

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lancaster County

Honorable Brooks P. Goldsmith, Circuit Court Judge

BENECO A. GANSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001736

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LANCASTER) COURT OF GENERAL SESSIONS
3) No. 2014 GS 29 00445

4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 BENECO GANSON)
9 Defendant)

10 Lancaster, South Carolina
11 June 24, 25, 2014
12

13 B E F O R E :

14 HONORABLE BRIAN M. GIBBONS, Judge, and a Jury

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

16 For the State: RANDY NEWMAN, Esq.
17 Solicitor

18 For the Defendant: BRANDON STEEN, ESQ.

19

20 Reporter Present: BONNIE KELLY

21

22 HARRIET P. BENNETT
23 Reporter, S. C. Court Administration
24 46 Regency Oaks Drive
25 Summerville, S. C. 29485

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EXHIBITS

		For ID.	IN EV.
1			
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3	BY THE STATE:		
4	1 Photograph		19
5	2 Photograph		19
6	3 Photograph		19
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14	11 Copy of indictment 2008-344		15
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16			
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18			
19			
20			
21			
22			
23			
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EXHIBITS

1

2

3 TRANSCRIPTION NOTE: No Defense Exhibits entered

4

There were no Court's Exhibits

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1 (The within matter came before the Court for hearing
2 on June 24, 2014)

3 THE COURT: Be seated. Good afternoon.

4 It's a lovely day to be in the Lancaster County Court-
5 house.

6 Ladies and gentlemen, we are about to start the trial
7 of -- Solicitor, if you would go ahead and call your case.

8 SOLICITOR: Case Number 2014 GS 29 445, State versus
9 Beneco Antoine Ganson,

10 Burglary in the first degree.

11 THE COURT: Any other Indictments?

12 SOLICITOR: No, sir.

13 THE COURT: All right, ladies and gentlemen, the State
14 intends to call the case of the State versus Beneco Ganson.
15 He has been charged with the crime of burglary in the first
16 degree.

17 As I told you yesterday, this is a criminal court this
18 week in Lancaster County, what we call General Sessions
19 Court.

20 Again, this document which if you're on the trial jury
21 in this case I will explain a little further -- this is
22 just a piece of paper that brings the case to Court. It
23 alleges what the Defendant did but it doesn't mean anything
24 about the guilt of the Defendant. It is just saying what
25 the State is charging him with.

1 So before we begin the trial of the case or ask you
2 more questions, I have to ask you before I do that --
3 since you were not sworn today, I have to ask the Clerk
4 to go ahead and swear you before we start with the ques-
5 tions.

6 (Whereupon, the Clerk swore the jury for the trial
7 of the within matter)

8 THE COURT: All right. Any proposed voir dire from
9 the Defense?

10 MR. STEEN: Just the general questions, Your Honor.

11 THE COURT: Any from the State?

12 SOLICITOR: No, sir.

13 THE COURT: Ladies and gentlemen, I have several ques-
14 tions I have to ask you. Before I do that, I will have
15 the Solicitor's Office introduce themselves to you, as well
16 as the Defense introduce themselves to you, or any witnes-
17 ses or people they have with them.

18 Solicitor?

19 SOLICITOR: Randy Newman, Assistant Solicitor. (Naming
20 other members of the Solicitor's Office)

21 MR. STEEN: Brandon Steen, Public Defender. This is
22 Michael Utsey, Chief Public Defender.

23 THE COURT: All right, thank you.

24 The first question I have -- if the question applies
25 to you if you will please stand, and I will ask what your

1 juror number is. I'll have some more questions for you
2 then.

3 Is there anyone who is related by blood or marriage
4 or has any close social or personal relationship with any
5 of the attorneys involved in this case? If so, will you
6 please stand?

7 (Juror standing)

8 THE COURT: Yes, sir, your number?

9 JUROR: Number 145.

10 THE COURT: What's your situation?

11 JUROR: Me and Mr. Newman are real close friends.

12 THE COURT: All right. Thank you, sir. I will ex-
13 cuse you from the trial of this case.

14 SOLICITOR: He's free to leave. We're not going to
15 draw another jury.

16 THE COURT: That's Number 145.

17 All right, is anyone related by blood or marriage,
18 or has a close social or personal relationship with the
19 Defendant, Beneco Ganson? If so, please stand.

20 No response.

21 (No response from any juror)

22 THE COURT: There is no particular order, but these
23 are potential witnesses which is you are on the trial
24 jury you may hear from:

25 Rodynka Howze, Cheyennae Howze; from the Lancaster

1 Police Department Phillip Ball, Bill Johnson; Rustin
2 Burlingame from the Lancaster County Sheriff's Office;
3 Ken Taylor, from the Fort Mill Police Department and
4 formerly with the Lancaster Police Department Robert
5 Middleton.

6 Is anyone related by blood or marriage or has a
7 close personal or social relationship with any of those
8 potential witnesses? If so, please stand.

9 No response.

10 (No response from any juror)

11 THE COURT: Has any member of the jury panel formed
12 or expressed an opinion about any issue or matter in-
13 volving this case? I don't know how you can respond if
14 you know nothing about it.

15 No response.

16 (No response from any juror)

17 THE COURT: All right, is any member of the jury
18 panel aware of any bias or prejudice for either the
19 State or the Defendant? If so, please stand.

20 No response.

21 (No response from any juror)

22 THE COURT: Is there any member of the jury panel
23 who was a member of the Grand Jury that issued the In-
24 dictment in this case?

25 No response.

1 (No response from any juror)

2 THE COURT: Is there any member of the jury panel
3 who is a member of or a contributor to any group which
4 has as its primary concern the promotion of law enforce-
5 ment or victims' rights?

6 For example, MADD, CAVE which is Citizens Against
7 Violent Crime, SADD, or a police association, trooper's
8 association.

9 If so, please stand.

10 (Juror standing)

11 THE COURT: Yes, maam. Your juror number?

12 JUROR: Number 70.

13 THE COURT: Would that affect your ability to be fair
14 and impartial in this case?

15 JUROR: No.

16 THE COURT: Thank you.

17 Is there any member of the jury panel who has a
18 religious or moral reason why they could not be a fair
19 and impartial juror? If so, please stand.

20 Nobody standing.

21 (No response from any juror)

22 THE COURT: Is there any potential juror who has
23 or is related by blood or marriage or has a close social
24 or personal relationship with anyone who is a sheriff's
25 deputy or law enforcement officer? If so, please stand.

1 (Juror standing)
2 THE COURT: Yes, sir. Your number?
3 JUROR: Number 125.
4 THE COURT: Would that affect your ability to be
5 fair and impartial?
6 JUROR: No, sir.
7 THE COURT: What is your situation?
8 JUROR: My wife's cousin is a sheriff's deputy.
9 (Another juror standing)
10 JUROR: Number 63. My cousin is a sheriff's deputy.
11 THE COURT: Would that affect your ability to be fair and
12 impartial?
13 JUROR: No, sir.
14 (Another juror standing)
15 JUROR: Number 23. My husband's best friend is a
16 state constable.
17 THE COURT: Would that affect your ability to be
18 fair and impartial?
19 JUROR: No.
20 THE COURT: All right. Any other questions, voir
21 dire questions, from the State?
22 SOLICITOR: No, sir.
23 THE COURT: Defense?
24 MR. STEEN: No, sir.
25 THE COURT: Then that concludes voir dire. Juror

1 134 is protected for Thursday.

2 If you are selected for the trial jury, just follow
3 the bailiff on down to the jury room.

4 We won't be starting the trial of this case today.
5 It will be tomorrow before we start the trial of this case.

6 Just bear with us.

7 (Whereupon, a jury was selected as follows:

8 Juror 63, Greg Jachyn, struck by the Defense

9 Juror 78, Randy Lash, seated

10 Juror 16, Zachard Brigman, seated

11 Juror 85, Tia Mack struck by the State

12 Juror 24, Joshua Carpenter, seated

13 Juror 96, Sharon Murphy, struck by Defense

14 Juror 129, struck by Defense, Francis Terres, Jr.

15 Juror 128, Billy Taylor, seated

16 Juror 31, Jennifer Costello, struck by Defense

17 Juror 60, Joshua P. Hunter, seated

18 Juror 70, Ilean Johnson, seated

19 Juror 125, Mark Stevens, struck by Defense

20 Juror 144, Floyd Watts, struck by Defense

21 Juror 4, Cheryl Baker, seated

22 Juror 62, Debra Hyatt, seated

23 Juror 112, Michelle Reece, struck by Defense

24 Juror 15, Alice Brevard, struck by State

25 Juror 19, Patti Brown, seated

1 Juror 65, Jennifer Jaillette, struck by Defense

2 Juror 50, Kathryn Harrell, presented by State

3 MR. STEEN: May we approach?

4 THE COURT: Yes, sir.

5 (Conference at the bench between counsel and the
6 Court off the record)

7 THE COURT: Ms. Harrell, you may be seated. (Juror
8 excused)

9 Juror 133, Michael Tylicki, seated

10 Juror 147, Donna Whitlock, struck by Defense

11 Juror 27, Janira Cho, struck by Defense

12 Juror 103, Laura Patterson, was not present

13 Juror 34, Brent Cunningham, struck by the State

14 Juror 80, Rena Livengood, seated

15 Juror 23, Jennifer Carnes, seated

16 THE COURT: One and two on alternates.

17 Juror 100, Ruby Outen, excused by Defense

18 Juror 101, Scott Palmer, excused by Defense

19 Juror 37, Sheniqua Dowell, seated as alternate

20 THE COURT: Please follow the bailiff to the jury
21 room.

22 Thank you, Mr. Clerk. This is the jury selection
23 for the trial of this case. Ladies and gentlemen of the
24 jury panel, you are excused for today but call in this
25 evening after six to receive instructions, just like

1 you did today.

2 (Jurors who were not selected for the within trial
3 were excused)

4 (The matter was resumed on June 25, 2014)

5 THE COURT: The Defendant -- where is he? We need
6 Beneco Ganson up here.

7 All right, while we're getting him up here, let's
8 deal with any matters we need to deal with before we
9 bring the jury in.

10 Back in Chambers you told me that you're going to
11 -- that the State was intending to call two additional
12 witnesses.

13 Who are the two additional witnesses?

14 SOLICITOR: One is Linda Thompson, the Defendant's
15 mother. She was in Court and I do have a subpoena wait-
16 ing. I would like to call her just briefly.

17 The second one is Carol Williams from the Clerk's
18 Office.

19 THE COURT: The purpose of calling Ms. Williams
20 would be for what?

21 SOLICITOR: We have two prior burglary convictions
22 and I have certified copies of those convictions that
23 would be Exhibits that Ms. Carol Williams gave to me.

24 THE COURT: She wouldn't be testifying-- she would
25 just be to authenticate that?

1 SOLICITOR: Yes, sir.

2 THE COURT: What is the Defense's position as to
3 that?

4 MR. STEEN: We would stipulate that they are au-
5 thentic.

6 THE COURT: You would stipulate to the admission of
7 those?

8 MR. STEEN: Yes, Your Honor.

9 THE COURT: They are in evidence then.

10 SOLICITOR: They are State's Exhibits 11 and 12.

11 THE COURT: She won't need to authenticate them.

12 Having said that, we don't need Ms. Williams to testify.

13 There is no need for her to sit here through the whole
14 trial.

15 As far as Ms. Thompson, what's the State's posi-
16 tion on Ms. Thompson?

17 MR. STEEN: Your Honor, I just received notice
18 that she is going to be testifying, and I have not had
19 a chance to speak with her or anything.

20 SOLICITOR: Your Honor, she lives out of town. I
21 believe she lives in Atlanta. We had no idea she was
22 coming until we saw her here.

23 THE COURT: How far into our case would you be calling
24 her?

25 SOLICITOR: Probably third.

1 THE COURT: Okay, what I will do is I will withhold
2 ruling on your objection until you've had an opportunity
3 to talk to her.

4 She may actually say something that would help you
5 out. I don't know.

6 SOLICITOR Or I may not call her.

7 THE COURT: That's right. Why don't we -- I will
8 withhold ruling on that until then.

9 Any other pre-trial issues?

10 MR. STEEN: We have moved to exclude some photo-
11 graphs the State intends to introduce.

12 THE COURT: Okay, I have made a preliminary ruling
13 back in Chambers on that, but for the record let's estab-
14 lish that.

15 Solicitor, tell me what you are offering and what
16 the video is.

17 SOLICITOR: It is a video of the house. She has a
18 cell phone, and it shows on the cell phone camera, and
19 there are some text messages on her cell phone as well
20 as still shots of the video.

21 As to the texts, Mrs. Ganson can testify about them.

22 THE COURT: Well, what are the facts of the alleged
23 burglary? Go into that.

24 SOLICITOR: Your Honor, as far as the texts are
25 concerned, he texted her before the burglary to see if

1 she was home. Then after the burglary he texted her . .

2 THE COURT: What did she say? Did she say I'm not
3 home?

4 SOLICITOR: She did.

5 THE COURT: Was she at home?

6 SOLICITOR: She was.

7 THE COURT: Okay, so did she actually -- did she see
8 him in the house?

9 SOLICITOR: She said she didn't want him to come in
10 so she told him she wasn't at home, but she heard somebody
11 on the porch and she walked down the hall and saw two
12 guys.

13 THE COURT: Okay.

14 SOLICITOR: One of which was the Defendant.

15 THE COURT: And she's going to testify about all
16 of that?

17 SOLICITOR: Yes, sir.

18 THE COURT: So she will testify about what he said
19 on the text, about seeing him in the house, and all of
20 that.

21 But in addition to that, you want to get in the
22 photographs or the actual texts?

23 SOLICITOR: Yes.

24 THE COURT: What is the Defense's position?

25 MR. STEEN: Under 901 B Six, the State must show

1 that the number was assigned by the telephone company to
2 a particular person. That has not been done.

3 THE COURT: Are you going to offer authentication
4 of that in your evidence?

5 SOLICITOR: Yes, sir.

6 THE COURT: What as that Rule again?

7 MR. STEEN: That's 901 B Six.

8 THE COURT: All right. So, Solicitor, the witness
9 is going to testify about the texts. She's going to
10 testify from memory as to what the texts say. She's
11 going to testify that she saw them on the phone, and
12 it's admissible.

13 Even though he may not testify, it's admissible
14 as an exception to hearsay. Do you agree with that?

15 MR. STEEN: Yes, sir.

16 THE COURT: Mr. Steen agrees it is an admission
17 against interests as an exception to hearsay.

18 Do you anticipate your client will testify?

19 MR. STEEN: No, Your Honor.

20 THE COURT: I will go over that at the appropriate
21 time, but -- well, I -- given the fact that she will be
22 able to testify from memory rather than just showing
23 them that document, I would agree with Mr. Steen.

24 I would exclude the actual photographs of the texts
25 coming in. Certainly her testimony, in my opinion,

1 and the Court rules, it is completely admissible.

2 Okay?

3 SOLICITOR: Thank you, Your Honor.

4 THE COURT: Anything else?

5 SOLICITOR: No, sir.

6 THE COURT: From anybody?

7 SOLICITOR: We do have some photos as well.

8 THE COURT: Whatever you all stipulate to we can go
9 ahead and admit them into evidence.

10 MR. STEEN: State's 1 through 8, photos of the
11 home, we stipulate to those.

12 THE COURT: Without objection then, Exhibits 1
13 through 8 are admitted into evidence.

14 (Photographs admitted without objection as State's
15 Exhibits 1 through 8)

16 SOLICITOR: State's 9 and 10 are photo lineups of
17 individuals, two different individuals.

18 MR. STEEN: Without objection, Your Honor.

19 THE COURT: Without objection State's 9 and 10 are
20 in evidence, and as I understand it the previous 11 and
21 12 were admitted in evidence without objection.

22 (Photographs admitted without objection in evidence
23 as State's Exhibit 9 and 10. Exhibits 11 and 12 pre-
24 viously admitted.)

25 THE COURT: That way we won't have to go through

1 the whole rigamorole. They're all in, and you can just
2 refer to them by number.

3 Anything else?

4 MR. STEEN: No, sir.

5 THE COURT: Okay, are we ready for the jury?

6 The only additional question, I'm going to ask the
7 jury do they have any close personal or social relation-
8 ship with, or are they related by blood or marriage, to
9 Linda Thompson. If there is a response we will deal
10 with it.

11 Bring the jury.

12 (Jury returned to Courtroom)

13 THE COURT: All right, all members of the jury are
14 present. You can be seated. Thank you.

15 Good morning, ladies and gentlemen. My apologies,
16 my sincere apologies, for keeping you back there until
17 almost or right at eleven o'clock. My fault.

18 I didn't realize we had some other matters we had
19 to deal with this morning out of your presence, so if
20 you get mad at anybody get mad at me. I didn't know that
21 or I would have told you to be here at eleven.

22 Again, I'm sorry. I assure you I haven't been sit-
23 ting here twiddling my thumbs all morning, and neither
24 has anyone else in this Courtroom. We've been working,
25 so thank you for your understanding and your patience.

1 Having said that, before I swear you in as the jury
2 in this case, I need to ask one more qualifying or voir
3 dire question.

4 There will be possibly another witness who may be
5 called in this case. You may recall the names of some
6 of the witnesses yesterday, but the other witness which
7 may be called is Linda Thompson.

8 So my question to you at this point in time is does
9 anybody have any close personal or social relationship,
10 or is anybody related by blood or marriage to Linda
11 Thompson, and I believe she's from Atlanta, Georgia.

12 Solicitor, does she live in Atlanta?

13 SOLICITOR: I think she lives in Georgia. I'm not
14 sure exactly where.

15 THE COURT: Okay. If so, please stand.

16 No response.

17 (No response from any juror)

18 THE COURT: Okay. Mr. Clerk, if you'll swear in
19 our jury.

20 (Whereupon, the jurors were sworn in for the trial
21 of the within case)

22 THE COURT: All right, ladies and gentlemen. As I
23 told you yesterday, we are holding General Sessions Court
24 here this week, and we are about to start the trial of
25 the State of South Carolina, represented by Mr. Randy

1 Newman, an Assistant Solicitor here in Lancaster County,
2 versus Mr. Beneco Ganson, who is seated to my left
3 across the Courtroom, who is represented by Mr. Brandon
4 Steen of Lancaster, South Carolina.

5 Mr. Ganson has pled not guilty to the charge of
6 burglary in the first degree, and it will be your role
7 as jurors then to determine the guilt or the innocence
8 of the Defendant.

9 I'm going to talk about that briefly and how this
10 trial is going to proceed before we start, and before
11 we begin the trial I want to tell you that this trial
12 is probably going to be different from what you may ex-
13 pect. If you don't have a chance to attend actual court
14 sessions you may think that what goes on is like in the
15 movies or on TV or what you read in books.

16 This is what actually happens in real life. You
17 know, people tend to think that a trial is high drama
18 and intense with action and riviting circumstances, and
19 sometimes that can be true, but usually it is not true.

20 This trial is not for entertainment, ladies and
21 gentlemen. It is a fundamental part of our democracy.
22 It is a search for the truth, to make sure that justice
23 is done between the parties before the Court.

24 A search for the truth and to make sure justice is
25 done can often be a slow, deliberate or repetitive process,

1 the opposite of what you may expect from movies or TV.

2 Now, ladies and gentlemen, this Courtroom is a place
3 of honor, dedicated to a preservation of citizens' rights
4 through what many have called the greatest justice sys-
5 tem ever created.

6 The attorneys who appear before you today and maybe
7 tomorrow are advocates for the parties they represent.
8 First and foremost, they are officers of this Court, and
9 sworn to uphold the integrity of our judicial system
10 and to help you in the search for the truth.

11 So you should expect them to be professional, compe-
12 tent and ethical in the representation of their respect-
13 ive clients.

14 Remember that you have taken an oath -- you have
15 just taken an oath today and yesterday to try this case
16 and to reach a fair and just verdict. So you are ex-
17 pected to be professional, reasonable and ethical.

18 Thank you for accepting this responsibility. Now,
19 let me talk to you about how typically a trial proceeds.
20 First, the State will make an opening statement. An
21 opening statement is not evidence. It is simply an out-
22 line to help you understand what the State intends to
23 prove.

24 The Defendant may if he wishes to through his attorney
25 make an opening statement as well, and he may likewise

1 give you an outline of what he expects the evidence to
2 show.

3 Following open statements, you will hear testimony
4 and evidence in this case. This will consist of testi-
5 mony from various witnesses, as well as any physical
6 evidence which may be introduced into evidence.

7 At the completion of testimony, the attorneys again
8 will have an opportunity to give you what is called a
9 closing argument. This is an opportunity for the at-
10 torneys to summarize the case from their respective points
11 of view.

12 Again, closing statements are not evidence, and fol-
13 lowing the closing statemnts I will then instruct you on
14 the law of South Carolina that pertains to the issues
15 which may have come up in this case.

16 When I have completed my legal instructions to you
17 that is when you will be able to go back in the jury room
18 to begin deliberations.

19 Now, as I said, this is a criminal case brought by
20 The State of South Carolina which has charged the Defen-
21 dant, Mr. Ganson, with the crime of burglary in the
22 first degree.

23 The charge against the Defendant is contained in
24 this Indictment. An Indictment is not evidence of any-
25 thing but is a description of the charge that has been

1 made by the State against the Defendant. The Defendant
2 has pled not guilty to this charge and is presumed to be
3 innocent unless and until he is proven guilty beyond a
4 reasonable doubt.

5 I will explain that more in detail at the end of
6 the trial, but briefly a reasonable doubt is the kind of
7 doubt that would cause a reasonable person to hesitate
8 to act.

9 A Defendant has the right not to testify and never
10 has to prove innocence or present any evidence. The
11 burden of proof is always on the State of South Carolina.

12 As I said, the statements and arguments of the law-
13 yers are not evidence, and the questions and objections
14 made by the lawyers are not evidence. Testimony that I
15 may instruct you to disregard is not evidence.

16 It is your duty, ladies and gentlemen, to decide
17 from the evidence that comes in what the facts are. You
18 and you alone are the judges of the facts. You will
19 hear the evidence, and you will decide what the facts
20 are, and then you will apply the law which I give to you
21 to reach your verdict.

22 In doing that, you must follow the law whether you
23 agree with it or not. You should not take anything I
24 say or do during the trial as indicating what I think
25 of the evidence or what your verdict should be.

1 Just like rules which govern sports, games and other
2 activities you are involved in, there are rules of evi-
3 dence which control what goes on here. When a lawyer
4 asks a question or offers something into evidence and
5 a lawyer on the other side thinks it should not be admit-
6 ted under the rules of evidence, the lawyer may object.
7 If I overrule the objection, the question can be answered
8 or the exhibit may be received in evidence.

