did have two prior burglaries.

15 Q I have no further questions. Thank you.

16 THE COURT: Mr. Richey.

17 MR. RICHEY: No other questions.

18 THE COURT: All right. Come down. Thank you very
19 much.

20 MR. RICHEY: Call Mr. Welchel.

21

22

23

24

25

Richard H. whelchel
Direct examination by Mr. Richey

1 RICHARD H. WHELCHER, having
2 been first duly sworn, testified as follows:

3 THE COURT: State your full name for the record.

4 THE WITNESS: Richard whelchel.

5 DIRECT EXAMINATION BY MR. RICHEY

6 Q Mr. whelchel, are you currently a practicing attorney?

7 A Yes, sir.

8 Q Okay. And do you practice -- what county do you
9 practice in?

10 A Spartanburg.

11 Q Okay. And where are you employed?

12 A I work for the Spartanburg County Public Defender's
13 office.

14 Q Okay. And in that occasion did you have an
15 opportunity to represent Mr. Manigan?

16 A Yes, sir, I did.

17 Q And do you recall the charge was burglary first and
18 grand larceny?

19 A It was.

20 Q Okay. And you've been in the courtroom today and
21 you've heard his testimony, correct?

22 A Yes, sir.

23 Q In terms of the case is it correct that the main
24 evidence they had against him was the fingerprint on the
25 computer stuff? Is that correct?

Richard H. Whelchel
Direct examination by Mr. Richey

1 A Yes, sir.

2 Q Was there any other evidence that he had did this
3 crime other than that?

4 A Nothing direct in my opinion. You know, they -- they
5 developed during the course of the trial that the testimony
6 of the neighbor that saw Mr. Manigan and his cousin Gary in
7 the yard and this neighbor was cutting the victim's grass
8 and other people's grass, and she testified that Gary
9 Manigan, the cousin or nephew, I believe, came -- came up
10 to her and kept interrupting her and asking her how many
11 yards she was going to do and how long she was going to do
12 that for and statements like that.

13 And she testified that Mr. Manigan talked to her too.
14 And there was other testimony about him talking to the
15 victim later on that night.

16 Q And you tried this case twice, right?

17 A I did.

18 Q Okay. And this offer that he got of 20 years, do you
19 know when he got it? Was it before the first trial or
20 after the first trial? Do you recall?

21 A There was an offer before the first trial that he
22 turned down. There was an offer in September.

23 The first trial was in June. It was mis -- we tried
24 it all the way through and he -- I don't remember if he
25 testified or not at the first one, but he says he didn't.

Richard H. Whelchel
Direct examination by Mr. Richey

1 We tried it all the way through.

2 The solicitor in the first trial made an argument that
3 I objected to as shifting the burden of proof to
4 Mr. Manigan. And Judge Couch was the trial judge, and he
5 agreed with me. That's why there was a mistrial the first
6 time.

7 We got an offer in September of that year. I forget
8 which year it was. But we got an offer in September,
9 burglary second violent and grand larceny. And they would
10 run concurrent and they -- there would be 15. And I took
11 that to Mr. Manigan and he turned it down.

12 Q So -- so they'd offered him less than the amount that
13 he testified to.

14 A Yes, sir.

15 Q Okay. When it's discussed with him the implications
16 of what his record would have on this case in terms of -- I
17 believe he -- he believed that the burglaries could be kept
18 out under 403 and 404 balancing act. Did you discuss that
19 with him?

20 A I explained to Mr. Manigan that the problem we had in
21 his particular case was the fact that he was indicted under
22 the statute that allows the prior burglaries to be used as
23 an element of the crime and that 403 didn't have anything
24 to do with that, that those -- he was indicted under that
25 particular statute.

Richard H. Whelchel
Direct examination by Mr. Richey

1 well, the indictment had all of the -- all of the
2 statutory items in it, but they were going forward on it
3 being in the nighttime and the fact that he had two prior
4 burglary convictions. That's why I made the motion to
5 stipulate.

6 Q In terms of the -- in terms of where he lived, did he
7 live in that community?

8 A Yes, sir.

9 Q And -- and at the time he was supposed to have been
10 casing this house was -- was he on his property? Are you
11 aware of that?

12 A He was on his front porch and in his yard. You've got
13 to understand that his house is -- if this is the street,
14 his house would be right here and her house would be one or
15 two down. You can see down the street where her house was
16 and down the street where the lady's that was cutting the
17 grass was. You can see her house too. I went to the scene
18 numerous times.