9 If I sustain the objection, the question cannot be
10 answered or the exhibit cannot be received. So when-
11 ever I sustain an objection to a question or deny a mo-
12 tion to admit something in evidence, you must ignore the
13 question or the proposed exhibit, and you must not guess
14 or speculate what that would have been or what the ex-
15 hibit would have shown.

16 Remember, you only consider the evidence presented
17 to you.

18 Now, sometimes, ladies and gentlemen, it may be
19 necessary for me to request you leave the Courtroom so
20 I may discuss certain legal issues with the attorneys
21 that may come up during the trial. If this occurs,
22 while you are in the jury room do not speculate about
23 what we may be talking about.

24 Remember the reason you were asked to leave is
25 simply because that is what the law requires when certain

1 issues arise.

2 To keep you all from having to get up and go to
3 your jury room too many times during the trial, I may
4 ask the attorneys to approach the bench so we can dis-
5 cuss a legal issue in private.

6 I will do this as often as possible so you all won't
7 have to get up and go out. Again, what we are talking
8 about up here, do not speculate about or think we are
9 trying to hide anything from you.

10 We are not, but it is just simply a procedure fol-
11 lowed by lawyers and all courts to determine and decide
12 legal questions so the jury can receive the most compe-
13 tent and reliable evidence. Okay?

14 In deciding the facts in this case, you may have
15 to decide what witnesses to believe and which witnesses
16 not to believe. You can believe everything a witness
17 says, only part of what a witness may say, or none of
18 it. That is your role as a jury.

19 You are not going to be allowed to take notes dur-
20 ing the trial, so I urge you to pay close attention to
21 what a witness testifies to so that you will be able to
22 accurately reflect upon that during your deliberations.

23 In addition, it is very time consuming and it takes
24 a while for my Court Reporter, who is there right in
25 front of you -- she's speaking every word I say right

1 now into a mask she's wearing and she has all these
2 backup recorders to record everything. It's very time
3 consuming for her to have to pull up testimony when you
4 are back there deliberating, so please pay attention to
5 what goes on in here.

6 Let me say just a few more things. Until I advise
7 you to begin your deliberations, you must not discuss
8 this case with anyone, including your fellow jurors,
9 friends, family members, anyone involved in this case.
10 No social media whatsoever during the trial of this case,
11 during recesses, when you go home, until the trial con-
12 cludes.

13 No Twitter, Google, Facebook or independent re-
14 search at all because remember that your verdict can only
15 come from the evidence in this Courtroom.

16 During the trial don't read, listen to or watch any
17 news reports about this case which may be going on, and
18 this includes anything that may be in the newspaper or on
19 the radio or television.

20 You must not consider anything you may have read or
21 heard about this case outside of the Courtroom either be-
22 fore or during the trial, and after the case is submit-
23 ted to you you must discuss it only in the juryroom with
24 your fellow jurors.

25 If anyone attempts to talk to you about this

1 case in violation of these instructions I've just
2 given to you, please advise me so I can deal quickly
3 with it in an appropriate manner.

4 Now, it is important, ladies and gentlemen,
5 that you keep an open mind and not decide any issue in
6 this case until all of the evidence has been presented,
7 until the attorneys have made their closing arguments
8 and I have instructed you on the law of the case.

9 It is your solemn responsibility to determine the
10 guilt or the innocence of the Defendant, and your ver-
11 dict must be based solely on the evidence as it is pre-
12 sented in this trial and on the law as I instruct you at
13 the end of the trial.

14 All right, that is my pre-trial colloquy with you,
15 and we will proceed with the trial of the case.

16 Solicitor.

17 SOLICITOR: Thank you, Your Honor. May it please
18 the Court?

19 We are here today because Beneco Ganson committed
20 a burglary in the first degree. On December 6, 2013,
21 he kicked in the door at [REDACTED] North White Street, here in
22 Lancaster.

23 He was attempting to take a TV from the shelf when
24 Ms. Howze who lives there came down the hall and caught
25 him in the act. She told him, I'm going to call the

1 police, and he took off running.

2 Ladies and gentlemen, my name is Randy Newman.

3 I'm an Assistant Solicitor. I work for the Honorable
4 Solicitor Barfield.

5 I want to thank you for your service today. I know
6 there are definitely other places you'd rather be, and I
7 thank you again. You're here for a very important rea-
8 son, so that Mr. Ganson gets a fair trial.

9 It is up to you to decide this case. I will give
10 you the evidence and it will be up to you to decide who
11 is right and who's wrong.

12 I have to prove to you beyond a reasonable doubt by
13 the testimony that Mr. Ganson committed a burglary in the
14 first degree.

15 In presenting the case, there is no DNA, no fancy
16 stuff. We have a single mom at home with the kids when
17 Mr. Ganson comes and kicks in the door.

18 So what is burglary first? A person is guilty of
19 burglary in the first when one enters the dwelling of
20 another without consent.

21 Number two, with intent to commit a crime once they
22 gain entry.

23 Number three, the burglary is committed by a person
24 with a prior record of two or more convictions for burg-
25 lary.

1 Now, he has two or more convictions for burglary.

2 Ladies and gentlemen, throughout the trial you will
3 have to be patient with us. Like the Judge said, this
4 is not going to be like a TV show. We can't have it
5 all done in sixty minutes, and some of them do it a lot
6 shorter.

7 You will hear the testimony and see some evidence,
8 and when we finish you will know that Mr. Ganson is
9 guilty of burglary in the first degree.

10 Thank you.

11 THE COURT: Thank you, Solicitor. Mr. Steen.

12 MR. STEEN: Good morning. My name is Brandon Steen,
13 and it is my pleasure here today representing Beneco
14 Ganson.

15 As has been indicated, this will be a short trial.
16 The State has charged Mr. Ganson with burglary in the
17 first degree.

18 My goal here today is to show you that Mr. Ganson
19 did not enter the dwelling of Ms. Howze; that he did not
20 commit the crime or attempt to commit the crime.

21 The Solicitor stated that someone was trying to take
22 a TV from the residence. You will see evidence in the
23 trial that Mr. Ganson has his own TV and that it was not
24 Mr. Ganson who did that.

25 The State has the burden of proof with basically one

1 eye-witness, the victim in this crime.

2 The victim here has severe credibility issues. She
3 falsely accused someone in this very case already. You
4 will hear her testimony.

5 Your job here today is to be the tryer of the facts,
6 to hear the evidence. If you do not believe the testi-
7 mony of the State's witnesses, I ask you to find my client
8 not guilty.

9 Thank you all.

10 THE COURT: All right, thank you.

11 The State may call its first witness.

12 SOLICITOR: The State calls Rodnyka Porchlee Howze.

13 RODYNKA HOWZE, being
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR:

17 Q. State your name.

18 Q. Rodynka Porchlee Howze.

19 Q. Ms. Howze, back in December where did you live?

20 A. ...

21 Q. Back in December of 2013.

22 A. At [REDACTED] North White Street.

23 Q. Okay. Who did you live there with?

24 A. My sister and our kids.

25 Q. Now, do you know Beneco Ganson?

R. HOWZE ON DIRECT

1 A. . .

2 Q. Ms. Howze, is everything okay? You good?

3 A. . .

4 Q. Okay, do you know Beneco Gadson?

5 A. . .

6 THE COURT: You've got to answer, maam.

7 A. Yes.

8 BY SOLICITOR:

9 Q. You all were friends, weren't you?

10 A. . .

11 Q. You okay?

12 A. Yes.

13 Q. You see Mr. Ganson here in the Courtroom?

14 A. Yes.

15 Q. What's he wearing?

16 A. You say what's he wearing?

17 Q. Yeah.

18 A. Blue . . .

19 Q. There's three guys at this table. Which one is Mr.
20 Ganson?

21 A. In the middle.

22 Q. How do you know Mr. Ganson?

23 A. We've been friends, for a while.

24 Q. You've known him five years, ten years -- how long?

25 A. Maybe five or less.

R. HOWZE ON DIRECT

- 1 Q. Has he ever been a visitor in your home at Clyde
2 Street?
- 3 A. . .
- 4 REPORTER: Is that a yes?
- 5 A. He was there the night before.
- 6 Q. The night before this incident?
- 7 A. Yes.
- 8 Q. Was that the only time?
- 9 A. No. One time before that.
- 10 Q. But he had been there?
- 11 A. Yes.
- 12 THE COURT: You've got to say yes or no.
- 13 Q. Who lived with you in that home?
- 14 A. My sister and our kids -- my kids and my nephew.
- 15 Q. Okay, how many kids have you got?
- 16 A. I have two, a boy and girl.
- 17 Q. How old are they or how old were they last December?
- 18 A. One was two and my little girl was three months.
- 19 Q. Now, did anything significant happen at [REDACTED] North
20 White Street on December 6, 2013?
- 21 A. What you mean, significant?
- 22 Q. Anything unusual?
- 23 A. Yes, that morning.
- 24 Q. Tell us what happened that morning?
- 25 A. Me and my kids were still sleeping, and I heard

R. HOWZE ON DIRECT

1 -- I'm not a morning person, but that morning I heard
2 him and he was constantly texting me on my phone.

3 Q. Okay.

4 A. He was trying to conversate with me.

5 Q. And he was just there the night before?

6 A. Yes.

7 Q. What time did he leave?

8 A. I don't remember.

9 Q. Do you have any idea what time he started texting?

10 A. That morning? No, but it was early morning.

11 Q. When you woke up?

12 A. Yes. I wasn't going to work that morning.

13 THE COURT: You've got to answer, maam. My Court
14 Reporter can't pick up nods of the head. You've got to
15 say yes or no.

16 A. Yes. It was early for me to talk on the phone, and
17 then I heard him on the front porch. He was trying to
18 text to see if I was home.

19 Q. You heard Mr. Ganson on your front porch?

20 A. Yeah, him and a friend or another person.

21 Q. And what did you do?

22 A. I text him and told him I'm not home. I had to
23 take the little girl to the doctor.

24 Q. You told him you were not home?

25 A. Right.

R. HOWZE ON DIRECT

1 Q. All right, and what happened next?

2 A. After that, I heard him and his friend, whoever it
3 was, I heard him say to kick the door in.

4 Q. You heard him say. .

5 A. See, with our house you can hear people through the
6 door. It's an older house and anybody out there you can
7 hear.

8 Q. He was by the door and you could hear them -- I show
9 you State's Exhibit 4. Do you recognize that?

10 A. Yeah, that's the front porch and the front door is
11 there.

12 SOLICITOR: Your Honor, may I have permission to
13 publish?

14 THE COURT: Yes, sir.

15 (Photograph shown to the jury)

16 THE COURT: That's the picture on your screen, ladies
17 and gentlemen.

18 SOLICITOR: Yes, sir.

19 BY SOLICITOR:

20 Q. And is that a screened-in porch?

21 A. It is.

22 Q. And was he inside that screened-in porch.

23 A. Yes, when I heard him say kick the door in.

24 Q. So he was inside the porch when you heard him say
25 that?

R. HOWZE ON DIRECT

1 A. Yes.

2 SOLICITOR: If you tap the screen, it should come on.

3 BY SOLICITOR:

4 Q. So he was between the screen door and the front
5 door to the house?

6 A. Right.

7 Q. Okay. All right, and what happened after you heard
8 someone say to kick the door in?

9 A. He kicked the door in.

10 Q. And where were you when the door got kicked in?

11 A. I was inside the front door. When you walk in
12 the front door there's a long hallway, and my room is
13 the last door back there.

14 When I had heard the door kicked in I took both my
15 kids and put them in the crib, and I tiptoed down the
16 hallway, and then I walked in and I was like, what the
17 fuck you all doing and they ran.

18 Q. And what were they doing?

19 A. . .

20 Q. When you saw them before they ran?

21 A. When I walked in they were moving the TV and had
22 their hands on my ring. (Portion not audible)

23 Q. That's your class ring?

24 A. For citizenship.

25 Q. And they moved the TV?

R. HOWZE ON DIRECT

1 A. Yeah, they moved it.

2 Q. Now, how many people did you see inside of your
3 home?

4 A. It was two people.

5 Q. Okay, and did you give the officers two names? Is
6 that correct?

7 A. Yeah, I did, and I was wrong about one of them.

8 Q. What's the other name?

9 A. Beneco.

10 Q. And do you know the name of Shawn Quavos?

11 A. Yes, but that was wrong.

12 Q. Two guys were in your house and you gave two names.

13 Did you know Shawn Quavos' name immediately, or did you
14 have to find out some place else?

15 A. . .

16 THE COURT: Hang on, maam.

17 MR. STEEN: Objection to leading.

18 THE COURT: Sustained.

19 BY SOLICITOR:

20 Q. How did you find out Shawn Quavos' name?

21 A. I know Shawn Quavos.

22 Q. Okay.

23 A. I know Beneco Ganson, and then I saw the side of
24 the other guy's face and thought it was Shawn Quavos.

25 Q. Okay.

R. HOWZE ON DIRECT

1 A. When he turned around after they started to run, I
2 could see the side of the guy's face, and he didn't have
3 any hair.

4 Q. Did you have a close personal relationship with Mr.
5 Ganson?

6 A. Personal? Okay, yes.

7 Q. So you knew him pretty well, or did you?

8 A. Yeah. Nothing to talk about really.

9 Q. I mean, how often did you see him?

10 A. Well, before that he was locked up so I didn't much
11 see him.

12 MR. STEEN: Objection.

13 THE COURT: Sustained.

14 A. Well, I heard . . .

15 Q. You can't say what you heard.

16 THE COURT: The jury will disregard that statement.

17 Q. We had been together more than three times. We had
18 got together before.

19 Q. Were you as close to Shawn Quavos as you were to
20 Mr. Ganson?

21 A. No, sir. I seen him at school.

22 Q. How long had it been since you'd seen him?

23 A. A couple of years maybe.

24 Q. Okay, and did you look at a photo lineup?

25 A. Yes.

R. HOWZE ON DIRECT

1 Q. Okay. Let's get back to the sequence of the
2 events.

3 You came out and what happened?

4 A. I said, I'm calling the police, and I did call the
5 police while they ran. Them coming in wasn't the only
6 reason. There were kids there.

7 (Portion not audible)

8 Q. Did you call the police right then?

9 A. Right then.

10 Q. Okay. Was there any damage to your home?

11 A. Yes, the front door was destroyed.

12 Q. And is this your front door?

13 A. Yes.

14 Q. Is the door broken completely?

15 A. Well, we could shut it.

16 Q. This is State's Exhibit 6. Is this the same door,
17 door frame?

18 A. Yes.

19 Q. Showing you State's 1. Is that the same door?

20 A. Yes.

21 Q. When you lived there was the door damaged before the
22 two came in that door?

23 A. No, it was not before that.

24 Q. Did either of the two men you saw in your house -- did
25 either of them have permission to be in your house?

R. HOWZE ON DIRECT

- 1 A. No. I had told him I wasn't home.
- 2 Q. When you picked Shawn Quavos out of that photo lineup you
- 3 you were pretty sure it was him?
- 4 A. Yeah, I thought it was. I thought I was sure.
- 5 Q. Do you know now if it was or wasn't him?
- 6 A. No. I heard it was . . .
- 7 Q. Don't say what you heard. Do you know?
- 8 A. No.
- 9 Q. Are you certain that Mr. Ganson was in your home?
- 10 A. It was him, no doubt about that.
- 11 Q. Now, after they ran away and you called the police, did
- 12 anyone call you?
- 13 A. Yes. I got a text from Beneco.
- 14 Q. Tell me about the text that Beneco sent you.
- 15 A. He called to apologize.
- 16 Q. More than one time?
- 17 A. Yeah.
- 18 Q. What did he say?
- 19 A. He was sorry, he shouldn't have done it. No excuse for
- 20 what he done.
- 21 Q. Okay.
- 22 A. He just apologized.
- 23 SOLICITOR: Beg the Court's indulgence.
- 24 THE COURT: Yes, sir.
- 25 (Brief pause in proceeding)

R. HOWZE ON DIRECT

1 BY SOLICITOR:

2 Q. I've got no further questions for you. Please an-
3 swer anything Mr. Steen asks.

4 THE COURT: All right, Mr. Steen. Your witness.

5 CROSS EXAMINATION

6 BY MR. STEEN:

7 Q. Ms. Howze, two people kicked your door in on December
8 6th, correct?

9 A. Yes.

10 Q. And you gave the police two names, correct?

11 A. Yes.

12 Q. And you knew these people before this, correct?

13 A. Yes.

14 Q. And the next day you picked these individuals out of a
15 lineup without any problems, correct?

16 A. Yes.

17 Q. You were certain it was Mr. Ganson?

18 A. I was almost certain of the other one.

19 Q. So you were almost certain you told the police who did
20 this?

21 A. . .

22 Q. Did the police ask if you were almost certain when you
23 picked somebody?

24 A. They asked me if I was sure.

25 Q. What did you tell the officers?

R. HOWZE ON DIRECT

1 A. I told them yes.

2 Q. On both individuals?

3 A. Um hm.

4 Q. So you were wrong about Mr. Quavos?

5 A. Yes.

6 Q. You were wrong before . .

7 A. But I was right about Mr. Ganson.

8 Q. You couldn't possibly be wrong about him?

9 A. No way possible. I'm sure it was him.

10 Q. You testified that you saw Mr. Quavos and Mr. Ganson
11 attempt to steal your TV?

12 A. Yes.

13 Q. Let's go back to December 6. You wrote a statement
14 that day, didn't you?

15 A. Yes.

16 Q. And since that incident had just happened, your mem-
17 ory was pretty good when you wrote that statement?

18 A. Yes.

19 Q. And this statement was given to law enforcement in
20 a criminal investigation, and it was complete and accu-
21 ate?

22 A. Except for saying it was Shawn everything
23 was accurate.

24 Q. And do you remember what you wrote?

25 A. (Inaudible response)

R. HOWZE ON CROSS

1 Q. You didn't mention Mr. Quavos or Mr. Ganson attempt-
2 ing to steal your TV at all in that statement, did you?

3 A. I don't remember what I put in the statement.

4 Q. You left out the two individuals were trying to
5 steal your TV?

6 A. I don't remember what I put in the statement. I can't
7 remember it word for word, and I was shook up.

8 THE COURT: Maam, just answer the question.

9 A. Yes.

10 Q. Yes, you left out saying the two were trying to steal
11 your TV?

12 A. Right.

13 Q. You didn't want company that morning, so you called
14 the cops because you didn't want someone there?

15 A. No, I called the cops because my house had got broken
16 into.

17 Q. By who?

18 A. Beneco.

19 Q. And who else?

20 A. Shawn Quavos.

21 Q. And it's your belief that it was not Beneco who kicked
22 in your door. Correct?

23 A. Maybe it was. I don't know.

24 Q. You said you heard a statement about kicking the door
25 in. Who do you say said that?

R. HOWZE ON CROSS

1 A. Beneco said that.

2 Q. So you would assume somebody else kicked in the
3 door?

4 A. . .

5 Q. Not Beneco?

6 A. . .

7 Q. Can you answer that?

8 A. Yes.

9 Q. Thank you.

10 A. I know he was in the house.

11 MR. STEEN: One moment, Your Honor.

12 THE COURT: Okay.

13 (Brief pause in the proceeding)

14 BY MR. STEEN:

15 Q. Just a few more questions, Ms. Howze. Do you have an
16 arrest for harrassment and assault?

17 A. Yes, but it wasn't my fault. I wasn't . .

18 SOLICITOR: Objection, Your Honor.

19 THE COURT: Will you all approach?

20 (Conference at the bench between counsel and the Court
21 off the record)

22 THE COURT: Overruled. Please answer the question.

23 Ask the question again, Mr. Steen.

24 Q. Do you have a harrassment first charge, Ms. Howze?

25 A. Yes.

R. HOWZE ON CROSS

1 Q. Do you have an assault of a high and aggravated nature
2 charge, Ms. Howze?

3 A. I do, yes.

4 THE COURT: Redirect, Solicitor?

5 SOLICITOR: Briefly.

6 REDIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. Let me ask you about that. When did that happen?

9 A. That was before I -- it happened a long time ago.

10 Q. I understand that, but did you serve time for that
11 or did you get probation?

12 A. Yes, and I completed probation successfully.

13 Q. He asked you about a statement. You gave a written
14 statement on the day this happened, the 6th?

15 A. The same day.

16 Q. Okay, and on the following day did you go to the police
17 department?

18 A. The next day.

19 Q. And did you talk to Officer Hall?

20 A. I can't recall but I did go there.

21 Q. No further questions.

22 THE COURT: You may step down. Call your next witness.

23 SOLICITOR: Cheyennae Howze.

24 (Witness excused from stand)

25 46

CHEYENNAE HOWZE, being duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR:

4 Q. Ms. Howze, state your name for the record

5 A. Cheyennae Howze.

6 Q. Back on December 6 of 2013, where did you live?

7 A. At [REDACTED] North White Street here in Lancaster.

8 Q. In the photos you saw before, is that the same house
9 you lived in?

10 A. Yes.

11 Q. Do you still live there?

12 A. I do. We have an alarm system now.

13 Q. Okay, and is that home in the City of Lancaster?

14 A. It is.

15 Q. Now, on December 6, 2013, who lived in this house?

16 A. My sister and her two kids and my son and me.

17 Q. You had a child?

18 A. I did, my son.

19 Q. Okay, what is your relation to Ms. Rodynka Howze?

20 A. That's my sister.

21 Q. Do you know Mr. Ganson?

22 A. Not before this happened.

23 Q. Ever seen him in your home before this happened?

24 A. No.

25 Q. Speak up, please. You ever see him in your home?

C. HOWZE ON DIRECT

- 1 A. Never. I may have seen him one time out of my house.
- 2 Q. Were you at home on December 6th?
- 3 A. No, I was not at home. I was at work.
- 4 Q. Where do you work?
- 5 A. I work at Bojangles.
- 6 Q. What do you do there?
- 7 A. I'm a manager. I run my own store now. I was a
- 8 unit director.
- 9 Q. I want to show you State's 6.
- 10 A. That's our front door.
- 11 Q. Is that how your front door looked after this happened?
- 12 A. Yes. It was a metal front door, and this is a picture
- 13 of it after it was kicked out.
- 14 SOLICITOR: Beg the Court's indulgence.
- 15 Q. When you left for work that morning, what kind of shape
- 16 was that door in?
- 17 A. It was up and in place. It didn't look anything like
- 18 this when I got back home.
- 19 Q. Okay, I have no further questions.
- 20 THE COURT: Mr. Steen, Cross Examination.
- 21 CROSS EXAMINATION
- 22 BY MR. STEEN:
- 23 Q. Did you see Mr. Ganson on December 6th?
- 24 A. No, I did not.
- 25 Q. Thank you.