19 Q This third-party guilt -- and you've got the
20 transcript of what you did on it -- did you discuss that
21 with him, the whether you could succeed or not succeed?

22 A Oh, yes, sir.

23 Q Okay. And he testified that you did not properly
24 argue the directed-verdict standard. Do you believe you
25 did that?

Richard H. Welchel
Cross-examination by Ms. Giovanoli

1 A I do.

2 Q Did you tell him it was in his best interest to take
3 this plea offer? Did you tell him it was in his best
4 interest, or you just left it up to him?

5 A The plea offer of 15?

6 Q Yes, sir. yes, sir.

7 A I told him to take it.

8 Q And he expressed to you that he was not guilty of the
9 charges, correct?

10 A That's correct.

11 Q One moment.

12 (Pause.)

13 Q Isn't his house -- isn't his house across the street
14 from the lady's house?

15 A His house?

16 Q Yes.

17 A Yeah.

18 Q Thank you.

19 CROSS-EXAMINATION

20 BY MS. GIOVANOLI

21 Q Good afternoon, Mr. Welchel. Thanks for being here.

22 A Yes, ma'am.

23 Q How long have you been practicing criminal law?

24 A I'd have to do some math. It'll be -- right now it's
25 35 plus years. I'm just -- just shy of 36 years.

Richard H. Whelchel
Cross-examination by Ms. Giovanoli

1 Q Has that always been with the public defender's
2 office?

3 A No, ma'am. I started out as an assistant solicitor in
4 Richland and Kershaw County.

5 After that I came home to Spartanburg in '85 and
6 worked there for two or two and a half years in the
7 solicitor's office here. And then I was in private
8 practice doing criminal defense and a host of other things
9 for almost 20 -- 20 years.

10 And then I went. And at that time when I started my
11 private practice I was also a part-time public defender for
12 about six or seven or eight years.

13 And then back in 2006 I closed my private practice and
14 came back to the public defender as a full-time assistant
15 public defender.

16 Q Okay. Thank you for all of that history.

17 I want to address one thing that the applicant's
18 alleged you didn't discuss the pros and cons of him
19 testifying in his case. Did you actually discuss the pros
20 and cons of him testifying?

21 A Numerous occasions I had test -- excuse me. I
22 discussed that with him prior to the first trial. I
23 discussed that with him during the course of and prior to
24 his actual testimony. There's -- I think it's in the
25 transcript where I told Judge Cole that I wanted to talk to

Richard H. Welchel
Cross-examination by Ms. Giovanoli

1 my client again about whether or not he had to testify or
2 wanted to testify. And the decision to testify was his.

3 Q And that's correct. That's on page 219 on line 14.

4 You actually requested that you could discuss with him
5 testifying over lunch, is that correct?

6 A Yes.

7 Q Is that what your recollection of the trial was?

8 A Oh, yeah. I mean, I did that. I don't know what line
9 and page it's on, but it's there.

10 Q Okay. And as far as the offer for 15 years concurrent
11 on burglary second violent and grand larceny, you relayed
12 that offer to the applicant. Did you explain the offer to
13 him?

14 A Yes, ma'am.

15 Q Do you feel that he understood the offer?

16 A He understood the offer.

17 Q And it was your testimony that you advised him to take
18 the offer.

19 A Yes, ma'am.

20 Q And was that based on the state's evidence against the
21 applicant?

22 A Yes, ma'am. This is one of the few cases that I've
23 tried where the state uses the two prior convictions for
24 burglary as an element of its crime. And I tried to get
25 him to understand that before he ever takes the stand or

Richard H. Welchel
Cross-examination by Ms. Giovanoli

1 doesn't take the stand one of the first things that the
2 jury is going to hear is that he has two prior convictions
3 for burglary and that's an element of the crime. That's
4 why he's charged with burglary first. He --

5 Q You tried to prevent that blow by moving to stipulate
6 to those prior convictions.

7 A I did, ma'am.

8 Q Did the state stipulate?

9 A No. They would not.

10 Q And they have a discretion to prove their case, every
11 element.

12 A Unfortunately, yes.

13 Q Okay. Going to the directed-verdict standard, did you
14 keep up with this case on appeal?

15 A Not really, I mean.

16 Q Okay.

17 A I found out that it -- I filed the appeal notice and
18 everything. And I saw. I've read the stuff when it --
19 when it came back.

20 Q So you weren't aware that the directed-verdict issue
21 was actually briefed on appeal based on your arguments.

22 A No.

23 Q It was just -- able to be briefed.

24 A Okay.

25 Q As far as third-party guilt, applicant's expressed

Richard H. Welchel
Cross-examination by Ms. Giovanoli

1 that he wanted you to pursue third-party guilt alleging
2 someone else that he didn't know committed the crime. Was
3 that your recollection of your discussions with him?

4 A No, ma'am.

5 Q Okay. The third-party guilt that you pursued was
6 based on a nephew?

7 A The third-party-guilt individual was Gary Manigan. We
8 had -- and I've never had this before or since. We had a
9 fellow that was in possession of the victim's stolen
10 property in less than 36 hours.

11 The burglary took place on a Saturday evening. On a
12 Monday morning within the hour of the pawn shop a half-mile
13 from this incident, opening up Gary Manigan shows up with
14 the victim's earrings -- I think diamond earrings -- and
15 pawns them for \$50. That's why we went with third-party
16 guilt.

17 Gary Manigan was originally charged with burglary and
18 larceny himself. They chose -- when I say they, I mean the
19 city of Spartanburg. They chose to charge him or let him
20 plead to receiving stolen goods.

21 Q And Gary Manigan, was he related to Mr. Manigan?

22 A I think he's a nephew.

23 Q And you actually proffered extensive testimony in the
24 pretrial hearing on your motion to, I guess, introduce
25 evidence of third-party guilt.

Richard H. Welch
Cross-examination by Ms. Giovanoli

1 A Yes, ma'am. Judge Cole accepted it.

2 Q Okay. And did Judge Cole read a third-party-guilt
3 charge to the jury?

4 A Yes, ma'am.

5 Q With regard to the -- he's alleged that you didn't
6 request a lesser included offense. Was -- did the facts
7 support a lesser included offense in this case?

8 A No, ma'am.

9 Q Was there any other reason why you wouldn't have
10 requested the charge on a lesser burglary?

11 A I would have had it been any other kind of burglary,
12 but it's because it's this statutory burglary.

13 Q Applicant also takes issue with the fact of a
14 hand-of-one-hand-of-all charge was read. Do you recall any
15 discussions with the Court regarding that charge?

16 A We knew that was coming. The hand of one is hand of
17 all was going to be charged in the first case. And Judge
18 Cole said it was going to be charged in the second case
19 too.

20 Q Okay. I have no further questions. Thank you very
21 much.

22 MR. RICHEY: No other questions.

23 THE COURT: You may come down. Thank you very much.
24 May this witness be excused?

25 MS. GIOVANOLI: No objection from the state.

1 THE COURT: Without objection, you're free to go, sir.
2 Thank you very much.

3 THE WITNESS: Thank you, Your Honor.

4 (Whereupon, the witness was excused.)

5 MR. RICHEY: Nothing.

6 MS. GIOVANOLI: Nothing from the state.

7 THE COURT: Thank you very much, counsel. Proposed
8 orders in 30 days.

9 END OF REQUESTED TRANSCRIPT OF RECORD

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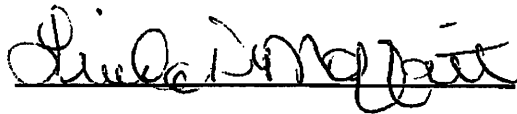
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 15th and 17th days of November 2017.

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

October 26, 2018



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Michael A. Manigan, #243544

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-4025

**ORDER OF DISMISSAL
WITH PREJUDICE**

2018 JAN 24 PM 1:19
CLERK OF COURT
SPARTANBURG COUNTY

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Michael A. Manigan (Applicant) on November 10, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 17, 2017 at the Spartanburg County Courthouse.¹ Applicant was present and represented by Rodney Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Richard Whelchel, Esquire, ("Counsel") also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the June 2011 term of the Grand Jury for Spartanburg County for burglary – 1st degree (dwelling) (2011-GS-42-3015) and grand larceny (2011-GS-42-3016). On January 14, 2013, Applicant proceeded to trial while represented by Richard H. Whelchel, Esq. Assistant Solicitor Timi Poulos represented the State. On January 16, 2013, Applicant was

¹ The hearing was originally scheduled for November 15, 2017 but had to be continued because Counsel was ill and unable to appear to testify. Also at the November 15 hearing, Applicant withdrew his motion to relieve Rodney Richey as his PCR counsel he had filed October 30, 2017.

found guilty as indicted of both charges and sentenced by the Honorable J. Derham Cole to imprisonment of forty years for burglary – 1st degree and ten years for grand larceny, to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by Daniel Simmons McQueeney, Jr., Esq. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion filed January 20, 2016. State v. Manigan, Op. No. 2016-UP-022 (S.C. Ct. App. 2016). Applicant petitioned for rehearing, but was denied by order on March 24, 2016. The Remittitur was returned on May 27, 2016.