1 (Witness excused from stand)

2 THE COURT: Call your next witness.

3 SOLICITOR: State calls Officer Burlingame.

4 DUSTIN BURLINGAME, being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. Please state your name for the record, Sergeant.

9 A. Dustin Burlingame.

10 Q. And where are you employed?

11 A. Lancaster City Police Department.

12 Q. And how long have you been so employed?

13 A. Nine years.

14 Q. What are your duties there? Your current position?

15 A. I'm a detective sergeant.

16 Q. Were you a detective on December 6, 2013?

17 A. Yes, sir.

18 Q. And did you get called out to [REDACTED] North White Street
19 on that date?

20 A. Yes, sir, I did.

21 Q. And what were you called out for?

22 A. A burglary that had already occurred.

23 Q. And what were your duties on that day?

24 A. That day when I arrived the then Sergeant Hildreth
25 was on the scene taking photographs of the scene and

D. BURLINGAME ON DIRECT

1 I assisted with the crime scene investigation that day.

2 Q. Now, Hildreth was a Sergeant as well?

3 A. Yes, sir.

4 Q. What is th difference in your jobs?

5 A. He works patrol and answers calls as they come in,
6 and I get a call and come and investigate.

7 Q. And you were to investigate this home invasion?

8 A. Yes, sir.

9 Q. What did you do as a part of your investigation?

10 A. Well, that day I observed the damaged door, front
11 door, that was smashed in. I observed the television in
12 the house and the stand it had stood on.

13 I looked for any fingerprints on that television
14 and stand and lifted some fingerprints from it.

15 Q. All right.

16 A. The prints were taken to the Lancaster County
17 Sheriff's Office for analysis.

18 Q. Did you take them yourself?

19 A. I did.

20 Q. Is that the standard practice if you take finger-
21 prints in Lancaster?

22 A. Yes, sir.

23 Q. I show you State's 7. Is that the TV that you took
24 prints from?

25 A. Yes, sir, it is.

D. BURLINGAME ON DIRECT

1 Q. And how do you check for fingerprints?

2 A. Just observed them with a flashlight on the bottom right
3 of the TV. That's where I lifted the print from that I saw
4 on the television.

5 Q. Did you view anything else concerning the television or
6 the stand it was on?

7 A. Yes.

8 Q. What was that?

9 A. Because of the position of the TV on the stand and the
10 dust it was sitting in, you could see where it had been moved
11 from the position it was in.

12 Q. It's not that great a picture, I know, but is it hanging
13 off the shelf any?

14 A. Yes, it is close to hanging off.

15 Q. How many fingerprints did you retrieve?

16 A. I retrieved two, and only one was of any significance.

17 Q. When it went to the Lancaster Sheriff's Office, was it
18 turned over to any particular person?

19 A. Yes.

20 Q. That's all I have for you, Detective. Please answer any
21 questions Mr. Steen has for you.

22 THE COURT: Mr. Steen, Cross Examination.

23 MR. STEEN: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. STEEN:

C. BURLINGAME ON CROSS

- 1 Q. You said you pulled two sets of fingerprints?
2 A. Yes, sir.
3 Q. Off the TV?
4 A. Yes, sir.
5 Q. Were either of them a match for Mr. Ganson?
6 A. No, sir.
7 Q. Were they matched to anyone?
8 A. No, sir.
9 Q. And you stated the TV was moved?
10 A. Yes.
11 Q. And you could tell that from the dust that was disturbed?
12 A. Yes.
13 Q. Can you conclusively say that Mr. Ganson was involved in
14 moving that TV?
15 A. No, sir.
16 Q. Thank you, Sergeant. I have no further questions
17 for you.
18 THE COURT: Any Redirect?
19 SOLICITOR: No, sir.
20 THE COURT: You may step down, Sergeant.
21 WITNESS: Thank you.
22 (Witness excused from the stand)
23 THE COURT: Call your next witness, please.
24 SOLICITOR: The State would call Ken Taylor to the
25 stand.

1 KEN TAYLOR, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. State your name for the record.

6 A. Ken Taylor.

7 Q. Mr. Taylor, where are you employed?

8 A. Lexington County Sheriff's Office.

9 Q. How long have you been so employed?

10 A. Nine years.

11 Q. What is your position there?

12 A. Crime scene investigator and latent print examiner.

13 Q. How long have you been a latent print examiner?

14 A. Since 2010.

15 Q. What is your educational background?

16 A. I have taken two latent print courses in 2009, and
17 a class at the South Carolina Criminal Justice Academy in
18 latent prints, basic examination and identification.

19 I've had some classes since then as refreshers, some
20 on-line through West Virginia University, and as continu-
21 ing education.

22 Q. Okay, and what are some of your responsibilities as
23 far as latent print examiner?

24 A. Out on the scene actually dusting for latents, lifting
25 them and bringing them back to office.

K. TAYLOR ON DIRECT

1 When we get them to the office we will -- I say we --
2 the other officers I work with they will bring them to me
3 and we compare the prints with known suspects or check
4 the system to see if we can match them up to any individ-
5 uals.

6 Q. Have you received any certification in this field?

7 A. Crime scene investigation, the certification from
8 the National Forensic Academy in 2010, and again -- well,
9 right now there is not a current requirement for certifi-
10 cation for latent print examiners.

11 However, the ongoing educational opportunities are
12 there, and I have taken advantage of those.

13 Q. Okay. Have you ever been qualified in the courts of
14 this State as an expert witness?

15 A. Yes.

16 SOLICITOR: Your Honor, at this time I would move
17 to qualify this witness as an expert in latent print
18 examination.

19 THE COURT: Any further voir dire?

20 MR. STEEN: Not at this time, Your Honor.

21 THE COURT: It is so ordered then that he is an ex-
22 pert in latent print examination.

23 Ladies and gentlemen of the jury, let me talk with
24 you a little bit about what you are going to hear and
25 what that means to be qualified as an expert witness.

K. TAYLOR ON DIRECT

1 Normally a person when testifying cannot give an
2 opinion. They have to testify as to what they saw or
3 heard or sensed by smell or something of that nature, but
4 there is an exception. Someone may be qualified as an
5 expert because they have education and experience in a cer-
6 tain field.

7 In that case, they are allowed to give you, the
8 fact-finders, or the jury, an opinion in a certain area if
9 the Court qualifies them that way. You heard the lawyers
10 just agree that this witness is an expert in that field
11 of latent print examination, and so he may give an ex-
12 pert opinion.

13 Just because he may give such an opinion that does
14 not mean you have to believe him, but it is evidence for
15 you to use in any way that you see fit.

16 Okay? Solicitor.

17 BY SOLICITOR:

18 Q. Everybody knows what a fingerprint is. What is a
19 latent print?

20 A. A latent print means it is not easily visible, that
21 there has to be some light put on it or some type of pow-
22 der, so that you can see it better.

23 Q. And how is a latent print lifted off of a surface it
24 is found on?

25 A. Usually it is put on a clear plastic type thing you

K. TAYLOR ON DIRECT

1 can see through once it is dusted or something is applied
2 to it in order to see it better.

3 It is lifted and applied to the card until they can
4 get it back and we can take a closer look at it.

5 Q. Are there other types of fingerprints other than la-
6 tent prints?

7 A. Yeah, there are other terms. There are prints that
8 are called patent that are visible. You can see them without
9 any enhancement being applied. Maybe in grease or blood.

10 Q. Now, can you explain to the jury how you examine that
11 fingerprint?

12 A. Yes. Usually when we get a print in, there is a proto-
13 col we try to follow, called ACEV. That stands for analyzing
14 care evaluating and verification, or verifying.

15 One of the first steps is to analyze the print to find
16 details of that print before actually comparing it to the
17 known print of a person. Getting the fine details of the
18 print so you can take the next step and try to compare it
19 to a possible suspect. If you don't have enough points to
20 pursue it, then you don't need to go any further.

21 If you have enough quality and visible detail, you can
22 see if the details equates with the detail, the ending ridges
23 or the bifurcations and deltas, things like that, and you
24 can compare those to the known subject.

25 Q. And did you compare those prints with the exemplars

K. TAYLOR ON DIRECT

1 sent to you for comparison?

2 A. Yes. If you come to the conclusion, based on your
3 training, your skill -- if you come to the conclusion you
4 have an identification, you call that a formal identifica-
5 tion and notify the submitting party.

6 Q. And did you receive prints in this particular case
7 from the City of Lancaster?

8 A. Yes.

9 Q. And did you then examine them?

10 A. Yes.

11 Q. And, first of all, what are the possibilities you can
12 come up with a comparison?

13 A. You can generally come to one of three possibilities.
14 You either make an identification and say it is a formal
15 identification of a particular person with a particular
16 source, if you have sufficient detail, quality detail.

17 Or if you find sufficient detail to exclude that per-
18 son, you can say based on your training and skill that
19 these are unknown prints, and not a match to a particular
20 suspect.

21 You can say that print didn't come from that person,
22 or there is not sufficient detail or if the quality of the
23 print is so poor that you can't make a comparison to say
24 it is or it isn't, you have to say it is inconclusive.

25 Any form identification is based upon whether or not

K. TAYLOR ON DIRECT

1 you have good and reliable information.

2 So those are the three conclusions, that it is an iden-
3 tification, an exclusion or it is inconclusive.

4 Q. As regards the two prints that you received from the
5 Lancaster City Police Department in this case or relating to
6 this case of the State versus Beneco Ganson, what did you
7 determine?

8 A. As I recall, there were four prints -- three or four,
9 and there was only one with sufficient detail to try for a
10 comparison, and I determined it was not left by the source
11 or the suspected source.

12 The one with sufficient detail was not a match with
13 those of the suspect, and the others were of such poor
14 quality that I was not able to make a determination one
15 way or the other.

16 Q. Now, let me ask you this. If I touch, pick up this ob-
17 ject and carry it across here and sit it down here, is
18 there any possibility I may not leave a fingerprint on it?

19 A. There is a possibility, yes.

20 Q. And how long will my fingerprint stay on there?

21 A. I can't give you a -- necessarily a good answer for
22 that. It depends -- it depends on several things.

23 Q. If someone sat that object down last week and nobody
24 has cleaned it, would there be a chance of finding a fing-
25 erprint on that?

K. TAYLOR ON DIRECT

1 A. Yes.

2 Q. And would there be a chance of not finding a finger-
3 print on it?

4 A. Yes.

5 SOLICITOR: Beg the Court's indulgence.

6 (Brief pause in proceeding)

7 SOLICITOR: That's all I have. Please answer anything
8 Mr. Steen asks you.

9 THE COURT: Mr. Steen.

10 MR. STEEN: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. STEEN:

13 Q. Mr. Taylor, in your experience as a law enforcement
14 officer, would you expect people who touched things to leave
15 fingerprints?

16 A. I would expect them to.

17 Q. And in this case with what was given to you, were you
18 able to identify the print to Mr. Ganson?

19 A. No, sir.

20 Q. Thank you. Nothing further.

21 SOLICITOR: No Redirect.

22 THE COURT: Thank you, sir. You may step down.

23 (Witness excused from stand)

24 THE COURT: Ladies and gentlemen of the jury, at this
25 time we'll go ahead and take our lunch recess. I will ask

1 you to be back in your jury room ready to go at one thirty.

2 Do not discuss the case or do any independent research
3 or anything.

4 I'll see you back at one thirty. Thank you very
5 much.

6 (Jury excused from the Courtroom for the lunch recess
7 at 11:53 A.M.)

8 THE COURT: We will recess at this time. If Ms.
9 Thompson is here now, you all go and talk with her.

10 We'll deal with that as soon as I come back.

11 (Court stood in recess, the matter being contin-
12 ued at 1:15 P.M.)

13 THE COURT: Hold off on the jury, if you would, on
14 bringing them in.

15 (Conference at the bench between counsel and the
16 Court)

17 SOLICITOR: I would like to publish the stipulation
18 to the jury about his prior burglaries.

19 As to Ms. Thompson, I do want to call her. She
20 can state she called the victims and offered to pay for
21 the damages.

22 THE COURT: Okay.

23 SOLICITOR: That's pretty much all she said.

24 THE COURT: All right. Your objection is already
25 in the record. So you are good to go with that, and

1 I think he is entitled to publish the stipulation to
2 the jury.

3 Do you intend to offer any evidence?

4 MR. STEEN: We're not sure.

5 THE COURT: Okay. Provided we move it along, I'm
6 going to give it to the jury today. Okay?

7 MR. STEEN: Yes, sir.

8 THE COURT: It's one forty-five now, so let's try to
9 limit our closing arguments and, accordingly, I can -- I
10 promise you with my charge I'll get it to the jury by
11 three.

12 All right, let's bring the jury in.

13 (Jury returned to Courtroom)

14 THE COURT: All right. Good afternoon, ladies and
15 gentlemen of the jury. I hope you had a good lunch.

16 At this point in the trial I appoint a Foreperson of
17 the jury. Mr. Tylicki, where are you? You're sitting
18 in the right chair, by happenstance.

19 But, anyway, I am going to appoint you as the Fore-
20 person of the jury. It is going to be your duty to pre-
21 side over the jury during the deliberations.

22 You also are going to be the jury's official
23 spokesperson here in Court.

24 You also will be the one who signs the verdict form
25 which I will go over with you more as I give you closing

1 instructions. Although you are the only one who can
2 sign the verdict form, it is not your verdict alone. It
3 has to be a unanimous verdict, and I will tell you
4 about that later on.

5 Okay, thank you.

6 Solicitor, call your next witness.

7 SOLICITOR: We call Linda Thompson.

8 LINDA THOMPSON, being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR:

12 Q. Please state your name for the record.

13 A. Linda Thompson.

14 Q. Ms. Thompson, what is your relationship to Mr.
15 Ganson?

16 A. Mr. Ganson is my oldest child, the oldest of
17 three.

18 Q. And I don't want your address, but where do you
19 reside?

20 A. In Atlanta, Georgia.

21 Q. How did you learn about the events that took place
22 on December 6?

23 A. My sister called me, and she told me that she and my
24 mother had seen something on the scanner about a
25 breaking-in, and then right after that they heard my son

L. THOMPSON ON DIRECT

1 Beneco Ganson's name called, and that is how I learned
2 about it.

3 Q. Does your sister live here in Lancaster?

4 A. Yes, she does.

5 Q. When you heard about the events, what did you do?

6 A. . .

7 Q. Did you call Redynka?

8 A. The first thing I tried to do was to call Beneco.

9 That's the first thing I did.

10 Q. Did you actually speak to him?

11 A. No.

12 Q. Who else did you call?

13 A. My mother in law, and she told me what she knew, so
14 after she and I talked on the phone -- she told me she
15 had also tried to contact Beneco and couldn't get him
16 at that time.

17 So after that, that's when I called Ms. Howze.

18 We call her Porchlee. I went ahead and called her.

19 My mother had her phone number. She and my mother con-
20 versated a lot because of the relationship between
21 her and my son.

22 Q. What did you tell Ms. Howze?

23 A. I didn't tell her anything. I asked her what was
24 going on, what had happened, because my sister had called
25 and told me something happened.

L. THOMPSON ON DIRECT

1 About her house being broke into or a house being
2 broke into, and about three or four days later she
3 called me on the scanner.

4 Q. Did you offer to pay for the damage to the door?

5 A. Yes, I did, sir.

6 Q. That's all the questions I have. Please answer
7 anything Mr. Steen may ask.

8 A. Yes, sir.

9 THE COURT: Mr. Steen.

10 MR. STEEN: No questions.

11 THE COURT: You can step down.

12 Call your next witness.

13 SOLICITOR: The State calls Lieutenant Phillip
14 Hall.

15 PHILLIP HALL, being duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Where are you employed?

20 A. City of Lancaster Police Department.

21 Q. And what are your duties?

22 A. I am currently the lieutenant over special opera-
23 tions. (Portion not audible)

24 Q. How long have you been with the City?

25 A. I've been with the City since 2000. I went with

P. HALL ON DIRECT

1 the Sheriff's Office in '96.

2 Q. How long have you been over the Detective Division?

3 A. Two and a half years.

4 Q. Were you working on December 6 of 2013?

5 A. I wasn't working when the actual call came in.

6 Q. How did you become involved in this particular
7 case?

8 A. We had on-call investigators and I was covering
9 for one of the officers in the rotation. So the inci-
10 dent happened on Friday before lunchtime, and I didn't
11 get anything until Saturday when I come on at five o'clock.

12 I received a phone call from Ms. Porchlee Howze
13 saying she had information in regard to this burglary.

14 Because it had happened on Friday and the case had
15 not been assigned I went ahead and picked up the case
16 to get that information.

17 Q. Now, did you ask Ms. Howze to come in to the Police
18 Department?

19 A. I did.

20 Q. Did you meet with her there?

21 A. Yes.

22 Q. When did she come in?

23 A. The next day, around six or seven that night.

24 Q. The next day meaning . . .

25 A. The incident occurred on Friday and I met with her

P. HALL ON DIRECT

1 Saturday, the next day.

2 Q. Did you ask her if she had a relationship with Mr.
3 Ganson?

4 A. I did.

5 Q. What did she tell you?

6 A. She advised that he was a friend with benefits.

7 Q. Did she give you a second name?

8 A. She did.

9 Q. What was that name?

10 A. Allen Shaquavous. She knew him by his street
11 name.

12 Q. She knew him by a street name?

13 A. Correct.

14 Q. Did you show her a photo lineup?

15 A. I did.

16 Q. Tell the jury how that works, how you do a photo
17 lineup?

18 A. Usually we can do it in-house with a system which
19 consists of our original arrest pictures. I didn't have
20 a photo of Allen, so what we did was send a request to
21 SLED to their photo center, and they sent one back, using
22 the DMV pictures.

23 We put together pictures of people who almost look
24 like each other. They really need to know the person
25 pretty good to pick someone out.

P. HALL ON DIRECT

1 Q. I show you what's been marked State's Exhibit 10.

2 Is that the lineup you showed Ms. Howze?

3 A. Yes.

4 Q. And Number 2, is that the Defendant?

5 A. Yes, sir, it is.

6 Q. And is that the person Ms. Howze picked out from
7 the photo lineup?

8 A. Yes, it is.

9 Q. Does it have Ms. Howze's initials on it?

10 A. Yes. I also had her put the person's name beside
11 the picture if she knew what it was.

12 Q. Okay. Showing you State's Number 9, is this the
13 same photo lineup you showed her?

14 A. Yes, this is the second lineup and she circled num-
15 ber 5.

16 Q. That's who Ms. Howze picked out?

17 A. Yes.

18 Q. And is that Mr. Allen?

19 A. Yes, it is.

20 Q. Were you able to track down both of these guys?

21 A. Mr. Allen was found with no problem.

22 Q. What about Mr. Ganson?

23 A. Mr. Ganson was in Georgia, Dekalb County. That's
24 where he was arrested.

25 Q. Did you charge Mr. Allen?

P. HALL ON DIRECT

1 A. I did.

2 Q. And did you drop those charges?

3 A. I did.

4 Q. I was able to confirm that he wasn't present at
5 that time.

6 Q. And do you now have another suspect?

7 A. I do.

8 Q. Beneco Canson still your suspect?

9 A. He is.

10 SOLICITOR: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (Brief pause in the proceeding)

13 BY SOLICITOR:

14 Q. Mr. Hall, would you briefly walk us through the in-
15 terview with Ms. Howze on that Saturday.

16 A. She said she was at home by herself with her two
17 kids, a two year old and three month old. She said
18 she was awakened by a phone call and text message com-
19 ing in on her cell phone.

20 She said that she looked and seen it was Beneco.
21 She said that -- I asked what her relationship was with
22 Beneco, and she said friends with benefits.

23 She said he kept texting or calling her and he
24 wanted to know if she was at home. So she responded by
25 saying, no, I'm taking my baby to the hospital or to

P. HALL ON DIRECT

1 the doctor's office.

2 She said after she had sent that text message, within
3 mere seconds, she heard -- she said she heard some-
4 body that she pretty much thinks is Beneco.

5 She goes to the doorway and the next thing she
6 knows the door pops in. She said she was walking back
7 because she had seen them on the porch through the win-
8 dow and she was walking back to her room.

9 She said she got back in the bedroom as the door
10 was busted in, and she turned around. She said she had
11 her kids in the house, and she went back into the living
12 room and yelled at both Beneco and the other suspect
13 -- said I know who you are. Beneco was by the TV.

14 She said when she said that, they both ran out the
15 door. She said she screamed that she was calling the
16 police right then.

17 She said she never saw any vehicle but she knew
18 that there was one close by because he was fixing to grab
19 the TV, and that would be kind of standing out if they
20 went walking down the street with a big TV.

21 Q. Did she say she got any texts after that?

22 A. Yes. She said after the burglary she had received
23 a couple of phone calls from Mr. Ganson.

24 Q. I know you can't say word for word but what is the
25 gist of it? The gist of what they said?

P. HALL ON DIRECT

1 A. . .

2 Q. Did he apologize?

3 A. He apologized for it and told her not to call the
4 police.

5 Q. Do you remember how long it was after this burglary
6 that you found Mr. Ganson?

7 A. The burglary happened on December 6, and he was ar-
8 rested on January 9th.

9 Q. Where was he arrested?

10 A. In Georgia on December 18th, and was brought back
11 -- he waived extradition and was brought back to South
12 Carolina, one nine.

13 Q. And then he was arrested for this burglary?

14 A. Yes, sir.

15 Q. Please answer any questions Mr. Steen has for you.

16 A. Yes, sir.

17 THE COURT: Mr. Steen.

18 MR. STEEN: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. STEEN:

21 Q. So the Co-defendant's GPS placed him at another
22 location?

23 A. That's correct.

24 Q. After Mr. Ganson's Codefendant was cleared, do you
25 know if there was a photo lineup with him?

P. HALL ON CROSS

1 A. I did not because of her relationship with him.
2 She said she went to school with him and it was years
3 ago. I asked if she was one hundred percent sure on
4 Ganson, and she said yes.

5 She said with Allen it had been years and she was
6 not that sure. We were able to determine his whereabouts
7 so he couldn't have been there breaking in.

8 We also cleared it up with his probation officer.

9 Q. But Ms. Howze in the photo lineup originally picked
10 Quavos?

11 A. She didn't show any more reaction to Allen than she
12 did to the others, but she was able -- I showed her
13 Beneco Ganson's lineup first, and she said that's him,
14 right there.