In his application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel, in that;
 - a. "Counsel failed to object to trial court's jury instruction on first degree burglary and grand larceny."
 - b. "Counsel failed to request lesser included offense for first degree burglary and grand larceny."
 - c. "Counsel failed to request exclusion of name and basic nature of Applicant's prior convictions."
 - d. "Counsel failed to request the trial court to conduct a Colf analysis on impeachment value of Applicant's prior convictions when his credibility was a crucial issue in this case."
 - e. "Under SCRCrimP, Rule(s) 403 & 404(b), Counsel failed to request trial court's determination regarding Applicant's prior convictions of similar nature."
 - f. "Counsel failed to object to trial court's erroneous jury instruction and supplemental charge."
 - g. "Counsel failed to prepare and argue a complete defense of third party guilt."
 - h. "Counsel failed to argue a correct direct verdict standard."
 - i. "Through many of the claims listed above, Counsel's performance was further deficient by failing to argue and protect Applicant's procedural and [substantive] Due Process rights in violation of the U.S. Constitution, Amendment XIV."

FILED
SOUTH CAROLINA COURT
OF APPEALS
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M. HOPE BLACKLEY

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FACTS ADDUCED AT TRIAL

On December 11, 2010, Applicant broke into his neighbor's, Elizabeth Ann Vandahm ("Victim"), home and stole various items. Earlier that day, Victim left her home for work. (R. p. 22.) When Victim left her home, everything was in normal condition. (R. p. 23.)

At trial, Anna Holcombe, Victim's neighbor, testified that she was doing yard work in her own yard and in Victim's yard on the day of the burglary. (R. p. 91; R. pp. 93-94.) According to Holcombe, Applicant and Gary Manigan, Applicant's nephew ("Nephew"), were watching Holcombe do yard work. (R. pp. 95-96.) Applicant and Nephew kept interrupting Holcombe's yard work by asking her how long she was planning on being outside. (R. p. 96.) Holcombe never had any dealings with Applicant. (R. p. 96.) Applicant sat on his porch for the majority of the time that Holcombe was outside. (R. p. 97.)

When Victim returned home from work, at approximately 10:30 p.m., she noticed glass on her kitchen floor. (R. p. 25.) She also saw a big piece of cement on her kitchen floor. (R. p. 25; R. p. 33.) Victim's computer monitor, printer, and beer were missing. (R. p. 26; R. p. 28; R. p. 35.) In addition, Victim's jewelry, including a pair of diamond earrings, were missing. (R. p. 26.) When Victim went to her bathroom, she saw glass and a brick on her bathroom floor. (R. p. 27; R. p. 32.) Her bathroom window was broken. (R. p. 27; R. p. 32.) Further, Victim noticed that someone tried to pry open her backdoor. (R. p. 27; R. p. 47.)

After the police arrived at her home, Victim found a trash bag, which contained her stolen computer monitor and printer, in her backyard behind her "hog wire fence." (R. pp. 36-37.) The trash bag appeared to be one of her trash bags. (R. p. 37.) According

to Officer Charles Hair, the hog wire fence was easily bendable; the fence would not have kept anyone from going in and out of the yard. (R. p. 108.) Officer Hair was able to lift fingerprints from the stolen computer monitor and printer. (R. pp. 112-113.)

While the police were still at Victim's home, Applicant came to her home. (R. p. 50.) Applicant asked Victim a lot of questions, including if she knew if the police had found anything yet. (R. p. 51.) Victim had never met Applicant before this occasion. (R. p. 52.)

Around 2:00 a.m., after everyone had left, Applicant came back to Victim's house and knocked on the door. (R. p. 53.) Applicant asked Victim for a beer and told her that "it was shame what had happened to [her] house and that he watches [her] and that he watches [her] house." (R. p. 53.)