15 Q. When you showed her Allen Quavos' photo lineup,
16 what did she say?

17 A. She said this one fits the side profile.

18 Q. But you thought she was sure that day about those
19 -- about both those individuals?

20 A. Yes, and she said Quavos fit the side profile in her
21 mind.

22 Q. Did you ever speak with Mr. Ganson?

23 A. Mr. Ganson refused to talk to me.

24 Q. Mr. Ganson was down in Georgia?

25 A. Correct.

P. HALL ON CROSS

1 Q. Do you agree he has family members there?

2 A. I don't know. Based on what his mom said, that
3 she lived in Atlanta, I guess -- I don't know.

4 Q. Okay.

5 (Brief pause in proceeding)

6 BY MR. STEEN:

7 Q. How often would you say someone picked in a photo
8 line-up is incorrect?

9 A. Somebody picked the wrong guy?

10 Q. Yes.

11 Q. That would have been my first one.

12 Q. Okay. No further questions. Thank you.

13 THE COURT: Anything further?

14 SOLICITOR: No further questions.

15 THE COURT: You may step down.

16 (Witness excused from stand)

17 THE COURT: The State may call its next witness.

18 SOLICITOR: May we approach?

19 THE COURT: Okay.

20 (Conference at the bench between counsel and the
21 Court off the record)

22 SOLICITOR: The State rests, Your Honor.

23 THE COURT: All right, ladies and gentlemen of the
24 jury, at this point in time I'm going to ask that you go
25 back to the jury room.

1 I need to take up some matters of law with the at-
2 torneys, so go ahead and take a little break.

3 We'll call you back out shortly. Do not talk
4 about the case. Okay?

5 Thank you.

6 (Jury excused from Courtroom)

7 THE COURT: Mr. Steen?

8 MR. STEEN: First I would like to move for directed
9 verdict based on all of the things I have raised during
10 the trial, as well as that the State did not produce
11 sufficient evidence to support the charge.

12 THE COURT: The motion is denied.

13 Anything else?

14 MR. STEEN: No, sir.

15 THE COURT: Have you talked to your client about
16 testifying?

17 MR. STEEN: Yes, sir.

18 THE COURT: What has he indicated to you?

19 MR. STEEN: He does not intend to testify.

20 THE COURT: Anything else?

21 SOLICITOR: Your Honor, I would like to publish the
22 stipulation to the jury at this time.

23 THE COURT: You have already rested, so you cannot
24 talk about it now. You did talk about it and you can

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1 -- it's in evidence and you can talk about it in your
2 closing argument.

3 I will give them a charge about that.

4 Okay, Mr. Ganson, if you would please
5 stand and raise your right hand.

6 (Defendant sworn for colloquy with the Court)

7 THE COURT: Thank you. You can be seated.

8 See the microphone in front of you. Pull it to
9 you and speak into it good and loud. Okay?

10 At this time I'm going to explain to you certain
11 rights that you have. If you don't understand anything
12 I say, let me know, and I will be glad to explain any-
13 thing you want me to explain.

14 Now, we have now reached the stage of the trial in
15 which you may present your defense. In doing that, I
16 want to make sure you understand that you have the right
17 under the Fifth Amendment of the United States Constitu-
18 tion which says that no person shall be compelled in any
19 criminal case to be a witness against himself.

20 That's what the Fifth Amendment says. In other
21 words, you do not have to testify, you cannot be required
22 to testify. You have a right to testify on your own,
23 but if you choose not to you don't have to.

24 Nobody can make you do that against your will. Do
25 you understand that right?

1 DEFENDANT: Yes, sir.

2 THE COURT: Now, I want to make sure you do under-
3 stand that if you wish to testify you may do so and
4 tell them your side of the story. You can deny it or
5 whatever you're going to do, but, you know, just like
6 with the other witnesses who have testified against you,
7 any particular crimes that would meet the legal standard
8 for what's called impeachment may come in, and, you know,
9 a jury may be able to hear that and may infer that
10 against you. Do you understand that?

11 DEFENDANT: Yes, sir.

12 THE COURT: Okay. Now, if you decide not to testify
13 then I will instruct the jury that they cannot consider
14 that whatsoever, the fact that you did not testify, and
15 it is of absolutely no prejudice to you because you do
16 not testify.

17 Do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Did you go over this with your lawyer?

20 DEFENDANT: Yes, sir.

21 THE COURT: Are you satisfied with your lawyer?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you wish to testify?

24 DEFENDANT: No, sir.

25 THE COURT: Now, I don't know what, if any, prior

1 record you have. The same rule which covers other wit-
2 nesses would be applicable to you. That means that if
3 you have committed any offenses which involve dishonesty
4 or are punishable by incarceration by more than one
5 year and this Court determines the probative value sub-
6 stantially outweighs the prejudicial effect to you, the
7 Solicitor may possibly question you about them to attack
8 your credibility.

9 Do you understand that?

10 DEFENDANT: Yes.

11 THE COURT: Understanding all these things, do you
12 wish to testify?

13 DEFENDANT: No, sir.

14 THE COURT: You understand what we've been over?

15 DEFENDANT: Yes, sir.

16 THE COURT: Thank you. Do you intend on presenting
17 any defense?

18 DEFENDANT: No.

19 MR. STEEN: No, sir.

20 THE COURT: Then we will bring them back and so,
21 Solicitor, you will go first with closing argument, fol-
22 lowed by Mr. Steen's closing argument. Mr. Steen will
23 have the last word.

24 MR. STEEN: Could we have a brief break?

25 THE COURT: Yes, sir.

1 (The Court stood in recess from 2:09 to 2:14 P.M.)

2 THE COURT: Is there anything you would request I
3 charge?

4 SOLICITOR: No, sir.

5 MR. STEEN: No, sir.

6 THE COURT: Of course, I will give you a chance at
7 the conclusion of my charge if you wish me to charge
8 something else or explain something further.

9 THE COURT: All right, bring the jury in.

10 (Jury returned to Courtroom at 2:15 P.M.)

11 THE COURT: All right, thank you, ladies and gen-
12 tlemen.

13 The State has rested. Mr. Steen?

14 MR. STEEN: The Defense rests.

15 THE COURT: The Defense rests. Ladies and gentle-
16 men, that now concludes the evidence stage of the trial.
17 We're going to move into what is called the closing ar-
18 guments, both by the State and the Defense.

19 At the end of the arguments I will explain to you
20 the law applicable to this case.

21 I'd ask you to please pay very close attention to
22 the lawyers as they argue what they believe the facts
23 have proved.

24 Solicitor?

25 SOLICITOR: Thank you. May it please the Court?

1 THE COURT: Yes, sir.

2 SOLICITOR: Ladies and gentlemen, I know many of
3 you are tired and you want to get out of here. The
4 trial has been brief, and I will try to be brief as
5 well.

6 You have heard from a number of witnesses today,
7 and your job is to take what has been said and to put
8 it together and come up with the whole story.

9 I'll go over just a little of it. It started on
10 December 6, 2013, that morning, when Ms. Howze was at
11 home with her two children. She didn't have to get up,
12 so she didn't answer. She didn't want company.

13 The Defendant came to the home and she heard him
14 on the porch. She texted him that she wasn't home.

15 Instead of leaving, she heard him say, kick in
16 the f'ing door, and then, bam, the door was kicked
17 open.

18 And who did she see in the house? Her friend,
19 Beneco Ganson, and another person. She screamed at
20 them, I'm calling the police. They run.

21 As you've heard, Ms. Howze mis-identified one of
22 the guys because she had a personal relationship with
23 Mr. Ganson. She didn't have that relationship with
24 the other guy.

25 She had no relationship with the other guy and had

1 only seen him a couple of times since school.

2 Someone kicked the door in, and it doesn't matter
3 who kicked it. The guy who said to kick it in is just
4 as guilty as the guy who did that. All you need to
5 do to commit a burglary is enter the house without
6 permission.

7 The police came and you heard they looked for
8 fingerprints. They found two sets. The witness said he
9 looked at one set and he could determine it was not
10 those of Mr. Ganson.

11 On the other set of prints, he said they just were
12 not good enough to be conclusive.

13 But we already know there were two people in there,
14 two people moving a TV. Obviously, one set of the
15 prints could be from Mr. Ganson.

16 There are TV shows like CSI and Law and Order, and
17 we don't have DNA. What we have is a lot of testimony
18 from a young lady who put her hand on that Bible and
19 swore to you she would tell you the truth.

20 The Defendant's mother told you she called Ms.
21 Howze to try to cover the cost of any damages. Why
22 would she do that? That is something for you all to
23 decide.

24 The Judge is going to tell you about the law and
25 don't try to reach your verdict without applying the

1 law. He will tell you what law to apply.

2 He will tell you that a person is guilty of burg-
3 lary in the first degree when they enter the home of
4 another person without permission, by a person with a
5 prior record for two or more burglaries.

6 Ladies and gentlemen, you heard testimony and you
7 have all the elements of burglary in the first degree.
8 Mr. Ganson went in the home, tried to steal a TV,
9 has a conviction for two or more burglaries and we've
10 stipulated to that.

11 You will have the paperwork in evidence that you
12 can look at in the jury room.

13 Now, comes the hard part. You have to decide as
14 you go back there who is right and who is wrong.

15 The Judge will talk to you about reasonable doubt.
16 A reasonable doubt is the kind of doubt that would cause
17 a reasonable person to hesitate to act.

18 Ladies and gentlemen, you don't even have to look
19 for a reasonable doubt. There is no doubt at all as
20 to this case from the evidence. You cannot ignore it.
21 You have all the elements of burglary in the first de-
22 gree.

23 We would ask you when you go back to your jury
24 room to return a verdict of guilty.

25 Thank you.

1 THE COURT: Mr. Steen.

2 MR. STEEN: Thank you, Your Honor.

3 This has been a short trial but it is a serious
4 trial. Mr. Ganson is on trial for burglary in the
5 first degree.

6 The State has the burden of proving his guilt with
7 evidence that convinces you beyond a reasonable doubt.

8 They have to show that Mr. Ganson entered the dwell-
9 ing or this house of Ms. Howze and that he did that
10 with the intent to steal the TV. I don't believe they
11 have shown that here today.

12 Their only evidence is the victim, Ms. Howze, who
13 literally turned her back on us as soon as she sat down
14 in the Courtroom.

15 She said she was convinced it was Mr. Ganson and
16 Mr. Allen. Said she was sure. That was day one. Then
17 on day two, she claimed it was Mr. Ganson and Mr. Allen
18 came in the house and moved the TV.

19 Then Mr. Allen is cleared, and then she said it
20 was Mr. Ganson and another person who came in the
21 house, tried to steal the TV. Her story changed four
22 times since day one, and we definitely cannot rely on
23 such testimony.

24 As to Mr. Allen, she said she went to school with
25 him; she knew it was him, but here today after everything

1 has changed --- I wasn't sure -- now, I'm unsure.

2 On the stand, she knew one well but not the other,
3 but at first she knew both well. You cannot rely on
4 that.

5 The standard that the State faces here today is
6 reasonable doubt. They may not have DNA but they still
7 have to prove the Defendant's guilt beyond a reasonable
8 doubt.

9 If Mr. Ganson's fingerprints had been found on that
10 TV, we probably wouldn't be here today. The State
11 did not determine it was Mr. Ganson. They didn't find
12 his fingerprints anywhere.

13 You heard that the TV was moved slightly in the
14 dust. That dust probably was a cause of the problem
15 with the other fingerprints. You heard that prints were
16 taken but they did not match those of Mr. Ganson.

17 You heard his mom testify that he went to his mom's
18 house, but the Solicitor implied that he was running.

19 You heard that he came back to face these charges
20 on December 18th. He said, hey, come get me; I want
21 my trial.

22 (Portion not audible)

23 Consider reasonable doubt, and inconsistent testi-
24 mony causes a reasonable doubt. If someone falsely
25 identifies someone, that is reasonable doubt.

1 After you'll consider the evidence presented and
2 apply the law you are given, we ask that you find Mr.
3 Ganson not guilty. Thank you.

4 THE COURT: Thank you, Mr. Steen.

5 Now, ladies and gentlemen, I will ask that you
6 turn and look at me as I charge you on the law in the
7 case. Please listen very carefully as this is the law
8 you will use and apply to the facts as you find them
9 to be.

10 Mr. Foreman and members of the jury, you heard
11 the testimony, the evidence, and the arguments of
12 both the State and the Defense. Now I will charge you
13 the law that applies to this
14 case.

15 Under the Constitution and laws of South Carolina,
16 you are the finders of facts in this case. I do not
17 have a right to comment about the facts or even to ex-
18 press an opinion that I may have as to that, because
19 that is a matter solely for you, the jury, to deter-
20 mine.

21 As jurors then, it is your duty to determine the
22 facts by weighing the value and the truth of the evi-
23 dence presented during this trial.

24 Now, as the Trial Judge it has been my responsi-
25 bility to preside over the trial of this case and to

1 rule on the admissibility of evidence that may have
2 been offered during the trial. You are to consider
3 only the testimony which has been presented from this
4 witness stand together with any exhibits which were
5 made a part of the record in this case.

6 I have the additional duty to charge you the law
7 of the case. Just as you are the sole judges of the
8 facts, I am the sole judge of the law. It is your
9 duty as jurors to accept as correct and apply the law
10 as I now charge it to you to reach your verdict.

11 The fact that I may instruct you on various sub-
12 jects in this case must not be taken as indicating an
13 opinion of the Court as to what the facts should be
14 or what your verdict should be.

15 Finally, I charge you that you should not be con-
16 cerned with what you think the law ought to be, but only
17 what I charge you the law is.

18 You are the judges, the sole judges, of the credi-
19 bility of the witnesses, which is also called the be-
20 lievability of the witnesses who have testified and
21 the evidence presented during this trial.

22 In passing upon credibility, you may take into con-
23 sideration anything such as the demeanor or the manner
24 of the witnesses who testified, or whether the witness
25 had a reason to be biased or prejudiced; whether or not

1 the witness' testimony was contradicted on the one
2 hand or supported or corroborated on the other hand.

3 All of these things you will consider, bearing in
4 mind that you should give the Defendant the benefit
5 of every reasonable doubt. It becomes your duty as
6 jurors to analyze and evaluate the evidence and deter-
7 mine that evidence which convinces you of its truth.

8 Now, I instruct you and emphasize that the fact
9 the Defendant did not testify is not a factor to be con-
10 sidered by you in any way in your deliberations, or in
11 your consideration of the question of the guilt or in-
12 nocence of the Defendant.

13 It must not be considered by you in any manner what-
14 soever. A Defendant has the constitutional right to
15 remain silent, and the assertion of this right must not
16 be considered by the jury in their deliberations.

17 So I will repeat, you are to draw no conclusion
18 whatsoever from the fact that the Defendant in this
19 case did not testify. The fact that he did not testify
20 should not even be discussed in the jury room.

21 The burden of proof, as I have stated to you, is
22 on the State of South Carolina. The Defendant is not
23 required to prove his innocence. The burden of proof
24 is on the State to prove guilt beyond a reasonable
25 doubt.

1 A person who has a past criminal record is compe-
2 tent to testify during a trial. A past record does
3 not affect the ability of that person to testify. A
4 past record may only be considered by you as an element
5 in considering the witness' believability.

6 Remember that you are the sole judges of the facts
7 in the case, credibility and believability of all of
8 the witnesses in the case.

9 There has been evidence presented that a witness
10 may have made prior statements that were not consistent
11 with the witness' testimony.

12 You may use this evidence to decide whether or
13 not to believe a witness. You may also use this evi-
14 dence of the earlier statement to determine the truth-
15 fulness of the witness.

16 It is up to you to decide whether to believe an
17 earlier statement or the testimony given at trial.

18 Now, there are two types of evidence which are
19 generally presented during a trial, direct evidence and
20 circumstantial evidence.

21 Direct evidence is the testimony of a person who
22 claims to have actual knowledge of a fact, such as an
23 eye-witness. It is evidence which immediately estab-
24 lishes the main fact to be proven.

25 Now, circumstantial evidence on the other hand is

1 proof of a chain of facts and circumstances which in-
2 dicate the existence of a fact. It is evidence -- and
3 I will explain more in a minute to make you understand
4 -- it is evidence which immediately establishes col-
5 lateral facts from which the main fact may be inferred.

6 Circumstantial evidence is based on what you can
7 infer or an inference. It is not a matter of personal
8 knowledge or observation.

9 For example, imagine you are at home and happen
10 to look outside and see that your lawn is brown. You go
11 to bed and wake up the next morning and see snow on the
12 front lawn and tracks on your front lawn through the
13 snow.

14 You can infer the snow -- you didn't see it snow
15 but you can infer that it snowed. You can infer as
16 well that somebody walked on your lawn. These are
17 things you can infer, even though you didn't see it
18 snow and even though you didn't see somebody on your
19 lawn.

20 Now, the law makes absolutely no distinction, lad-
21 ies and gentlemen, between the weight or the value to
22 be given to either direct or circumstantial evidence,
23 nor is any greater degree of certainty required of
24 circumstantial evidence than direct evidence.

25 You should weigh all the evidence in the case, and,

1 after weighing all the evidence, if you are not con-
2 vinced of the guilt of the accused beyond a reasonable
3 doubt you must find him not guilty.

4 Now, as I've told you during the trial, our rules
5 of evidence ordinarily do not permit witnesses to tes-
6 tify as to opinions or conclusions. Normally the
7 person must testify to what they either saw or heard or
8 sensed by smell, or something of that nature.

9 However, when someone is qualified through educa-
10 tion or training, they can give an opinion in certain
11 areas if the Court finds that person is an expert wit-
12 ness.

13 There was one expert witness in this case, and so
14 that witness could offer an opinion. To give opinion
15 testimony in that area, that does not mean that you have
16 to accept the opinion, but is evidence for you, the
17 jury, to use in any way you see fit and give it the
18 weight and credibility you believe is appropriate.

19 An expert witness' testimony is to be given no
20 more weight than that of other witnesses, simply because
21 the person is an expert.

22 Now, the fact that the Defendant was arrested,
23 charged and indicted is not evidence in this case and
24 cannot be used by you as such. Nor does that create
25 any presumption or inference of guilt against the Defendant.

1 The indictment as I told you at the outset of the case
2 yesterday is simply a formal instrument which contains
3 the charge against the Defendant.

4 An indictment is simply the document by which the
5 case is brought into Court.

6 Now, the Defendant has pled not guilty to the charge
7 contained in the indictment, and that plea places the
8 burden of proof upon the State to prove the Defendant
9 guilty.

10 A person charged with committing a criminal offense
11 in South Carolina is never required to prove himself
12 innocent.

13 I charge you, ladies and gentlemen, that it is a
14 very important rule of law that a defendant, no matter
15 the seriousness of the charge, will always be presumed
16 to be not guilty of a crime for which the indictment
17 was issued unless and until guilt is proven by evidence
18 satisfying you of guilt beyond a reasonable doubt.

19 Now, the presumption of innocence does not end when
20 you begin your deliberations, ladies and gentlemen, but
21 it accompanies the Defendant throughout the trial until
22 you have reached a verdict.

23 The presumption of innocence is like a robe of
24 righteousness, and you can imagine in your mind that
25 being placed about the shoulders of the Defendant, which

1 remains with him until it is stripped from him by evi-
2 dence convincing you of his guilt beyond a reasonable
3 doubt.

4 This presumption of innocence is not a mere legal
5 theory. It is not just a legal phrase, but it is a sub-
6 stantial right to which every Defendant is entitled, un-
7 less you, the jury, are satisfied beyond a reasonable
8 doubt from the evidence of the Defendant's guilt.

9 A reasonable doubt is a doubt which makes an hon-
10 est, sincere, conscientious person, in search of the
11 truth, to hesitate to act.

12 Proof beyond a reasonable doubt must therefore be
13 proof of such a convincing character that a reasonable
14 person would not hesitate to act upon it in the most
15 important of his or her own affairs.

16 Now, proof beyond a reasonable doubt can also be
17 described as proof that leaves you firmly convinced of
18 the Defendant's guilt.

19 Now, there are very few things in this world that
20 we know with absolutely certainty, ladies and gentlemen.
21 In criminal cases, the law does not require proof that
22 overcomes every possible doubt, so that if based upon
23 your consideration of the evidence you are firmly con-
24 vinced the Defendant is guilty, then you must find him
25 guilty.

1 If, on the other hand, you believe there is a real
2 possibility that he's not guilty, you must give him
3 the benefit of the doubt and find him not guilty.

4 The Defendant is charged with first degree burg-
5 lary. The State must prove beyond a reasonable doubt
6 that the Defendant entered the dwelling without consent.

7 A dwelling is any building or portion of a building
8 in which a person ordinarily sleeps. In order to prove
9 the Defendant entered the dwelling, the State does not
10 have to show that the Defendant's entire body entered
11 the dwelling. The smallest entry is sufficient. It may
12 be a part of the body such as the hand or foot, or any
13 instrument.

14 The State does not have to prove that force was
15 used to gain entry.

16 Next, the State must prove beyond a reasonable
17 doubt that the Defendant intended to commit either a
18 felony or a misdemeanor at the time of the entry.

19 The mere entry into a dwelling without consent is
20 not burglary.

21 If the intent to commit a crime was formed after
22 the entry, it is not burglary.

23 On the other hand, if the Defendant intended to
24 commit a crime upon entry it is a burglary, even if
25 the intent was abandoned after entry.

1 It does not matter what the intended crime was or
2 that the intended crime may not have been intended.

3 Intent may be shown by acts and conduct of the De-
4 fendant in other circumstances from which you may rea-
5 sonably infer intent.

6 Finally, the State must prove beyond a reasonable
7 doubt that the Defendant has a prior record of two or
8 more convictions for burglary.

9 Evidence of prior offenses committed by the Defen-
10 dant was not offered to prove the Defendant has a bad
11 character or to prove the Defendant committed a burglary
12 on this occasion.

13 The prior conviction may be considered by you only
14 for the purpose of determining whether or not it satis-
15 fies that element of the offense that makes it first de-
16 gree burglary if you enter a dwelling without consent
17 and you have two prior convictions for burglary.

18 Before you can even consider the evidence of the
19 Defendant's prior convictions, you must first find the
20 State has proved beyond a reasonable doubt that a
21 burglary was committed by the Defendant.

22 If you find beyond a reasonable doubt that a burg-
23 lary was committed, then you may consider the evidence
24 of the prior convictions as evidence of circumstances
25 which would make the burglary first degree burglary.

1 If you do not find beyond a reasonable doubt that
2 the Defendant committed these alleged prior offenses,
3 you cannot return a verdict of first degree burglary.

4 Let me say something about your deliberations be-
5 fore you begin. The word deliberation is defined as
6 careful consideration with a view to a decision.

7 The genius of our jury system, ladies and gentle-
8 men, is that it allows twelve good people, twelve men
9 a women from different life experiences, to consider
10 the evidence, talk about it, and ultimately reach a ver-
11 dict.

12 The task of a juror is called deliberation for
13 a reason. You, the jurors, are to consider the evidence
14 carefully and deliberately, and to discuss it in a calm
15 and thorough and courteous manner.

16 Remember you are not partisans or advocates for
17 either side over the other. Your purpose is to judge
18 the facts. Your sole duty is to go through the informa-
19 you have received in this trial and find what you believe
20 to be the truth.

21 Now, the Constitution affords everyone a day in
22 court and a fair trial. This case is very important
23 to both sides because it is their day in court.

24 I charge you to listen carefully to the views of
25 your fellow jurors, carefully consider their viewpoints,

1 and courteously discuss the evidence. Remember that
2 you are doing something deliberately. You are not in
3 a big hurry, but you are tasked with the duty that is
4 of utmost importance.

5 In conclusion, ladies and gentlemen, you have been
6 selected by the State and the Defendant to be fair and
7 impartial jurors. It is your duty then in your deliber-
8 ations to determine the truth in this case, giving the
9 benefit of every reasonable doubt on the charge.

10 I have told you the standards you have to apply to
11 the charge of burglary. You have heard the evidence.
12 Now you've heard the law. Whatever your verdict is,
13 guilty or not guilty, Mr. Foreman, you will indicate it
14 and sign and date your verdict form. It will be back
15 there with you.

16 Now, although the Foreman is the only juror who
17 writes the verdict, but is not his verdict alone. The
18 verdict has to be unanimous which means all twelve of
19 you have to agree upon it.

20 Mr. Foreman, do not write on the verdict form or
21 sign until all of you agree upon what your verdict
22 should be.

23 Ladies and gentlemen, I will send you to your jury
24 room at this time, but do not begin to discuss the
25 case until you receive the exhibits and verdict form.

1 Once you receive these things, that will be your
2 signal to finally begin talking about the case. Once
3 you begin deliberations, deliberate until you reach a
4 verdict. Then knock on the door and advise the bailiff.
5 We will bring you out to receive your verdict.

6 All of you except Madam Alternate
7 are free to go back to your jury room.

8 (Juror excused from Courtroom at 2:43 P.M.)

9 THE COURT: Any exceptions to the charge from the
10 State?

11 SOLICITOR: No, sir.

12 THE COURT: From the Defense?

13 MR. STEEN: No, sir.

14 THE COURT: Thank you.

15 (Alternate juror excused)

16 THE COURT: We'll be at ease, awaiting the jury's
17 verdict.

18 (Court stood in recess until 3:34 P.M.)

19 THE COURT: All right, thank you. Be seated.

20 I understand we have a verdict. Bring the jury
21 in.

22 (Jury brought into Courtroom)

23 THE COURT: All right, all members of the jury are
24 present. Mr. Foreman, I understand the jury has been
25 able to reach a verdict?

1 FOREMAN: Yes.

2 THE COURT: Have you signed it?

3 FOREMAN: Yes.

4 THE COURT: And you've written on the verdict form?

5 FOREMAN: Yes.

6 THE COURT: Would you hand that to my Clerk?

7 You may publish the verdict.

8 CLERK: Case 2014 GS 29 0445, first degree burg-
9 lary. We, the jury, unanimously find the Defendant,
10 Beneco Antoine Ganson, guilty.

11 Signed, Michael Tylicki, Foreman, June 25, 2014.

12 THE COURT: Ladies and gentlemen of the jury, if
13 this be your verdict, so say you by raising your right
14 hands.

15 Let the record reflect all jurors raised their right
16 hands.

17 All right. Ladies and gentlemen, thank you so
18 much for your service to Lancaster County as well as to
19 the State of South Carolina this week.

20 (Jurors excused by the Court)

21 THE COURT: Will you approach for sentencing?

22 Let's do this. While we're waiting on the sentenc-
23 ing sheet -- I mean, that is just a form I have to sign
24 anyway -- let me hear any mitigation from the State so

25 96

1 I can determine the sentence.

2 SOLICITOR: Your Honor, this is not the most vio-
3 lent crime. However, he is an offender. I did promise
4 Ms. Howze that I would not ask for life. The range is
5 fifteen to life.

6 I will read you his record. It goes back to 2002,
7 possession of stolen pistol; 2004, burglary third,
8 assault and battery of a high and aggravated nature,
9 firing a firearm into a dwelling, another possession of
10 stolen pistol, simple assault and battery, petty lar-
11 ceny.

12 Also, public disorderly, violation of ABC law, a
13 minor in possession of alcohol; 2003, petty larceny,
14 trespassing, possession of marijuana, financial transac-
15 tion card fraud; 2004, possession of marijuana; then in
16 2009, burglary second degree, non-violent, and burglary
17 second degree, violent.

18 In 2010, criminal domestic violence, first offense,
19 criminal conspiracy, forgery less than Ten Thousand;
20 common law robbery or strong arm robbery; a DUI first
21 offense in 2013, and giving false information to police.

22 That's the extent of his record. You've heard the
23 facts so I won't go into that.

24 THE COURT: I'll be glad to hear from the victim,
25 Ms. Howze, and Officer Hall. After that's over I will

1 turn to Mr. Steen.

2 Yes, maam.

3 MS. HOWZE: I'm sorry. The only reason I came to-
4 day was (inaudible). I thought we were friends
5 but what he done when he broke in my door wasn't being
6 a friend. I forgave him.

7 I feel like he should be given one more chance,
8 and I ask you to please, please, please give him another
9 chance. (Portion inaudible)

10 He apologized and I have to think about his kids.

11 THE COURT: Thank you, maam.

12 SOLICITOR: Thank you, maam. Officer Hall also
13 wishes to address the Court.

14 THE COURT: Officer Hall?

15 OFFICER HALL: Your Honor, I would disagree with
16 that. You've heard his criminal history with several
17 burglaries, gun violations -- I think he's a menace to
18 society.

19 I think he needs to serve a little bit of time in
20 jail. I don't think he should get life but I think he
21 should spend time in jail to think about what he's done,
22 the people he has hurt, you know.

23 I believe life would be too much but he needs to
24 take his punishment.

25 THE COURT: Thank you.

1 THE COURT: Solicitor, the sentencing range for
2 burglary in the first degree is a minimum of fifteen
3 years.

4 SOLICITOR: Fifteen years, Your Honor, and the
5 State would also echo Officer Hall and ask for a sig-
6 nificant sentence.

7 THE COURT: Thank you. Mr. Steen?

8 MR. STEEN: Thank you, Your Honor. We would ask
9 for the minimum. Mr. Ganson is thirty. He has three
10 kids, two little girls and one boy.

11 I would turn over to Mr. Ganson and his mom, who is
12 here today, Your Honor.

13 THE COURT: Mr. Ganson.

14 DEFENDANT: Yes, sir. I have made a lot of mis-
15 takes and I can't at this time change anything I did, so
16 I've got to accept responsibility and take my
17 medicine.

18 THE COURT: Yes, sir.

19 Maam, would you like to say anything? Come up to
20 the microphone there.

21 MS. THOMPSON: This is hard. He does have a crim-
22 inal history. I know for a fact that by this thing hap-
23 pening it might make a difference now.

24 I don't know what happened because I wasn't there,
25 but I know before this happened he was trying to take the

1 necessary steps to get things on track. He wanted to
2 get custody of his daughters because the children's
3 mother was on drugs real bad. He was taking the neces-
4 sary steps through social services and was doing what
5 they asked him to do so he could get custody of his
6 children.

7 He has a three or four bedroom home where he can
8 come and take care of them there. He also was trying
9 to do what he had to do to get custody of his two little
10 girls because they are not being taken care of.

11 I know he has a prior record, but I ask you to show
12 some leniency to him.

13 THE COURT: Thank you. You have the sentencing
14 sheet. Right?

15 SOLICITOR: Yes, sir.

16 THE COURT: All right, Mr. Ganson. I hope you will
17 learn from the past mistakes in your life. You are a
18 young man, and you will have the ability to live your
19 life when you have completed your sentence.

20 From what I've heard and considering your past re-
21 cord, the sentence of the Court is twenty years.

22 Good luck to you.

23 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

24

25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South
3 Carolina Court Administration, hereby certify that the
4 foregoing Transcript was prepared from the records of
5 Bonnie Kelly to the best of my ability, having been
6 heard in the Court of General Sessions for Lancaster
7 County on June 24 and 25, 2014.

8 FURTHER, I certify that I neither of kin nor
9 counsel to any party to this action, nor do I have any
10 interest in the same.

11 November 5, 2014

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FORM 5

STATE OF SOUTH CAROLINA)

County of Lancaster)

IN THE COURT OF COMMON PLEAS

Benece Ganson #386785)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
OFFICE OF CLERK
OF COURT
2017 JAN -4 PM 3:18
CLERK OF COURT
LANCASTER, SC

INSTRUCTIONS B 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 _____
2. Name and location of Court which imposed sentence General Sessions / Lancaster
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-29-445 / Burglary first degree

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 25, 2014 / 20 years
- (b) _____
- (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 Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N
- (b) A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE: attached sheet 1-5
- (b) _____
- (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? YES
- (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? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N
- ii. _____
- iii. A

(b) the proceedings in which each ground was raised:

- i. N
- ii. _____
- iii. A

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) See 10(a) Applicant first time presenting ground
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

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. Brandon Steen (P.D. Office) 104 N. Main
St. P.O. Box 1809 Lancaster SC 29721
 ii. Lz Nelle Cantey DuRant - Div. of Appellate
Defense 1330 Lady St. Ste 401 Colo, SC 29201-3352
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing
 ii. Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of LANCASTER)

VERIFICATION

I, BENECO GANSON, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Bene Ganson

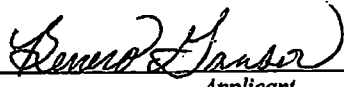
SWORN to and subscribed before me this 14th
day of December, 2016.
Michael Gause
Notary Public (L.S.)

My Commission Expires: July 09, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, BENECO GANSON, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
14th day of December, 2016.

 Michael Camare
Notary Public

My Commission Expires: July 09, 2026

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Beneco Ganson

Applicant

vs

the State

Respondent

IN THE COURT OF COMMON PLEAS

2017 CP29 00006

NOTICE AND MOTION
TO AMEND P.C.R.
APPLICATION

NOW COMES the above named Applicant - through his court appointed P.C.R. counsel, who moves this Hon. court in the above entitled matter per S.C. Code Ann § 17-27-90 to ADD the below arguments to his ground/argument set out in his original application.

INEFFECTIVE ASSISTANCE OF COUNSEL

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OF COURT
2017 JAN -4 PM 3:19
CLERK OF COURT
LANCASTER, SC

- (1) Although, counsel Steen knew - but failed to cross the state's only star witness Rodyuka Rorchlee Howze - about the text I sent her - was about me

being sorry for damaging her door - not that I had entered her home as she had claimed.

- (2) Counsel further failed to cross Mrs. Howze and the fact that she had made up that me and Charquavis Allen was the ones that he kicked in her door and entered her home, just to keep her sister from maybe putting her and her kids out. Where it was proven that Mr. Allen where some where else SEE: Trp 38 L 2 - L 7; p 41 L 2 - L 6; p 42 L 5 - p 45 - L 8; Also see Trp 32 L 2 - L 3.

- (3) Counsel also failed to cross Mrs. Howze on why would my clothes be at her home

(3) And, who took my clothes to my mother after this alleged burglary.

(4) Moreover, Counsel caused me to reject the 7 year plea offer, which I would have accepted. But counsel said that he can show that I was not at her home. Because she has already falsely accused this guy that was allegedly with me. Although counsel failed to tell me that the State's plea offer was more desirable than his no line of defense. SEE: Missouri v Frye 1325 Ct. 1399 (2012); Latter v Cooper 1325 Ct. 1376. Here, you can clearly see that counsel never put the State's case through

a test at all.

- (5) Counsel failed to object to the solicitor's closing argument when he stated, "and it doesn't matter who kicked it. The guy who said to kick it on is just as guilty as the guy who did that."

Here, that statement was very prejudicial because I was not charge with the hands of one. the hands of all SEE: Trp 79 L2 - L4. Nor. were the a jury charge on the hands of one SEE: Trp 83 L4 - p 93 - L3.

INEFFECTIVE ASSISTANCE OF COUNSEL

- (1) Per the Bill of Rights to the Federal Constitution I was denied the right to effective assistance of counsel. Thereby, my conviction and sentence violates the constitutions and laws of the United States as guaranteed by the 6th and 14th Amend. Also see S.C. Const. Article 1 Sec 3 and Sec 14. Also see Strickland v Washington 104 S. Ct. 2052.

Counsel Brandon Steen acts and or omissions including but not limited

to - failed to properly research
 and investigate the true facts
 and laws surrounding my whole
 case. SEE: Ard v Catoe 642 SE2d 590;
Pelzer v State 672 SE2d 790. Where
 Mr. Steen had a DUTY to conduct
 a reasonable investigation SEE:
State v Williams 485 SE2d 99;
Faretta v California 422 U.S. 806;
Pauling v State 503 SE2d 468;
Thomas v State 417 SE2d 531; Ingle
v State 560 SE2d 401; Martinez v
State 403 SE2d 113; Grier v State

384 SE2d 772.

(2) By counsel failure to investigate, he did not properly cross-examine the State's Star witness Rodyka Porchlee Howe upon on what really happen.

(3) Moreover, counsel Steen did not have a clear line of defense before going to trial. Which there is a reasonable probability that, but for counsel's unprofessional errors, the result of my trial and appeal

would have been different SEE: Cherry
386 SE2d at 625

Which I can prove by the preponderance
of evidence, alone with the aid of PCR
counsel SEE: S.C.R. Civil P. Rule 71.1 (d),
Rule 407 - Rule of Professional conduct
Frasier v State 570 SE2d 172

I further argue that any grounds
set out in my original P-C-R
application expressly argued or not,
is subject to amendments per. S.C.
Code Ann § 17-27-90. Also see
S.C.R. Civil P. Rule 71.1 (d) Therefore,

I am entitled to a FULL and
FAIR evidentiary hearing SEE:

Sharper v State 305 SE2d 247;

Odom v State 523 SE2d 753

Further I would like to bring to
this court, opposing counsel and my
PCR counsel's attention, that
I am entitled to a ruling on

"ALL" my issues that I bring
up at my PCR hearing SEE:

S.C. Code Ann § 17-27-80;

Marlar v State 653 SE2d 266

Also see Bostick v Stevenson

589 F3d 164.

Date 12-14-16

5 of 5

Respectfully submitted

sl Benevise (Dana)

PROOF OF SERVICE
Affidavit

I BENECO GANSON hereby certify that I
have served the below Clerk my PER form
and ground. By placing the above said into
the MC Corr. Inst. mail room on this _____
day of 12-14-16 to be placed in the U.S.
mail w/ postage prepaid.
The Hon Clerk of CT.

SWORN to before me

this 14th day of December 2016

[Signature]

Michael Camare

Notary Public

My Commission Expires July 09, 2026

Beneco Ganson

2017 CP 29 00006

The Hon. Clerk of Ct.

Date

Dear Hon. Clerk

Please find enclosed for filing my P
form and grounds.

Would you be so kind as to forward
the Atty Gen's office a filed copy and
me one back. please.

Thank you

Sincerely

cc: Personal file

Dennis J. Janssen

FILED
OFFICE OF CLERK
OF COURT
2017 JAN -4 PM 3:19
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	SIXTH JUDICIAL CIRCUIT
	)	
Beneco A. Ganson, #306785,	)	2017-CP-29-0006
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on January 4, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. In April 2014, the Lancaster County Grand Jury indicted Applicant for burglary, first degree (2014-GS-29-0445). Brandon Steen, Esquire, represented Applicant. Solicitor Randy Newman, Esquire, prosecuted the case. On June 24-25, 2014, Applicant proceeded to trial before the Honorable Brian M. Gibbons. The jury found Applicant guilty as indicted. Judge Gibbons sentenced Applicant to imprisonment for twenty years for burglary, first degree.

Applicant filed a timely notice of appeal. LaNelle Canty DuRant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on March 2, 2016. State v. Ganson, Op. No. 2016-UP-107 (S.C. Ct. App. March 2, 2016). The remittitur was returned to the circuit court on April 5, 2016.

Attached to this Return and incorporated by reference are the records of the Lancaster County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina

Department of Corrections, the trial transcript, and Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
 - a. "Counsel [committed] acts or omissions including but not limited to fail[ing] to properly research and investigate the true facts and laws surrounding my whole case;"
 - b. Counsel "did not properly cross-examine the State's Star witness Rodynka Porchlee Howze;"
 - c. "Counsel Steen did not have a clear line of defense before going to trial, Which there is a reasonable probability that, but for counsel's unprofessional errors, the result of my trial and appeal would have been different."

Applicant amended his PCR application for ineffective assistance of counsel, further alleging:

1. Counsel was ineffective, in that:
 - a. Counsel failed to cross-examine Ms. Howze regarding a text Applicant sent her.
 - b. Counsel failed to cross-examine "Ms. Howze and the fact that she had made up that [I had] kicked in her door and entered her home. . . ."
 - c. Counsel failed to cross-examine Ms. Howze "on why would my clothes be at her home and who took my clothes to my mother after this alleged burglary."
 - d. "Counsel caused me to reject the 7 year plea offer, which I would have accepted. But counsel said he can show that I was not at her house. . . . Although counsel failed to tell me that the State's plea offer was more desirable than his no line defense. . . counsel never put the State's case through a test at all"
 - e. Counsel failed to object to a prejudicial statement made during the solicitor's closing argument indicating "the hands of one – the hands of all," even though the Applicant was not charged with nor was the jury instructed on "the hands of one."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the

record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. 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), SCRPC.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of ineffective assistance of trial counsel.

[Signature block on following page]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN MITCHELL
Assistant Attorney General

By: DYM
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 8, 2017

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

BENECO A. GANSON, 306785

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2017-CP-29-0006

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:

Steven W. Fowler, Esquire
1019 Highway 17 South
North Myrtle Beach SC 29582

DATED this 8th day of June, 2017.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS

BENECO A. GANSON,

APPLICANT,

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT.

2017-CP-29-00006

TRANSCRIPT OF RECORD

JULY 16, 2018
LANCASTER, SOUTH CAROLINA

BEFORE:

THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES:

ATTORNEY FOR APPLICANT:

STEVEN W. FOWLER, ESQ.

ATTORNEY FOR RESPONDENT:

DeSHAWN H. MITCHELL
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1 **MR. MITCHELL:** Good morning, Your Honor.

2 **THE COURT:** Mr. Attorney General, I'm ready whenever
3 you are.

4 **MR. MITCHELL:** May it please the Court, Your Honor?

5 This is Beneco Ganson versus the State of South Carolina,
6 2017-CP-29-0006. The Applicant is present and confined in
7 the South Carolina Department of Corrections pursuant to
8 orders of commitment of the Lancaster County Clerk of Court.

9 In April of 2014 the grand jury indicted the Applicant
10 for burglary, first degree. Mr. Brandon Steen represented
11 the Applicant.

12 On June 24th through June 25th, 2014 the Applicant
13 proceeded to trial before the Honorable Brian Gibbons. The
14 jury found Applicant guilty as indicted. Judge Gibbons
15 sentenced Applicant to imprisonment for twenty years for
16 burglary, first degree.

17 The Applicant filed a timely notice of appeal. The
18 South Carolina Court of Appeals affirmed the Applicant
19 conviction on March 2nd, 2016. And the remittitur was
20 returned to the circuit court on April 5th, 2016. The
21 Applicant filed a timely Post Conviction Relief application
22 on January 4th, 2017 with several allegations.

23 He's present in the courtroom today represented by Mr.
24 Fowler. At this time I'll turn it over to Mr. Fowler. And,
25 Your Honor, the packet should be placed up there at the

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

5

1 bench.

2 **THE COURT:** Mr. Fowler.

3 **MR. FOWLER:** Yes, sir. Good morning, Your Honor.

4 **THE COURT:** Good morning.

5 **MR. FOWLER:** Before we get started, and I just wanted
6 to be clear on this, the transcript of record from the June
7 24th, 25th, 2014 matter, I believe that is part of the
8 record, but I just wanted to make sure that the Court would
9 take judicial notice of that document.

10 **MR. MITCHELL:** That's correct, Your Honor. It's
11 already part of the record.

12 **THE COURT:** All right. The Court would agree.

13 **MR. FOWLER:** All right. Your Honor, I'd like to call
14 Mr. Beneco Ganson to the stand, please.

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

16 **Beneco Ganson,** being duly
17 sworn testified as follows;

18 **MR. FOWLER:** Thank you, Your Honor.

19 **Direct Examination by Mr. Fowler:**

20 Q. First of all, please state and spell your name for the
21 Court, please.

22 A. Beneco Ganson, B-e-n-e-c-o, Ganson, G-a-n-s-o-n.

23 Q. Okay. And you and I have spoken about this matter,
24 correct?

25 A. Yes, sir.

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

6

1 Q. And I've provided or our office has provided you
2 information about this matter, is that correct?

3 A. Yes, sir.

4 Q. Okay. And you've had time to review that, is that
5 correct?

6 A. Yes, sir.

7 Q. Okay. Fantastic. You have filed a Post -- an
8 application for Post Conviction Relief in this matter, is
9 that correct?

10 A. Yes, sir.

11 Q. Okay. And then you mentioned several things in it.
12 And on the application in number 10 it says -- the question
13 is state concisely the grounds on which you base your
14 allegation that you're being held in custody unlawfully.
15 You said ineffective assistance of counsel, is that correct?

16 A. Yes, sir.

17 Q. Okay. And on number 11, see attached sheet, 1 through
18 5, is that correct?

19 A. Yes, sir.

20 Q. Okay. When you say ineffective assistance of counsel,
21 is that -- what's your thoughts on that? I mean, is that --
22 that seems to be a broad term to me. What are you
23 specifically saying here?

24 A. I'm saying that my attorney could have investigated my
25 case a little bit more. Then I think I would have had a

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

7

1 different outcome at trial if he would have investigated
2 more.

3 Q. Okay.

4 A. Then, like, okay ---

5 Q. And you allege certain things in this application?

6 A. Yes, sir.

7 Q. And notice and the motion to amend the PCR application,
8 is that correct?

9 A. Yes, sir.

10 Q. Okay. But it's -- but it's still a fairly broad term,
11 correct?

12 A. Yes, sir.

13 Q. Okay. In your notice and motion to amend PCR
14 application on -- filed in the Lancaster Clerk of Court on
15 January the 4th of 2017, once again, you've alleged certain
16 specific things in this matter, correct?