According to Investigator Lou Mathis Jones, the palm print found on the stolen computer monitor and the fingerprint found on the stolen printer, which were found in a trash bag located in Victim's backyard, belonged to Applicant. (R. p. 133.) According to Victim, prior to the burglary, Applicant had never been inside her home. (R. p. 50.) There was no reason for Applicant to have touched anything inside her home, including her computer monitor or printer. (R. pp. 49-50.) Further, there was no reason for Applicant to have ever been in her backyard. (R. p. 51.)

On December 13, 2011, two days after the burglary, Nephew sold Victim's stolen diamond earrings to a pawn shop for \$50. (R. pp. 156-157; R. p. 159.)

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified to essentially the same version of events he told at trial. He testified he had two trials, the first of which ended in a mistrial. Applicant testified at his second trial, but

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had no discussion with Counsel regarding the pros and cons of testifying. Applicant complained Counsel did not request a Rule 404(b), SCRE, or Colf analysis of his prior burglary convictions being presented to the jury. Applicant did not understand that Rule 404 and Colf applied to prior convictions being used for impeachment purposes and not for prior convictions used to prove a first degree burglary charge based on prior convictions.

Applicant also claims Counsel failed to object to jury instructions regarding the hand of one, hand of all because his understanding of the charge was it required two or more people who conspired to commit a crime and he was not indicted for conspiracy. Applicant testified he wanted a third party guilt charge, but Counsel did not request one. Applicant testified he wanted a third party guilt charge because neither he nor his nephew committed the crime. Applicant's cousin had the diamond earrings. Applicant also wanted a charge on the lesser included offense, but Counsel did not request one.

Applicant testified there was no evidence of him being at the crime scene other than his finger and palm prints on the stolen goods. Applicant testified he was offered a twenty year sentence to plead guilty but he did not accept it because he was innocent.

II. Counsel testified to the following:

Counsel has been practicing criminal law over thirty five years. He currently works as an Assistant Public Defender. Counsel recalled the most damning evidence was his finger and palm prints on the stolen goods outside Victim's home. Although there was no other direct evidence, the neighbor's testimony developed at trial was also damaging. Counsel testified Applicant's first trial ended in a mistrial because Counsel argued the Solicitor made burden shifting arguments.

Counsel testified the State offered Applicant a concurrent fifteen year sentence to plead to second degree burglary, violent, and grand larceny. He explained the offer to Applicant who in turn rejected it. Counsel also explained to Applicant the State was entitled to present evidence of his prior burglaries as part of the crime for which he was indicted. Counsel attempted to stipulate to Applicant's prior burglaries to lessen the blow, but the State declined. Counsel believed the State had a right to prove every element of the crime without stipulation.

Counsel discussed third party guilt with Applicant and was successful in arguing for a charge on third party guilt. Counsel also advised Applicant to accept the plea offer, but Applicant wanted to go to trial and denied guilt. Counsel discussed with Applicant the decision whether or not to testify and the pros and cons associated with him testifying. Counsel did not request the lesser included offenses because the evidence did not support the lesser included offenses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel in hindsight. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

6-6

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18.

A. Failure to object to trial court's jury instruction on first degree burglary and grand larceny

Although Applicant made an allegation that Counsel was ineffective for failing to object to the trial court's jury instructions on first degree burglary and grand larceny, Applicant has failed to meet his burden of proving this claim. Applicant presented no evidence or argument on

this point. Additionally, a reading of the record shows nothing improper regarding the trial court's jury instruction on first degree burglary or grand larceny. Having failed to meet his burden of proof on this allegation, the claim is denied and dismissed with prejudice.

B. Failure to request lesser included offenses

Applicant alleged in his original PCR application that Counsel failed to request a charge on the lesser included offenses for which he was indicted and tried. Applicant did not present any evidence to support or prove this claim. Furthermore, Counsel testified credibly he did not believe the evidence supported a charge on the lesser included offenses. This Court agrees. The State presented evidence of Applicant's two prior burglary convictions, which enhanced his crime to first degree burglary. The jury could either find him guilty of first degree burglary or not guilty of anything, but the evidence could not support a lesser burglary degree. As to grand larceny, the State presented evidence Victim had stolen from her jewelry, including a pair of diamond earrings, a computer monitor and printer. Based on common knowledge of the value associated with these things, it was reasonable not to request a charge for a lesser included offense – hoping the jury would simply find Applicant not guilty if the State did not prove beyond a reasonable doubt all of the elements of the crime. Therefore, this Court finds Applicant has failed to meet his burden of proof on this claim and therefore it is denied and dismissed with prejudice.