17 A. Yes, sir.

18 Q. Okay. And I'm reading from the notice and motion to
19 amend the PCR at this time for the Court, opposing counsel.
20 Number 1, it says although Counsel Steen, and forgive my --
21 I'm getting a little bit older. So I can't read as well as
22 I used to. So if I misstate a word, if you could help me
23 out on that, I guess.

24 Although Counsel Steen knew, but failed to cross the
25 State's only star witness, and what is that star witness'

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

8

1 name?

2 A. Ronika (ph) Howze.

3 Q. House, like -- kind of like ---

4 A. Yes, sir.

5 Q. They're maybe not spelled the same, but like house,
6 correct?

7 A. Yes, sir.

8 Q. Okay. Well, I'll refer to her as Ms. Howze. About the
9 text I sent her was about me being sorry for damaging her
10 door, not that I'd entered her home as she had claimed.

11 Okay. Well, what do you mean by that? What do you --
12 what's your -- you're here in front of the Court ---

13 A. Yes, sir.

14 Q. --- to express this to the Court and explain it.
15 What's your meaning behind that?

16 A. Okay. I felt like the attorney should have -- he
17 should have looked at the text message a little more because
18 I clearly stated in the text message that I did not enter
19 her home with the intent to commit any crime, but to simply
20 receive my things and leave, which she knew I was on my way
21 over there to her house.

22 The text message showed that I let her know that I was
23 on my way over there. She knew I was on my way over there
24 and what I was on my way over there for.

25 Q. So what do you mean by that, that she had prior

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

9

1 knowledge or ---

2 A. Yes, sir.

3 Q. Okay. Why do you think that's important, that text
4 message?

5 A. It showed that I didn't enter her home with the intent
6 to commit a crime, which that was a burglary, first, was me
7 entering her home with the intent to commit a crime once in.

8 Q. So you're saying that she had -- not to repeat what you
9 say, and I may do this a little bit -- you're saying that
10 she had knowledge that you were coming over?

11 A. Yes, sir.

12 Q. Did she -- did she provide a text saying -- giving
13 consent for you to come over or how ---

14 A. Like earlier in the conversation, but once I had got
15 there the text message stated that she wasn't at home, which
16 I knew that was a lie.

17 Q. So let me just back you up a sentence or two here.
18 You're saying that she said in an earlier text that it was
19 okay for you to come over ---

20 A. Yes, sir.

21 **MR. MITCHELL:** Judge, I'm just going to object. Some
22 -- a lot of this is hearsay about what she says. I guess he
23 can -- he can testify as to what he said, what he had
24 knowledge of, but not what she says.

25 **MR. FOWLER:** And, Your Honor, I'm just trying to prove

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

10

1 a point, that there was an ongoing dialogue that the
2 attorney did not look into, apparently, on this ---

3 **THE COURT:** Overruled. I'll allow it.

4 **Direct Examination by Mr. Fowler Continued:**

5 Q. Well, let's talk about that in terms of what you said.
6 But you're -- so just to repeat, you sent a text message,
7 basically giving you a green light or putting them on notice
8 that you were coming?

9 A. Yes, sir.

10 Q. All right. Anything else about that that you feel is
11 -- well, let's talk about your attorney's performance. Did
12 your attorney go into that with you in conversations before
13 court?

14 A. No, sir. He actually had that text message removed so
15 that wouldn't be evidence at my trial.

16 Q. Okay. What do you mean by that?

17 A. They ruled -- they had ruled on the text message being
18 that he didn't get clarification that they was -- the text
19 message conversations were between her from the phone
20 company. So they couldn't use it in trial. They couldn't
21 use the text messages in trial.

22 Q. Okay. So -- and just to be clear, so you're saying
23 that he took some action to remove that text message?

24 A. Yes, sir.

25 Q. And are you saying that he didn't follow proper

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

11

1 protocol in confirming the text message ---

2 A. Yes, sir.

3 Q. All right. How were those two things detrimental to
4 your case?

5 A. Because they didn't pre-approve it that I didn't intend
6 on committing any crime.

7 Q. And do you feel like if he had followed through better
8 that that would have helped your case?

9 A. Yes, sir.

10 Q. All right. Anything else about that text that you sent
11 in number 1 that you feel the Court needs to know about?

12 A. No, sir.

13 Q. Okay. All right. Moving on to number 2. Counsel
14 further stated -- failed to cross examine Ms. Howze and the
15 fact that she had made up that me and -- how do you
16 pronounce -- Mr. Allen, is that correct?

17 A. Sharquez (ph).

18 Q. Sharquez Allen, is that correct?

19 A. Yes, sir.

20 Q. Was the ones that -- he kicked in her door and entered
21 her home just to keep her sister from maybe putting her and
22 her kids out where it was proven that Mr. Allen was
23 somewhere else, is that correct?

24 A. Yes, sir.

25 Q. All right. Explain that to me. What do you mean by

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1 the paragraph 2 in this matter?

2 A. Okay. Ms. Howze, she identified Sharquez Allen as
3 someone who was with me as, I guess, my co-defendant, which
4 I never met him. He had a ankle monitor on, was nowhere
5 around -- nowhere around the scene of the crime. Never met
6 him a day in my life.

7 So I felt like she made that up just to protect herself
8 because that wasn't her house, it was her sister's house.
9 And she had made a statement that she would be kicked out if
10 it was to come to light that I came over there and kicked
11 her sister's door in. She was facing her being out on the
12 streets and her kids being out on the streets.

13 Q. Okay. So just to be clear, you're saying that --
14 you're saying that there was a false story about your
15 relationship with Mr. Allen, is that correct?

16 A. Yes, sir.

17 Q. Okay. Well, how did -- how did your attorney approach
18 that?

19 A. He ---

20 Q. Or not ---

21 A. He didn't approach it at all.

22 Q. Did you bring it to his attention?

23 A. Yes, sir.

24 Q. How did you bring it to his -- his attention?

25 A. I told him that I never met this guy a day in my life.

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1 Q. Okay.

2 A. And this is who she said that was with me ---

3 Q. Okay.

4 A. --- when all this took place.

5 Q. Okay. So you're saying that there was a Mr. Allen that
6 was alleged to be with you, ---

7 A. Yes, sir.

8 Q. --- but he was not?

9 A. No, sir.

10 Q. Okay. Did your -- and you're saying that your attorney
11 was faulty in terms of -- well, how would you have
12 approached that? How would you have attacked that issue,
13 and did you express that to your attorney?

14 A. Being that -- being that I didn't know him at all, I
15 would have pretty much attacked her -- her credibility on
16 the whole matter because if she clearly identified him as
17 being somebody that was with me and he was nowhere around
18 the scene of the crime, I feel like that that could have --
19 be a big downfall on her credibility.

20 Q. Did you express -- did you talk to him about this?

21 A. My attorney?

22 Q. Yes.

23 A. Yes, sir.

24 Q. Okay. What did you say to him?

25 A. I told him that I never met -- I never met him a day of

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1 my life. And that's how I feel like the story was
2 fabricated because I never met him a day in my life.

3 Q. Did he bring up this alleged relationship between you
4 and Allen at trial?

5 A. No, sir.

6 Q. Okay. You mentioned several parts in the transcript, I
7 think, and at the bottom of paragraph number 2. I think I'm
8 saying these correctly. Transcript -- and these are parts
9 of the transcript is question number 2 or statement number
10 2. Transcript, page 38, line 62 through 69, is that
11 correct?

12 A. Yes, sir.

13 Q. Page 41, 62 through 66?

14 A. Yes, sir.

15 Q. Page 42, line 65?

16 A. Yes, sir.

17 Q. Page 45, line 8, is that correct?

18 A. Yes, sir.

19 Q. Okay. And also see the page, at the top, 32, 62
20 through 63, is that correct?

21 A. Yes, sir.

22 Q. And you're asking today for the Court to draw attention
23 to those parts of the transcript ---

24 A. Yes, sir.

25 Q. --- to review -- okay. Anything else about this number

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1 2 that you feel is pertinent to this Court hearing today?

2 A. I feel like her whole credibility about this guy who I
3 don't even know and saying that he was with me and during
4 this -- doing this -- when this took place and saying that I
5 knew this guy, I never knew him. He had a ankle monitor on
6 saying that he's blocks and blocks away from the crime, that
7 should be looked at.

8 Q. Okay. And I think you brought this up for the first
9 time on -- you're saying that Mr. Allen apparently had an
10 ankle monitor ---

11 A. Yes, sir.

12 Q. So his placement could have been easily defined?

13 A. Yes, sir.

14 Q. Okay. And it wasn't by your attorney, was it?

15 A. Yes, sir.

16 Q. Okay. Well, your attorney did not go into that at
17 trial about the monitor, correct?

18 A. Yes, sir. The State -- the State pretty much could
19 verify his whereabouts.

20 Q. Okay. But your attorney did not, right?

21 A. No, sir.

22 Q. Okay. All right. Well, moving on to question or
23 statement 3, counsel also failed to cross Ms. Howze on why
24 would my clothes be at her house. And then it goes over to
25 the next, and who took my clothes to my mother after this

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1 alleged burglary?

2 Earlier the, you know, the State quoted hearsay ground.

3 So I'm not asking you necessarily what she said, but I am

4 asking you what is your opinion about this question number

5 3? What do you mean by that?

6 A. I mean, like, as far as a relationship between me and

7 her and my clothes at her house, after the incident, my

8 clothes were taken to my mother's house, ---

9 Q. Okay.

10 A. Well, my grandmother's house.

11 Q. And why do you think that's relevant to your

12 relationship with -- your professional relationship with

13 your attorney?

14 A. Because, like, if I'm not mistaken, if I had clothes in

15 her house, it is impossible for me to break into my own

16 house or my residence where I had clothes at.

17 Q. Okay. So you were -- were you staying there?

18 A. On and off.

19 Q. Okay. All right. Did you and her -- what was your

20 relationship with her?

21 A. Just basically, I mean, a little deeper than friends, I

22 would say.

23 Q. All right. Now you mentioned in paragraph 3 at the top

24 of the page, and who took my clothes to my mother after this

25 alleged burglary? So who took your clothes to ---

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1 A. She did.

2 Q. All right. So what does that mean? Why is that
3 relevant here that she took clothes to your -- is it mother
4 or grandmother?

5 A. My grandmother.

6 Q. Okay. Why is it relevant that she took clothes to your
7 grandmother after the alleged crime?

8 A. Because it's -- she stated that I burglarized her
9 house. And which I got things from -- that were mine from
10 her house, but afterwards the clothes were taken to my
11 grandmother's house, which further let you know that I
12 didn't burglarize her house and that I was there intending
13 to get those things and leave.

14 Q. So how would you -- okay. So you're saying that she
15 took clothes -- she -- did she take the clothes or say she
16 was willing to take them?

17 A. She was willing to take them to -- to my grandmother's
18 house.

19 Q. So are you saying that -- what does that indicate to
20 you when, you know, the alleged victim is willing to take
21 clothes back to ---

22 A. That it was -- it was a relationship there. It wasn't
23 no violation of any -- any sort.

24 Q. Okay. So how -- did you mention that to your attorney?

25 A. Yes, sir.

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1 Q. Okay. What did he say?

2 A. I mean, at that point --/at that point when I had
3 pretty much ran that by him, it wasn't nothing said.

4 MR. FOWLER: Your Honor, may I -- may counsel and I
5 approach the bench for just a moment?

6 THE COURT: Sure.

7 (Whereupon a bench conference was held off the record)

8 MR. FOWLER: We're back on the record, Your Honor?

9 THE COURT: Yes, sir.

10 MR. FOWLER: And I apologize for breaking that chain.
11 But if it's acceptable to the Court, I was in a car accident
12 last year, and I'm having some issues standing for long
13 periods of time. And if it's acceptable, I'd like to
14 address the Court or whatever today by sitting down.

15 THE COURT: Certainly. You may do that.

16 MR. FOWLER: Okay. Thank you, Your Honor.

17 **Direct Examination by Mr. Fowler Continued:**

18 Q. Finishing up question number 3, and just to reiterate
19 what I may have said earlier, what -- you mentioned in
20 question number 3 two points, he failed to cross Ms. Howze
21 on why my clothes would be at her house and who took my
22 clothes to my mother on this alleged burglary. Is there
23 anything else that you feel is -- needs to be addressed to
24 the Court about this and your relationship with your
25 attorney and ---

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1 A. Yes, sir. Yes, sir. There was -- it clearly shows
2 that it was -- it was more to that relationship, more like a
3 fight between two people. It was basically a fight between
4 two people more than anything. It was not a burglary.

5 Q. And your words, the fight did not escalate to the level
6 of a crime?

7 A. No, sir.

8 Q. Okay. All right. Moving on to question number 4.
9 Moreover, counsel caused me to reject a seven year plea
10 offer, which I would have accepted, but counsel said that he
11 can show that I was not at her house because she was --
12 already falsely accused this guy that was allegedly with me.
13 Although, counsel failed to tell me that the State's plea
14 offer was more desirable than his no line of defense. Okay.

15 And then you quote two cases, Missouri versus Frye and
16 Lafler versus Cooper. Here you can clearly see that the
17 counsel never put up the State's case through and tested on.
18 Okay. There's a lot in this. So I'm going to just kind of
19 parse it down and we'll -- we'll go over it.

20 Counsel caused me to reject a seven year plea offer,
21 which I would have accepted. Okay. Tell me a little bit
22 about that. Tell me a little bit about the seven year plea
23 offer that was given to you, apparently.

24 A. Yes, sir. I was given a seven year plea offer, which I
25 feel like I would have took it if I would knew that I was

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1 going to be placed not at the scene when I was clearly at
2 the scene.

3 Q. So are you saying that in hindsight that you would have
4 accepted that seven year ---

5 A. Yes, sir.

6 Q. And are you saying, I don't want to put words in your
7 mouth, but in retrospect why do you feel like you should
8 have taken that seven year plea at that -- at that time?

9 A. Well, I mean, I was placed -- I ended up with twenty
10 years. I ended up with twenty years, violent, twenty years
11 at 85 percent versus seven years, which I would have been
12 home. I have kids out there. So I lost a lot of my life
13 gambling with that line of defense that he had.

14 Q. But you're saying today is that your counsel's
15 performance was sufficient -- had you known he was
16 deficient, you would have accepted that plea?

17 A. Yes, sir.

18 Q. Moving on to question number 4, counsel said that he
19 could show that I was not at her house. Did he show that
20 you were not at her house?

21 A. No.

22 Q. Why not?

23 A. He couldn't.

24 Q. Okay. Because she has already falsely accused this guy
25 that was allegedly with me. Okay. Does that relate back to

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1 your earlier statement?

2 A. Yes, sir.

3 Q. Okay. Although counsel failed to tell me that the
4 State's plea offer was more desirable than his no line of
5 defense. All right. When you say no line of defense, did
6 he provide any kind of line of defense to you?

7 A. I mean, he tried to make it -- make it -- make his
8 pitch that I wasn't there, relying on her credibility, which
9 her credibility wasn't that good. So he was relying on her
10 credibility by not placing me at the scene, but he didn't
11 have anything to back that defense up.

12 Q. And then you quote a couple of statements -- cases that
13 you'd like to possibly bring the Court's attention to,
14 Missouri and Lafler cases.

15 And then finally in question number or statement number
16 4, here you can clearly see that counsel never put the case
17 -- the State's case through a test at all. What kind of
18 test are you referring to that he did not put the State's
19 test through?

20 A. This -- basically he had my case for -- he had my case,
21 I would say, a month. The week before -- the week before my
22 trial he came and told me, don't worry about trial, we're
23 just going for the bond hearing. The very next week I was
24 going to pick twelve jurors. There is no way that he could
25 have researched my case or investigated my case within that

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1 time.

2 Q. Okay. So you brought this up, you said that he had
3 your case for about a month?

4 A. Yes, sir.

5 Q. All right. So was he your only attorney on these
6 matters?

7 A. No, sir.

8 Q. Okay. Who was your first attorney on ---

9 A. I want to say Mark Grier.

10 Q. Okay. How do you spell that name?

11 A. M-a-r-k ---

12 Q. Last name.

13 A. --- G-r-i-e-r, Grier.

14 Q. Okay. Now, was he a public defender or ---

15 A. Yes, sir.

16 Q. So he is a public defender, right?

17 A. Yes, sir.

18 Q. All right. What happened with him on your case? What
19 did he ---

20 A. We had -- we had a disagreement. We had a
21 disagreement. So I felt like it'd be better if I just get
22 him off my case and got another attorney.

23 Q. And you said you had a second attorney, is that
24 correct?

25 A. Yes, sir.

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1 Q. Who was that attorney?

2 A. Brandon Steen.

3 Q. Okay. So you had two attorneys on this matter,
4 correct?

5 A. Yes, sir.

6 Q. Okay. How long did Mark Grier, I think is how you
7 pronounce it, how long did he have your case?

8 A. I'd say about a month, month and a half.

9 Q. Okay. So you're saying that Mr. -- your prior attorney
10 had it for a month and Mr. Steen had it for a month?

11 A. Yes, sir.

12 Q. So how long was it between when you were charged and
13 when you went to trial on it?

14 A. Like -- like five months.

15 Q. Five months?

16 A. Yes, sir.

17 Q. All right. Well, do you think that was -- in hindsight
18 do you think that was enough time to go over your case?

19 A. I would say Mark Grier had enough time, but it was no
20 way Brandon Steen had enough time.

21 Q. Okay. So how did Mr. Steen get your case if Mark Grier
22 was your initial attorney on the ---

23 A. I -- I fired Mark Grier.

24 Q. Okay. But it was still in the same office, correct?

25 A. Yes, sir.

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1 Q. Do you feel that Mr. Steen's time on the case was
2 enough? I think I'm rephrasing something I may have asked
3 earlier, but do you think he had enough time on the case to
4 adequately defend you?

5 A. Never possible.

6 Q. Okay. Did you ever ask for any kind of continuance or
7 delay on this?

8 A. No, sir. I wasn't able to. Like I said, I told -- he
9 told me we was going to the bond hearing, and the very next
10 week I was picking twelve jurors.

11 Q. Well, when you say you weren't able to, what do you
12 mean by that?

13 A. I never talked to him. I talked to him about a bond
14 hearing. And the next time I'm talking to him, I'm picking
15 twelve jurors, but -- going to trial.

16 Q. So even with Mr. Grier and Mr. Steen's representation
17 of you, it was less than six months or less than a year,
18 correct?

19 A. Yes, sir.

20 Q. Okay. All right. Moving on to question number 5 --
21 well, first of all, anything else on question number 4 that
22 you would like to bring to the Court's attention?

23 A. No, sir.

24 Q. Okay. Number 5, counsel failed to object to the
25 solutions, excuse me, I'm sorry. The solicitor's closing

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1 argument when he stated, and it doesn't matter who kicked
2 it, the guy who sent to kick it was just as guilty as the
3 guy who did that. Here in your -- stating to the Court in
4 the file, here that statement was very prejudicial because I
5 was not charged with the hand of all -- the hands of one is
6 the hands of all.

7 And you mentioned some -- the transcript here. And I
8 believe that's transcript, page number 79, lines 62 through
9 64, is that correct?

10 A. Yes, sir.

11 Q. All right. And nor was the jury charged on the hands
12 of one, hands of all at the end. See transcript, 82, line
13 64 through page 93, line 63, is that correct?

14 A. Yes, sir.

15 Q. Okay. Let's break this down and go over it a little
16 bit. Counsel failed to object to the State's closing
17 argument where he said -- and I believe you're saying the
18 State stated, and it doesn't matter who kicked it in, the
19 guy who kicked it in is just as guilty as the guy who did
20 that. Tell me a little bit about that. What do you mean by
21 that?

22 A. I wasn't tried with the hand of one, hand of all.

23 Q. Okay. Were you convicted on hand of one, hand of all?

24 A. No, sir.

25 Q. Okay. Well, I mean, it was presented to the jury, is

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1 that correct?

2 A. Yes, sir.

3 Q. Okay. So -- all right. So you're saying that your
4 counsel, that your legal counsel failed to object to the
5 closing argument, correct?

6 A. Yes, sir.

7 Q. Did your -- did your -- did your attorney go into the
8 hand of one, hand of all at any point in this matter?

9 A. No, sir.

10 Q. Okay. And just to be clear, you feel like you received
11 time based on that hand of one, hand of all?

12 A. I feel like I did because Ronika Howze, she could have
13 stated that somebody else had kicked her door.

14 Q. Okay. All right. And you continue on, here that
15 statement -- here that statement was very prejudicial
16 because I was not charged with the hands of one, hands of
17 all. Okay. Nor was the jury charged on the hands of one,
18 hands of all. What do you mean by this segment of your
19 statement?

20 A. Okay. Being that -- being that it was said that --
21 being that it was stated that this somebody else may have
22 kicked the door, whatever, it would be very prejudiced
23 toward me because she said that this guy, who wasn't even
24 there, had kicked her door in. Being that he kicked her
25 door, and the solicitor quoted -- quoted that I'm just as

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1 guilty as he is. Who is he? You know, he was never -- he
2 was never even there.

3 Q. So just to be clear on my end, you're saying that
4 because it was said, and I think you quoted it in the
5 transcript, because it was said by the prosecution that it
6 got in the jury's mind ---

7 A. Yes, sir.

8 Q. --- and that that may have played a part in your
9 sentencing?

10 A. It's basically saying I'm guilty, I'm as guilty as he
11 is.

12 Q. Okay. Well, let's talk about your attorney's
13 performance on that if we can or anything else. You said
14 that he did not object to it, is that correct?

15 A. Yes, sir.

16 Q. Did he do anything else in terms of motions, or
17 addressing the court, or ---

18 A. No, sir.

19 Q. --- anything -- let me just finish the -- it was
20 apparently said the hands of one, hands of all was
21 mentioned. You said on the stand today that you feel like
22 it was prejudicial to you. Let me phrase it this way. What
23 action did your attorney take in saying that that should not
24 have been mentioned?

25 A. None whatsoever.

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1 Q. Anything else in question number 5 that you would like
2 to address to the Court?

3 A. No, sir.

4 Q. And then we've got some more information here that's
5 handwritten. And I've got it, and I'd like to walk you
6 through it if it's -- ineffective assistance of counsel.
7 You mentioned in statement number 1, per the Bill of Rights
8 to the Federal Constitution, I was denied the right to
9 effective assistance of counsel. Therefore, my conviction
10 and sentence violates the Constitution and laws of the
11 United States as guaranteed by the Sixth and Fourteenth
12 Amendment.