C. Prior Convictions

Applicant has made various allegations regarding the admissibility of his prior burglary convictions. Specifically, Applicant alleges Counsel failed to request exclusion of his prior burglary convictions, failed to request the Court to conduct a Colf analysis on the impeachment value of the prior convictions, and failed to request the Court to make a determination of the

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admissibility of the prior convictions based on Rule 403 and Rule 404(b), SCRE. Applicant mistakenly believes the prior burglary convictions were used for impeachment and subject to either Rule 404 or Colf. Applicant's prior burglary convictions were an element of the crime the State was entitled to prove. See S.C. Code Ann. § 16-11-311(A)(2). Rule 404(b) addresses when evidence of other crimes can be used to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Thus, the rule was inapplicable in the context of Applicant's trial. Likewise, State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000), addresses the requirements for admitting evidence of remote convictions for the purpose of impeachment. Again, Colf and its progeny were not implicated in Applicant's trial because his prior burglary convictions were not being admitted under Rule 609, SCRE, but rather to prove the elements of the crime charged.

Additionally, Counsel testified credibly, and the record supports his testimony, that he did request to stipulate to Applicant's prior burglary convictions in an effort for the testimony not to be presented to the jury. However, the State declined to stipulate and chose to prove the elements through the presentation of evidence – something the legislature has explicitly allowed them to do by making the prior burglary convictions an element of the crime of first degree burglary. See S.C. Code Ann. § 16-11-311(A)(2). Applicant has failed to meet his burden of proving Counsel was deficient in this regard or Applicant was prejudiced by any alleged deficiencies. Therefore, all allegations regarding the improper handling of Applicant's prior burglary convictions are denied and dismissed.

D. Third Party Guilt Jury Instruction

Applicant alleges Counsel failed to request or obtain a jury charge on third party guilt. This allegation is conclusively refuted by the record. Not only did Counsel proffer testimony

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from five witnesses *in camera* pre-trial solely for the purpose of pursuing third party guilt, he was successful in his arguments and the jury was presented with evidence of third party guilt and read a third party guilt instruction by the trial court. Applicant failed to prove this allegation and it is therefore denied and dismissed.

E. Hand of One, Hand of All Jury Instruction

Applicant alleges Counsel was ineffective for failing to object to the supplemental charge requested by the State that the hand of one is the hand of all. This Court disagrees. Counsel testified credibly that because he introduced evidence of third party guilt, it necessarily opened the door for the State to be entitled to a charge on the hand of one, hand of all. Counsel had no basis to object and even if he had, the objection would most likely have been overruled. The evidence presented showed Applicant's nephew had pawned Victim's stolen diamond earrings. There was also evidence presented Applicant was involved in the burglary by way of his finger and palm prints on the stolen goods in Victim's backyard. Hand of one, hand of all was a proper jury charge. Applicant fails to show how Counsel was deficient in failing to object to the charge or how he was prejudiced by Counsel's failure to object. Therefore, the allegation is denied and dismissed.

F. Direct Verdict Standard

Applicant alleges Counsel argued an incorrect direct verdict standard. However, Applicant failed to present any evidence or argument as to how the standard argued was incorrect. In fact, the motion for a directed verdict was the issue briefed on appeal and affirmed by the South Carolina Court of Appeals. The standard was properly argued before the trial court and thereafter fully argued on appeal. This Court finds no error in Counsel's arguments for a

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CLERK OF COURT

[Signature]

directed verdict. Therefore, Applicant has failed to prove this allegation and it is denied and dismissed.

G. Procedural and Substantive Due Process Rights

Applicant claims Counsel failed to argue and protect Applicant's procedural and substantive due process rights. However, Applicant fails to present evidence or otherwise prove this claim. A reading of the trial record demonstrates Counsel's full understanding of the charges against Applicant and how best to proceed defending him. Counsel accorded Applicant competent representation well above the standards required of a criminal defense attorney. Counsel was well versed in the facts, made good legal arguments, and presented a well-prepared and competent defense. Applicant's Due Process rights were not violated. This Court finds no error or prejudice from Counsel's representation of Applicant.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a

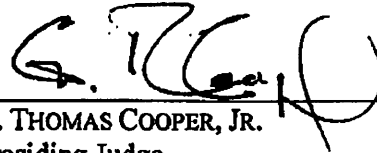
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Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRPC. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22nd day of January, 2017.