13 Also see South Carolina Constitution, Article 1,
14 section 3 and section 14. Also see Strickland versus
15 Washington, 101 S.C. T [sic] 2052. So you mention
16 Strickland versus Washington in this matter. What do you
17 know about this Strickland versus Washington case?

18 A. That my attorney -- my attorney has -- he has a job to
19 uphold. He has -- as him being my attorney, he's basically
20 my defense and my way of speaking to the court. And he
21 failed to do that.

22 Q. Do you -- okay. You're saying because he did not
23 provide you an adequate defense or was your line of defense,
24 how has that resulted in your life at this point? Because
25 he apparently or allegedly didn't do the job you said he

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1 should have done, how is that affecting you today?

2 A. I'm in the Department of Corrections with thirteen more
3 years to serve in prison.

4 Q. All right. Anything else about that section of number
5 1 that you'd like to bring to the ---

6 A. No, sir.

7 Q. --- Court's attention? All right. Continuing on,
8 counsel Brandon Steen acts and/or omissions including, but
9 not limited to, failed to properly research and investigate
10 the true facts and laws surrounding my whole case. And you
11 quote two case numbers there. All right.

12 What do you -- and some of this we may have gone over
13 earlier, but it's statements by you in your application.

14 You say he failed to properly research and investigate the
15 true facts and laws concerning my whole case. What do you
16 mean by that in terms -- let's break it down even more.

17 What do you mean he failed to properly research and
18 investigate the true facts of your case?

19 A. All the way down to the -- the witness. All the way
20 down from the witness to the defense, to his defense, his
21 line of defense that he had on his own, my statements. He
22 didn't investigate any of it. So, therefore, he didn't have
23 no defense.

24 Q. All right. And then you state, and the law surrounding
25 my whole case. Did he mention any laws to you that -- felt

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1 that needed to be ---

2 A. No, sir.

3 Q. All right. And then continuing on. Where Mr. Steen
4 had a duty to -- to conduct a reasonable investigation. And
5 then you quote several cases here, State versus Williams,
6 Faretta versus California, Holland versus State, Thomas
7 versus State, Engel versus State, Martinez versus State,
8 Greer versus State. And that closes out the -- that
9 statement 1.

10 When you said he had a duty to conduct a reasonable
11 investigation, what do you mean about -- are you saying that
12 he was lacking in his duty to investigate?

13 A. Yes, sir.

14 Q. Okay. Why -- why was that in your view?

15 A. 'Cause I ended up -- I ended up with twenty years.

16 Q. Okay.

17 A. I ended up with twenty years. He didn't do any
18 research because it was clearly -- it was stuff in my case
19 that he could have clearly seen that could have led to a
20 different outcome in my case if he would have just
21 investigated a little bit more.

22 Q. Such as?

23 A. Such as the issue with the clothes, the issue with
24 Sharquez Allen, him not being nowhere around, the issue that
25 -- there's just a whole bunch of stuff that he just looked

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1 over ---

2 Q. Well, ---

3 A. --- and didn't investigate.

4 Q. --- we're here in front of the Court. And if there's
5 anything else, I'd , you know, and with the Judge's

6 approval, you mentioned three things, I believe. You said
7 what else -- anything else that you -- comes in mind right
8 now?

9 A. Yeah. Let me see. Yeah, just he didn't investigate
10 her. He didn't -- he didn't do anything remotely close to
11 investigating anything about my case, anything.

12 Q. All right. Anything else on that question 1 or
13 statement 1 that you'd like to bring to the Court's
14 attention?

15 A. Yeah. I wanted to -- I wanted to bring -- bring to the
16 Court's attention that the judge erred in ---

17 **MR. MITCHELL:** Objection, Judge. Objection, Judge. I
18 don't see that in the amendments in the application or the
19 original application. So anything new that's being brought
20 forward today, the State would object to it.

21 **MR. FOWLER:** And, Your Honor, I think what's happening
22 here is that when he filed his application he stated
23 ineffective assistance of counsel. And as I stated earlier,
24 that's a fairly broad term.

25 You know, if he wants to maybe say that his attorney

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1 didn't do something, I mean, I think that would probably be
2 good grounds for him to continue on. But the -- if that
3 relates to his attorney, I think that that would be within
4 the scope of this Court's purview today on this topic being
5 within the broad tent of ineffective assistance of counsel.

6 **THE COURT:** All right. I'll overrule the objection.
7 You may proceed.

8 **Direct Examination by Mr. Fowler Continued:**

9 A. Okay. I wanted to bring to the Court's attention that
10 he didn't object to a question being asked to the jury was
11 any of my jurors ever been a victim of burglary? Well, that
12 question was supposed to been asked to all my jurors and it
13 wasn't. So, therefore, it wasn't proven that any one of my
14 jurors could have been -- could have been prejudiced toward
15 a burglary, but it was never proven because the question was
16 never asked to my jurors.

17 Q. So you're -- and are you saying that he had a duty to
18 ask the jurors that question?

19 A. Yes, sir. He had a duty to present that or object to
20 the judge not asking that question.

21 Q. Okay. And so you're saying that on the voir dire issue
22 he did not properly perform his duties?

23 A. Yes, sir.

24 Q. All right. Anything else on that topic, the voir dire
25 that you'd like to bring to the Court's attention?

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1 A. No, sir. Just that he didn't ask that question, which
2 clearly could have prejudiced some of my jury because they
3 had a juror on my jury that felt some type of way about the
4 burglary charge, but it was never asked -- the question was
5 never asked, so it wasn't never proven.

6 Q. Okay. And the final question on this, I guess, what
7 relevance would asking a juror if they had been a victim of
8 a burglary, how was that -- and him not doing that, how was
9 that allegedly -- how was that prejudicial to where you are
10 today?

11 A. I could have had a juror, a few jurors that could have
12 been a victim of burglary and could have felt prejudice
13 against that charge particularly. But that question wasn't
14 never asked, so it wasn't never proven.

15 Q. All right. Anything else on question -- on statement
16 number 1?

17 A. No, sir.

18 Q. Okay. Number 2, by counsel's failure to investigate,
19 he did not properly cross exam the State's star witness, Ms.
20 Howze, on what really happened. I think we've discussed
21 this earlier. It's -- but if it's -- if it was not gone
22 into as well as you would like to -- what do you mean by
23 statement number 2?

24 A. Statement number 2.

25 Q. The -- on page 3 of 5, by counsel's failure to

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

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1 investigate he did not properly cross examine Ms. Howze on
2 what really happened.

3 **MR. MITCHELL:** Judge, the rest of the remaining
4 allegations, we've gone through them already. Number 2 that
5 counsel's referring to and also number 3 that his trial
6 counsel didn't have a clear line of defense. I think we've
7 gone through this ---

8 **THE COURT:** Isn't this the same thing we've already
9 been over?

10 **MR. FOWLER:** Your Honor, I just want to make sure that
11 my client -- if there is any discrepancy on that -- it
12 appears that it may be, but I'll phrase the question to
13 where, you know, if there's anything additional.

14 I just want to make sure that there's nothing different
15 between that in his mind between this and the earlier
16 statements. And I'm not here to try the Court's patience,
17 but, you know, I want to make sure ---

18 **THE COURT:** See if you can narrow it down, then.

19 **MR. FOWLER:** Okay.

20 **Direct Examination by Mr. Fowler Continued:**

21 Q. You've heard the attorney general state questions 2 and
22 3 are somewhat similar to where we were earlier. And we
23 don't want to try the Court's patience, but we do want to
24 make sure that if you're -- if there's anything else that
25 you feel is, in your mind, relevant here that you did not go

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

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1 over earlier, me, I'd like for you to bring that up.

2 By counsel's failure to investigate he did not properly
3 cross examine the State's star witness Howze upon what
4 really happened. We went over that earlier, correct?

5 A. Yes, sir.

6 Q. Okay. Is there anything else on that that you'd like
7 to bring to the Court's ---

8 A. No, sir.

9 Q. --- attention? Okay. And then number 3, moreover,
10 Counsel Steen did not have a clear line of defense before
11 going to trial, which there is a reasonable probability that
12 but for counsel's unprofessional errors the result of my
13 trial and appeal would have been different.

14 See Cherry. You quote a case here, which I can prove
15 by the preponderance of the evidence along with the aid of
16 PCR counsel. And you quote Civil Procedure Rule 771 and 407
17 and Frasier versus State. We went over that earlier, is
18 that correct?

19 A. Yes, sir.

20 Q. Is there anything else on that that you'd like to
21 mention to the Court?

22 A. No, sir.

23 Q. Okay. And then number 3 is fairly lengthy. So picking
24 up, I further argue that any grounds set out on my original
25 PCR application is expressly argued and not subject to

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

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1 amendments. So there you're saying that you have the right
2 to amend this, correct?

3 A. Yes, sir.

4 Q. All right. I am entitled to a full and fair
5 evidentiary hearing. See Sharper and Odom, two cases that
6 you bring to the Court's attention.

7 Let me go into this a little bit. A full and fair
8 evidentiary hearing, were you provided a full and fair
9 evidentiary hearing?

10 A. I don't feel like I was.

11 Q. Why not?

12 A. Because I didn't -- my lawyer didn't investigate my
13 case.

14 Q. Okay.

15 **THE COURT:** Aren't we having an evidentiary hearing
16 now? Isn't that what this is?

17 **MR. FOWLER:** Well, I think so, yes, sir. But I think
18 it's in reference to maybe his prior counsel and not today's
19 hearing, so to speak. I'll move on. I think this is the
20 final statement.

21 **Direct Examination by Mr. Fowler Continued:**

22 Q. Further, I would like to bring to this Court's,
23 opposing counsel and my PCR counsel that I am entitled to a
24 ruling on all my issues that I bring up at a PCR hearing,
25 okay. We've gone over your application today, I think,

BENECO GANSON - DIRECT EXAMINATION BY MR. FOWLER

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1 fairly thoroughly. And you've mentioned the voir dire issue
2 with the jury. Are there any other issues that you wish to
3 bring to the Court's attention on this?

4 A. No, sir.

5 Q. Okay. Now, and once again, your -- and I -- what was
6 your relationship with ---

7 A. We had been friends since we been young.

8 Q. Okay. Did you have any -- did you tell her anything
9 around that time that maybe caused a problem?

10 A. That I was leaving town.

11 Q. Leaving town or leaving her?

12 A. Leaving town, her.

13 Q. Okay. All right. Did your attorney go into that?

14 A. No, sir.

15 Q. So he didn't -- when you say he didn't go into that, he
16 didn't go into your relationship with her at all?

17 A. No, sir.

18 Q. And anything that might have caused a problem in that
19 relationship?

20 A. No. 'Cause she -- she stated that we had been intimate
21 friends, that I was just over at her house the night before.
22 That was her statement.

23 Q. Did he bring that up at trial?

24 A. No, sir.

25 Q. Is there anything else that you wish to bring to the

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 Court's attention?

2 A. No, sir.

3 MR. FOWLER: I have no further questions, Your Honor.

4 MR. MITCHELL: Thank you, Your Honor. May it please
5 the Court?

6 THE COURT: Cross examination.

7 **Cross Examination by Mr. Mitchell:**

8 Q. Good morning, Mr. Ganson. How are you?

9 A. All right.

10 Q. Good. Let me ask you, I heard you initially testify
11 that you -- well, -- I guess I should ask for the record, did
12 you enter her home that day?

13 A. Yes, sir.

14 Q. Okay. So you kicked the door in?

15 A. No, I didn't kick the door in.

16 Q. So somebody else with you kicked the door in?

17 A. Yes, sir.

18 MR. FOWLER: Your Honor, I'd like to object to this.

19 This is going to the evidence of the matter of the
20 underlying case. It doesn't relate to his relationship with
21 his attorney.

22 MR. MITCHELL: And I would argue, Judge, that the
23 Applicant had been convicted already of the subsequent
24 crime.

25 THE COURT: All right. I'll overrule the objection.

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 **MR. MITCHELL:** Thank you, Your Honor.

2 **Cross Examination by Mr. Mitchell Continued:**

3 Q. So someone else kicked the door in, but you were -- you
4 were with them?

5 A. Yes, sir.

6 Q. Okay. So is it your argument that that's not burglary?

7 A. No, it's not burglary.

8 Q. So what is it?

9 A. I would say breaking and entering.

10 Q. Okay. So you ---

11 A. But I wasn't going in the house with the intent to
12 commit no crime. That's burglary.

13 Q. Okay. So let me ask you this. You said that you sent
14 her a message, a text message, correct?

15 A. Yes, sir.

16 Q. And, essentially, the response was that she wasn't
17 home, right?

18 A. No.

19 Q. That wasn't the response?

20 A. No, sir.

21 Q. Okay. Was there ever ---

22 A. That was the second response once I got to her house
23 and started knocking on the door.

24 Q. Okay. But you knew that she was inside?

25 A. Yes, sir.

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 Q. And so since you couldn't get in you decided to go in
2 anyway?

3 A. Yes, sir.

4 Q. Okay. But that's not burglary, right?

5 A. I mean, it could -- it could be considered, but
6 burglary is once you enter the house with the -- with the
7 intent to commit a crime. That's burglary.

8 Q. Okay. And there was no intention to commit any ---

9 A. No, sir.

10 Q. --- crime? You just wanted to go inside to get your
11 clothes?

12 A. Get my clothes and leave, which I did. I left things
13 that she later on took to my grandmother's house.

14 Q. Okay. And nobody -- the other guy that was with you
15 didn't try to take anything?

16 A. No. There was nothing in her home was touched.

17 Q. Why was he with you?

18 A. That was my ride. He drove.

19 Q. So you told him to kick the door in?

20 A. I mean, he was there. He kicked the door. I didn't
21 kick it.

22 Q. But my question was did you tell him to kick the door
23 or did he do it on his own?

24 A. I mean, I told him to.

25 Q. Okay. Let me ask you, how many times did you meet with

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 Mr. Steen prior to going to trial?

2 A. Twice.

3 Q. Okay. And how long had he represented you after you
4 got rid of the other lawyers?

5 A. I'd say probably about a month.

6 Q. Okay. So about a month. And then you said you had two
7 prior lawyers to that, correct?

8 A. No, one.

9 Q. Just ---

10 A. Mark Grier. Mark Grier and then it was Brandon Steen.

11 Q. Okay. And you fired him?

12 A. Yes, sir, Mark Grier.

13 Q. Why did you fire him?

14 A. We had a disagreement. We had a disagreement as far as
15 him -- the way he was looking at my case.

16 Q. Okay. Let me ask you this. Did Mr. Steen go over the
17 discovery and the evidence in the case with you?

18 A. Yes, sir.

19 Q. Okay. And you said you met with him how many times?

20 A. Like, twice.

21 Q. Twice? Okay. Did he come to the jail to visit you or
22 were you out?

23 A. He came to the jail.

24 Q. Okay. And you guys went through all the discovery?

25 A. Yes, sir.

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 Q. Okay. And did you guys discuss any possible defenses
2 going to trial?

3 A. No, sir.

4 Q. Okay. So you went to trial without having a defense?

5 A. We -- we talked about our defense the day of the trial.

6 Q. Okay. So what did you guys talk about at the other
7 meetings?

8 A. Bond hearing.

9 Q. Bond hearings?

10 A. Yeah, bond hearing.

11 Q. And the discovery that you had?

12 A. Bond hearing.

13 Q. Okay.

14 A. That's all -- that's what we talked about, the bond
15 hearing, because he told me not to worry about the trial, my
16 name was on the trial docket, but not to worry about it
17 because he was working on the bond hearing.

18 Q. Okay. And let me ask you, were there ever any plea
19 offers in the case at all?

20 A. Huh?

21 Q. Ever any plea offers ---

22 A. Seven years.

23 Q. Seven years?

24 A. Seven years.

25 Q. And so you decided to reject it?

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 A. Yes, sir.

2 Q. Well, let me -- I guess I should back up. Did the plea
3 offer come before Mr. Steen represented you or did it come
4 when Mr. ---

5 A. It come when he was representing me.

6 Q. So you never got any before then?

7 A. No, sir.

8 Q. Okay. And so Mr. Steen presented the plea offer to you
9 and you said what to him?

10 A. I told him no. I told him no. I didn't want to take
11 the plea. He felt like he could get me off by saying that I
12 wasn't there.

13 Q. Okay.

14 A. And if he could have proved that I wasn't there, why
15 take the seven years?

16 Q. Okay. Now in terms of you guys' conversations did you
17 discuss with him about any witnesses that you could call
18 because you said that the guy gave you a ride? Did you
19 offer that name to Mr. Steen?

20 A. No, sir.

21 Q. Why not?

22 A. Because -- I mean, that was her. She falsely accused
23 this dude. So I just left it at that.

24 Q. But she wasn't going to be on trial, you were, right?

25 A. Yes, sir.

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 Q. Okay. So if -- and correct me if I'm wrong, your
2 testimony today is that someone gave you a ride there and
3 you went to go get your clothes?

4 A. Yes, sir.

5 Q. And your testimony is that that wasn't burglary. So
6 why didn't you give the name of that person that was with
7 you ---

8 A. I never ---

9 Q. --- to Mr. Steen?

10 A. --- made a statement at all.

11 Q. I'm sorry?

12 A. I never made a statement at all.

13 Q. No, but you're testifying today that this guy was with
14 you to go get your clothes, right?

15 A. Yes, sir.

16 Q. So if you knew that was the case, why didn't you give
17 that name to Mr. Steen?

18 A. Because it wouldn't -- how would that would help me
19 then? I don't see how that would have helped.

20 Q. So he couldn't have testified and corroborated your
21 story?

22 A. Yeah, but I never made a statement.

23 Q. Okay. Did you guys ever talk about you testifying at
24 trial?

25 A. No, sir.

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 Q. Okay. Did you not want to testify?

2 A. No. I didn't have a reason to testify. I mean, I
3 really felt like she wasn't even coming to court because she
4 knew it wasn't even like that.

5 Q. Okay. But she did -- she did come to court and
6 testify?

7 A. Yeah.

8 Q. Okay. Do you remember the trial? The witnesses ---

9 A. Yeah.

10 Q. --- that were called? Okay. Do you remember Mr. Steen
11 asking the star witness, Ms. Howze, about how she
12 misidentified the other man that were with you guys?

13 A. Yes, sir.

14 Q. Okay. So he brought that out at trial?

15 A. Um-hum (affirmative).

16 Q. Okay. Did he also bring out that she was guilty of
17 criminal offenses herself?

18 A. Yes, sir.

19 Q. But you don't think that that showed the jury about her
20 credibility at all?

21 A. Yeah. I mean, that's -- that's what -- that was the
22 defense, her credibility.

23 Q. Okay. And it came out at trial that you guys had a
24 relationship or I think the transcript referenced friends
25 with benefits, is that correct?

BENECO GANSON - CROSS EXAMINATION BY MR. MITCHELL

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1 A. Yes, sir.

2 Q. So the jury was aware of that?

3 A. Yes, sir.

4 Q. Now let me ask you this question. Your mother came to
5 testify at trial, too, didn't she?

6 A. Yes, sir.

7 Q. And she testified that she sent a text message to the
8 victim in this case that she would pay for the door,
9 correct?

10 A. Yes, sir.

11 Q. Okay. Did you know that she was coming to testify?

12 A. No, sir.

13 Q. Okay. Just to make sure I don't miss anything.

14 **MR. MITCHELL:** A moment of the Court's indulgence, Your
15 Honor?

16 **THE COURT:** Sure.

17 (Pause)

18 Q. Just so the record's clear, what was Mr. Steen's trial
19 strategy going into it? Did he tell you at all?

20 A. I mean, he was trying to place me not there.

21 Q. He was trying to place you not there?

22 A. Yes, sir.

23 Q. Okay.

24 **MR. MITCHELL:** Judge, that's all the questions I have
25 for this witness.

BENECO GANSON - REDIRECT EXAMINATION BY MR. FOWLER

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1 **THE COURT:** Redirect?

2 **MR. FOWLER:** Yes, sir, Your Honor. Just briefly.

3 **Redirect Examination by Mr. Fowler:**

4 Q. The attorney general on his cross exam said that you
5 discussed the burglary versus breaking and entering. So
6 you're saying that -- what's your contention here, that
7 there was no intent on your part?

8 A. No, there was no intent to commit no crime.

9 Q. Okay. And you're saying that because of that
10 distinction your sentence is different than what it would
11 be?

12 A. Yes, sir.

13 Q. Okay. And also today you showed that there was no
14 intent by the person's subsequent text messages or
15 discussions with your family, correct?

16 A. Yes, sir.

17 Q. Okay. When you say no defenses, what do you mean by
18 that? Just reiterate it.

19 A. You said no defense?

20 Q. I think you stated on cross examination that your
21 attorney had no defenses, is that correct?

22 A. Yes, sir.

23 Q. And also you said that you went from a bond hearing to
24 a trial, is that correct?

25 A. Yes, sir.

BENECO GANSON - REDIRECT EXAMINATION BY MR. FOWLER

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1 Q. So is it -- how would you describe -- what was the time
2 difference between the bond hearing and the trial?

3 A. A week. I'd say maybe, tops, a week and a half.

4 Q. Okay.

5 A. I talked to him one week. And like a week, week and a
6 half later they called me up, called me to court, told me
7 that I was picking twelve jurors.

8 Q. Did your attorney indicate that more time was needed?

9 A. No, sir.

10 Q. In retrospect do you feel like more time could have
11 been used?

12 A. Yes, sir.

13 Q. Why do you say that?

14 A. Because he could have used more time to investigate.
15 That probably could have led to a different outcome on the
16 case.

17 Q. But you're saying he didn't, right?

18 A. Yes, sir.

19 Q. Okay. Now, you mentioned the plea offer and that you
20 did reject that, is that correct?

21 A. Yes, sir.

22 Q. But in hindsight you're saying if he had -- you thought
23 -- did you think that he might have done a better job for
24 you after -- after you rejected that plea?

25 A. I thought maybe he would, but ...

BRANDON STEEN - DIRECT EXAMINATION BY MR. MITCHELL

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1 **MR. FOWLER:** No further questions, Your Honor.

2. **MR. MITCHELL:** No recross, Your Honor.

3 **THE COURT:** Thank you, sir. You may step down.

4 **MR. FOWLER:** If I may have a moment with my client,
5 Your Honor?

6 THE COURT: All right, sir.

7 (Pause)

8 **MR. FOWLER:** Your Honor, that's our case, after a
9 discussion with my client.

10 THE COURT: All right, sir.

11 **MR. MITCHELL:** Your Honor, the State would call Brandon
12 Steen to the stand.