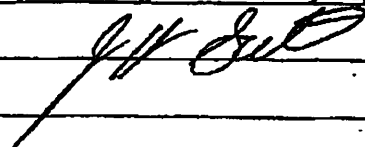
G. THOMAS COOPER, JR.
Presiding Judge
Seventh Judicial Circuit

Chadson, South Carolina

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M. HOPE BLACKLEY
JACKSON COUNTY

WITNESSES

Spartanburg Public Safety Department



ARREST WARRANT NUMBER

M125811

ACTION OF GRAND JURY

 **True Bill**

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

11-GS-42-3015

The State of South Carolina

County of Spartanburg

Barry J. Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE
vs.

Michael Anderson Manigan

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 JUN 21 PM 4:52

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011 the Grand Jurors of
Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE**(DWELLING)**

That the Defendant, Michael Anderson Manigan, did in Spartanburg County, on or
about December ^{11th} ~~10~~, 2010, willfully and intentionally enter the dwelling belonging to
Elizabeth Anne Vandahm, located at [REDACTED], Spartanburg, South Carolina
without consent and with the intent to commit a crime therein, and that the defendant
did enter the dwelling either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the
crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle,
shotgun, machine gun, or other firearms,
- (6) committed the crime while possessing a prior record of two or more
convictions for burglary or housebreaking or a combination of both,

in violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

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


ASSISTANT SOLICITOR

WITNESSES

Spartanburg Public Safety Department

1. SENTENCE MARK

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT

ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY

Direct Indictment (M125812)

ACTION OF GRAND JURY

JUN 17 2011

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 1-16-13

DOCKET NO.

11-GS-42-3016

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 20 2011

TERM

THE STATE

vs.

Michael Anderson Manigan

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B) (1); 16-1-57

CDR Code: 2367

Class FEL-F

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 JUN 21 PM 4:53

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 17 2011 the

Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That Michael Anderson Manigan, did in Spartanburg County on or about December ¹¹~~30~~, 2010, feloniously take and carry away the goods of Elizabeth Anne Vanndahm, valued at more than Two Thousand Dollars, but less than Ten Thousand Dollars, described as follows: jewelry, and/or a Dell computer, and/or a HP printer, with the intent to deprive the owner permanently of such property. Further that the Defendant has at least (2) two or more prior convictions for Property Crimes, all in violation of Section 16-13-30 (B) (1) and 16-1-57, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Michael Anderson Manigan

AKA:

Race: BLACK Sex: M Age: 54

DOB: 1958 SS#: [REDACTED]

Address:

City, State, Zip: SPARTANBURG, SC 29306-0000

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degree (15 years to Life)

INDICTMENT/CASE#: 2011GS4203015

A/W#: M125811

Date of Offense: 12/10/2010

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST Timi Poulos 7055
POULOS, TIMI SC Bar#

Defendant

Attorney for Defendant

SC Bar# 6057

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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 ☒ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS See Rest. OrderRecommended to be required asa condition of any pretrial release.*Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$133.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab, or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk A. SeaverCourt Reporter: M. Woods

SCCA/217 (03/2011)

Presiding Judge William ColeJudge Code: 3053Sentence Date: January 16, 2013

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.
Michael Anderson ManiganAKA: _____
Race: BLACK Sex: M Age: 54DOB: 1958 SS#: _____
Address: _____
City, State, Zip: SPARTANBURG, SC 29306-0000

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000 (0-10 years)INDICTMENT/CASE#: 2011GS4203016A/W#: M125812Date of Offense: 12/10/2010S.C. Code § : 16-13-0030 (B)CDR Code #: 3420

SENTENCE SHEET

in violation of § 16-13-0030 (B) of the S.C. Code of Laws, bearing CDR Code # 3420☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State.ATTEST: Timi Poulos 70495 [Signature] [Signature] 6057
POULOS, TIMI SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of \$ —; provided that upon the service of, — days/months/years and/or payment
of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$3.90
TOTAL		\$133.90

Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]

SCCA/217 (03/2011)

PTUP _____
_____ days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: [Signature]Judge Code: 2053Sentence Date: January 16, 2013