13 **Brandon Steen**, being duly
14 sworn testified as follows;

15 Direct Examination by Mr. Mitchell:

16 Q. Good morning, Mr. Steen. How are you?

17 A. Good morning.

18 Q. How long have you practiced law here in South Carolina?

19 A. Since 2011, November 2011. Six and a half years.

20 Q. And how much of that time has been devoted to criminal
21 law?

22 A. A little over six years.

23 Q. You're a public defender, correct?

24 A. Yes, sir.

25 Q. So you were appointed to represent Mr. Ganson?

BRANDON STEEN - DIRECT EXAMINATION BY MR. MITCHELL

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1 A. Yes, sir.

2 Q. Okay. And let me ask you this. I think you've heard
3 some testimony already; but if you could, how did the
4 charges arise in this case to the best of your memory?

5 A. I started in the Sixth Circuit Solicitor's Office on
6 May the 27th of 2014. He was already on the trial list. I
7 went and saw Mr. Ganson the following day, but I don't know
8 how the charges arose. He was on the trial list when I was
9 appointed the case on my first day here, working at this
10 office.

11 Q. Okay. And you say you went to go see him the next day?

12 A. Yes, sir.

13 Q. Did you have the discovery with you?

14 A. I did.

15 Q. Okay. Did you review it with him?

16 A. I did.

17 Q. Okay. And based on that conversation -- he was on the
18 trial roster. Based on that conversation -- let me back up.
19 Were there any outstanding plea offers at that time?

20 A. He had the seven year plea offer well before I took
21 over the case.

22 Q. Okay. So he rejected that before you took it over?

23 A. Yes.

24 Q. Okay. And so after reviewing the discovery in the case
25 what was the discussion between the two of you, going to

BRANDON STEEN - DIRECT EXAMINATION BY MR. MITCHELL

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1 trial, wanted you to work out another plea for -- plea offer
2 for him or what?

3 A. I will agree that the first meeting, we met on May
4 28th, I don't think I was in the position to tell him --
5 that was my first discussion with him about the case. We
6 did discuss the bond hearing. That was his primary issue.
7 I don't believe we actually did discuss whether he would go
8 to trial or not. The focus was on the bond hearing.

9 Q. Okay. And so that was the first meeting. When did you
10 meet with him after that? Do you recall?

11 A. I think it was the following week when I found out that
12 he would be -- he was on the short list for the trial list.
13 I was first up that week. So I assumed I would be -- that
14 trial would be my first trial, but apparently I was first
15 into that week.

16 Q. Okay.

17 A. So I went and saw him the following week. And that's
18 when we did discuss trial. Mr. Ganson told me that Ms.
19 Howze was not going to show up for trial.

20 Q. Okay. So he said that she wasn't going to show up for
21 ---

22 A. She -- yeah.

23 Q. And so ---

24 A. And -- sorry.

25 Q. Go ahead. I apologize. Go ahead and continue.

BRANDON STEEN - DIRECT EXAMINATION BY MR. MITCHELL

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1 A. That she was not going to show up for trial and that
2 was the only evidence. I agreed with him that if she did
3 not show up for trial, I mean, that was the State's star
4 witness as has been said. And he was under the belief that
5 she would not show up.

6 Q. Okay. So he was under the belief that she wouldn't
7 show up. Did you guys do anything else in preparation
8 besides that or ...

9 A. We did trial prep.

10 Q. Okay.

11 A. My notes aren't really down by dates because I started
12 and we started getting ready for trial. There was none of
13 that preliminary discussion you do on cases for the first
14 six months. I took over at the sixth month mark where it
15 was getting ready to go to trial.

16 Q. Okay.

17 A. But we discussed everything in detail.

18 Q. Everything. So let me ask you this. Did he know about
19 the possible punishments that he would receive if he got
20 convicted of burglary, first?

21 A. Yes, sir.

22 Q. Okay. And you discussed with him the State's burden
23 and his constitutional rights?

24 A. Yes, sir.

25 Q. Okay. Now, I just want to make sure the record is

BRANDON STEEN - DIRECT EXAMINATION BY MR. MITCHELL

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1 clear. The Defendant -- or I should say the Applicant,
2 pardon me. It was his interpretation that the witness in
3 this case would not show up for trial?

4 A. That was his belief, ---

5 Q. Okay.

6 A. --- in my opinion.

7 Q. Okay. And was it his decision to move forward with
8 going to trial after you guys had this conversation?

9 A. Yes.

10 Q. Okay. So in terms of -- well, let me back up. Did he
11 ever seem to indicate to you that he didn't understand any
12 of the conversations that you guys had at all?

13 A. No.

14 Q. Okay. Now in terms of -- I know you said that you had
15 it for a short period of time. Were you able to talk to any
16 witnesses or did he offer any witnesses for you to call on
17 his defense at all?

18 A. No, no witnesses. And I was unable to find Ms. Howze.
19 And based on my discussion with Mr. Ganson, he didn't want
20 me finding Ms. Howze.

21 Q. Okay. So you attempted to locate the victim ---

22 A. Yeah. I mean, I did not call, I mean, I had numbers
23 and -- I had ways to potentially contact her. By the
24 discussions with Mr. Ganson, I did not use those.

25 Q. Okay. Okay. And, I guess, it came out at trial, but

BRANDON STEEN - DIRECT EXAMINATION BY MR. MITCHELL

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1 Mr. Ganson and Ms. Howze had a -- or some sort of
2 relationship, correct?

3 A. Yes, based on my understanding and my conversations
4 with Mr. Ganson.

5 Q. Okay. Do you know if there were text message
6 communications between the two of them that day at all?

7 A. Yes, there were.

8 Q. Okay. And the substance of those communications to
9 you, did they bring anything out to light or bring anything
10 to their -- anything in relation to the case at all?

11 A. It shows that he was there on the scene.

12 Q. Okay.

13 A. He agreed with that. He was correct that we did move
14 to -- we moved and were successful in keeping those text
15 messages out. He was under the -- in our discussions he
16 knew that those text messages would do more harm than good
17 in his case. It showed that he was there and that he broke
18 into the house in his own words. So we were successful in
19 keeping that -- those text messages out. And that was the
20 best decision for that trial.

21 Q. Okay. So the text messages are out. And so -- and,
22 again, I ask you, what did the case hinge on? Did it just
23 hinge on the witness' testimony in this case?

24 A. Yes.

25 Q. Okay. So there really wasn't anything else besides her

BRANDON STEEN - DIRECT EXAMINATION BY MR. MITCHELL

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1 testimony at ...

2 A. Yes.

3 Q. Okay. So we get to the day of trial, Ms. Howze shows
4 up?

5 A. Yes.

6 Q. Okay. Did you have a conversation with Mr. Ganson once
7 you see that she's there or how did things play out?

8 A. I do not -- I do not recall the conversation. I'm sure
9 me and Mr. Ganson discussed it, but I do not recall the
10 conversation about her being present.

11 Q. Okay. Do you know if he was surprised to see her at
12 all, that she showed up or ...

13 A. I don't recall.

14 Q. Okay. Now, your cross examination, for the record,
15 page 42 through 46, you cross examined her about her
16 misidentifying one of the other co-defendants, correct?

17 A. Yes, sir.

18 Q. Okay. And also you cross examined her about a
19 statement that she gave to the police?

20 A. Yes, sir.

21 Q. Okay. And then you also cross examined her about her
22 having an arrest or a conviction for crimes as well, too,
23 correct?

24 A. Yes, sir. Yes, sir.

25 Q. Would you agree with me that those things kind of

BRANDON STEEN - DIRECT EXAMINATION BY MR. MITCHELL

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1 demonstrated to the jury that she had an issue with her
2 credibility?

3 A. Yes. Once she was here, I knew that's the route we had
4 to go was to attack her credibility as the State's witness.

5 Q. Okay.

6 A. Or eyewitness in this case.

7 Q. Okay. And, I guess, just to go back just for a minute.
8 Going into trial what was your theory in the case or the
9 defense that you built or you wanted to build?

10 A. That -- the goal, I mean, if she wasn't going to
11 testify it was going to be that he wasn't there. They had
12 no other -- they had no other evidence except for those text
13 messages and her testimony.

14 Q. Okay.

15 A. I kept the text messages out, but she showed up. And
16 so we -- the next goal was to attack her credibility.

17 Q. Okay. So you had a clear line of defense going into
18 trial, which was to essentially show that -- if she didn't
19 -- she's not going to be there, so there's no way to place
20 him there because the text messages were going to be ---

21 A. Yes.

22 Q. --- excluded? And so she did show up. So you had to
23 shift -- and, again, I don't want to testify for you, but
24 you had to shift your -- your defense, correct?

25 A. Yes.

BRANDON STEEN - CROSS EXAMINATION BY MR. FOWLER

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1 Q. Okay. Did you all ever have any conversations about
2 Mr. Ganson testifying on his own behalf?

3 A. I don't recall that, but that is part of my practice.
4 I mean, I'm sure we did that before we discussed it with the
5 judge.

6 Q. Okay. In the terms of the voir dire and the jury
7 selection did you have any discussions with Mr. Ganson about
8 asking a particular question in terms of whether any member
9 of the jury were the victim of a crime that ...

10 A. I don't recall.

11 Q. Okay.

12 A. In reviewing my files I don't see -- I don't have any
13 notes regarding that.

14 Q. Okay. Okay.

15 **MR. MITCHELL:** Just a moment of the Court's indulgence,
16 Your Honor.

17 **THE COURT:** Certainly.

18 (Pause)

19 **MR. MITCHELL:** Judge, that's all the questions I have
20 at this moment.

21 **THE COURT:** Cross examination.

22 **Cross Examination by Mr. Fowler:**

23 Q. And I took notes while you were discussing on direct
24 with the attorney general's office. So when did you become
25 -- when did you start with the public defender's office?

BRANDON STEEN - CROSS EXAMINATION BY MR. FOWLER

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1 A. May 27th, 2014.

2 Q. And when was this trial?

3 A. June the 24th, 2014.

4 Q. Okay. So you -- you went to trial basically in
5 Lancaster less than a month after you were named to the
6 public defender's office, correct?

7 A. That's correct.

8 Q. Okay. So you were new to the job, correct?

9 A. I mean, I'd been a public defender four years before
10 this.

11 Q. But you were new to this case, right?

12 A. That is correct.

13 Q. Okay. Did you ever -- okay.

14 **MR. FOWLER:** Give me just a moment, if you don't mind,
15 Your Honor.

16 Q. Did you fail to cross examine the star witness, Ms.
17 Howze?

18 A. I cross examined Ms. Howze.

19 Q. Okay. But did you go into her about being sorry for
20 damaging the door? Did you ever go into that?

21 A. I think those were the text messages that we got
22 excluded prior to the trial.

23 Q. Okay.

24 A. That would open the door for all those to come in at
25 that point.

BRANDON STEEN - CROSS EXAMINATION BY MR. FOWLER

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1 Q. All right. But did you cross examine her about her
2 statement to that effect?

3 A. (No response).

4 Q. Did you -- you said -- okay. You deleted -- you did
5 not bring the text messages in, is that correct?

6 A. Correct.

7 Q. But did you ever talk to her on the stand, ever cross
8 examine her about her discussions with him? And you were in
9 the courtroom on my direct with my client, correct?

10 A. Yes.

11 Q. All right. He stated several things, that there was a
12 notice text that he was coming over and also that she said
13 that she would help him out, she would bring the clothes
14 over, correct? Did you ever go into that on cross
15 examination with her?

16 A. The clothes texts were after the fact, after the
17 incident was to alleged to have occurred. Again, I don't
18 think that would have helped with Ms. Howze testifying
19 against Mr. Ganson that day.

20 She was -- she came in, she turned around. We did not
21 know if she was going to testify. But at that point she
22 knew she was breaking Mr. Ganson's heart by testifying here
23 that day. And I was not going to get anything out of her
24 that was going to help Mr. Ganson by questioning her about
25 the text messages that he was sorry for what he had done.

BRANDON STEEN - CROSS EXAMINATION BY MR. FOWLER

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1 Q. Okay. Did you go into on her testimony or cross exam,
2 or what have you, that she knew that he was coming over?

3 A. In her testimony?

4 Q. Yes.

5 A. Again, her text was that -- her testimony was that she
6 told him not to come over, that she wasn't there.

7 Q. Okay.

8 A. And that's when he proceeded to come over.

9 Q. Okay. In terms of Mr. Allen that was mentioned
10 earlier, did you talk with my client any about him before
11 the -- before the trial?

12 A. Yes.

13 Q. And what did you say?

14 A. Mr. Ganson stated that he did not know him. And that
15 was ---

16 Q. Did you bring that out in court?

17 A. I don't recall.

18 Q. Okay. All right. It was mentioned earlier on my
19 direct examination about the voir dire of the jury under the
20 ineffective assistance of counsel matter, did you -- did the
21 jury get instructed on the hand of one, hand of all?

22 A. No.

23 Q. Okay. Did you -- did you bring up anything about --
24 let me rephrase that. Did you bring up anything? I

25 apologize. I got my lines of questioning mixed up. Did you

BRANDON STEEN - CROSS EXAMINATION BY MR. FOWLER

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1 bring up anything to the jury about any of them being a
2 victim of a burglary or a crime?

3 A. I did not bring up anything to the jury about that.

4 Q. Do you think if they -- if a juror was a victim of a
5 crime, that could have been prejudicial to my client?

6 A. Yes, sir.

7 Q. Did you go into, in the trial, the relationship between
8 my client and Ms. Howze?

9 A. Not that I recall.

10 Q. But they did have a somewhat close relationship,
11 correct?

12 A. I mean, I could never really get a clear answer about
13 the status of their relationship during my representation.
14 I would defer to Mr. Ganson's testimony earlier that it was
15 friends with benefits.

16 Q. Did you -- did you -- well, let me go into this about
17 Ms. Howze. You stated earlier that it was your belief that
18 Ms. Howze would not show up, is that correct?

19 A. Based on my conversations with Mr. Ganson, correct.

20 Q. In your pretrial preparation did you prepare as if she
21 was not going to show up?

22 A. I prepared both ways.

23 Q. What was your relationship, professional relationship
24 with Mr. Grier, I believe, his prior attorney, ---

25 A. He ---

BRANDON STEEN - CROSS EXAMINATION BY MR. FOWLER

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1 Q. --- Mark Grier? Do you two work together in the same
2 office or ---

3 A. Yes. He was -- he was a public defender in the public
4 defender's office when I started.

5 Q. All right.

6 A. He still is.

7 Q. Did you talk to him about this case?

8 A. I'm sure I -- I have notes that I did.

9 Q. Okay. What do those notes reflect to you? I mean, you
10 say you have notes. I mean, did you have in-depth
11 discussions with him about it?

12 A. I don't recall in-depth discussions with him.

13 Q. Do you think at this point it might have been helpful
14 to have some in-depth discussions with the prior attorney?

15 A. My discussions with Mark, from my notes, was about
16 whether the victim had been around at the previous bond
17 hearings or had he had any contacts with her.

18 Q. And that was -- that was it, right?

19 A. I don't recall.

20 Q. In terms of the plea offer, which was mentioned in my
21 client's application, how was the seven year plea offer or
22 was a seven -- let me rephrase that. Was a seven year plea
23 offer given to him?

24 A. Yes, sir.

25 Q. How was it given to him?

BRANDON STEEN - CROSS EXAMINATION BY MR. FOWLER

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1 A. Based on the correspondence I have from Mr. Ganson --
2 between Mr. Ganson and his previous attorneys, it was given
3 to him -- the paperwork says February the 26th of 2014.

4 Q. So it was his prior attorney that gave him the seven
5 year ---

6 A. Yes.

7 Q. Okay. And he rejected it with the prior attorney and
8 not you, is that correct?

9 A. He rejected it with me, I mean, he wrote nine letters
10 rejecting it and rejected it with me when I spoke with him.

11 Q. Okay. Why did he -- you said he wrote you letters.
12 Why did he not -- why did he reject it?

13 A. He did not write me letters. He wrote the previous
14 attorneys letters. I can go through them.

15 Q. Well, I'm just asking do you have a general sense of
16 why he rejected it?

17 A. Seven years is too much time.

18 Q. In my client's application it says counsel failed to
19 object to the solicitor's closing argument when he stated,
20 and it doesn't matter who kicked it, the guy who was sent to
21 kick it in was just as guilty as that. Here the statement
22 was prejudicial because I was not charged with the hands of
23 one, the hands of all. So did you object in any form to the
24 statement by opposing counsel in that matter?

25 A. No, sir.

BRANDON STEEN - CROSS EXAMINATION BY MR. FOWLER

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1 Q. Okay. What actions could you have taken to clarify
2 that, to object to it in a closing argument?

3 A. I mean, I could have objected.

4 Q. Yeah. I mean, why did you not object to this
5 statement, and it doesn't matter who kicked it in, hand of
6 one, hand of all that was mentioned at the closing argument?

7 A. Because as the defense attorney I didn't think it was
8 best to object to that. The jury was not charged with hand
9 of one, hand of all argument. A lot of times it's just best
10 to move on.

11 Q. But it was -- it was mentioned to him -- mentioned to
12 the jury in closing argument, correct?

13 A. Not -- not the specific terminology, hand of one, hand
14 of all.

15 Q. Okay.

16 A. Just that it doesn't matter who broke the door --
17 kicked the door in.

18 Q. Okay.

19 MR. FOWLER: If I may have a moment to speak with my
20 client, Your Honor.

21 THE COURT: All right, sir.

22 (Pause)

23 MR. FOWLER: Your Honor, may attorney general and I
24 approach, briefly?

25 THE COURT: All right, sir.

BRANDON STEEN - REDIRECT EXAMINATION BY MR. MITCHELL

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1 (Whereupon a bench conference was held off the record)

2 **THE COURT:** All right. We'll be at ease for just a few
3 minutes.

4 (Whereupon court was in recess at 11:14 am)

5 (Whereupon court reconvened at 11:18 am)

6 **THE COURT:** Let me ask the attorney general, does the
7 State have -- are you through with cross examination?

8 **MR. FOWLER:** I think it was my turn, I think, Your
9 Honor. Your Honor, we have spoke with a -- my client's
10 mother in the courtroom for just a moment, and we've
11 discussed briefly some issues. We have no further -- I've
12 discussed it with my client for the few minutes break, and
13 we don't have any further questions on cross examination.

14 **THE COURT:** Any redirect?

15 **MR. MITCHELL:** Just one additional question.

16 **THE COURT:** Yeah.

17 **Redirect Examination by Mr. Mitchell:**

18 Q. Mr. Steen, the opposing counsel asked you about closing
19 arguments and the solicitor making an argument about hand of
20 one. I think your answer to that question as to why you
21 didn't object was what again?

22 A. I mean, I didn't think -- I chose not to object.

23 Q. Okay. And are closing arguments evidence in the -- in
24 any case?

25 A. No.

CLOSING ARGUMENTS - MR. FOWLER

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1 Q. Okay. Thank you.

2 THE COURT: All right. Thank you, sir. You may step
3 down.

4 A. Thank you, sir.

5 MR. MITCHELL: The State has no additional witnesses,
6 Your Honor.

7 THE COURT: Anything in reply?

8 MR. FOWLER: If we're doing a closing, Your Honor, I
9 just feel that my client's application was thorough. I
10 think his testimony today here was thorough as well. I
11 think we've walked through the application to his desire,
12 Your Honor.

13 We feel like based on the issues that the State
14 presented with their testimony, from his prior attorney,
15 that we feel like he is deserving the appeal, this PCR win,
16 Your Honor, to rule in -- for the Court to rule in his
17 favor, rather. And we ask that the Court take all this into
18 consideration.

19 We've quoted parts of the transcript or we've referred
20 to parts of the transcript and other cases that are relevant
21 here, Your Honor. And in my opinion my client is entitled
22 to his PCR being granted.

23 THE COURT: All right. Thank you, sir. Attorney
24 general.

25 MR. MITCHELL: For the record, Your Honor, in regards

CLOSING ARGUMENTS - MR. MITCHELL

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1 to the allegations about the star witness not being
2 effectively cross examined, I think the record, the
3 transcript, page 42 through 46 would note that Mr. Steen
4 brought out relevant points to attack the credibility of the
5 witness. So I think there has not been sufficient --
6 deficiency, I should say, shown. So we shouldn't even have
7 to take a look at the prejudice argument in this case.

8 In terms of whether counsel should have asked certain
9 voir dire questions, I think you can just move on to the
10 prejudice argument. Applicant cannot demonstrate that he
11 can show prejudice from failing to ask a question during
12 voir dire.

13 In terms of the allegation in regard to the solicitor
14 in his closing arguments, I would just note for the record
15 that closing arguments are not evidence. The judge is the
16 finder of the law and would charge the jury with the
17 appropriate law for the appropriate offenses.

18 And I just want to make sure I don't miss any
19 allegations that were brought up.

20 (Pause)

21 And in terms of failure to -- regards to rejecting a
22 seven year plea offer, I think there was testimony from Mr.
23 Steen that Mr. Ganson rejected the plea offer prior to him
24 representing him and still wanted to go forward with trial.
25 So I think there's evidence in the record to -- for that

RULING OF THE COURT

1 allegation to be meritless as well. Thank you, Your Honor.

2 **THE COURT:** All right. Thank you, Mr. Mitchell. The
3 Court agrees with argument and position set forth by the
4 attorney general. I find that the Applicant has failed to
5 meet his burden of proof in the application. The Post
6 Conviction Relief is hereby denied. I'd ask the attorney
7 general to please prepare an order consistent with the rules
8 in the court. Twenty days?

9 **MR. MITCHELL:** If I could get thirty, Your Honor, I'd
10 appreciate it.

11 **THE COURT:** All right, thirty days. Court will be in
12 recess five minutes.

13 **MR. MITCHELL:** Thank you, Your Honor.

14 (Hearing Ended at 11:21 am)

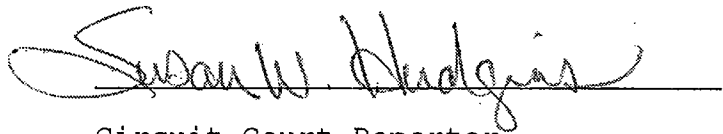
15 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Sixth 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/hearing of the captioned case, relative to appeal, in the Circuit Court for Lancaster County, South Carolina, on the 16th day of July 2018.

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

November 14, 2018


Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Beneco A. Ganson, #306785,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE SIXTH JUDICIAL CIRCUIT

Case No.: 2017-CP-29-0006

ORDER OF DISMISSAL

FILED
CLERK OF COURT
2018 AUG 28 PM 2:38
LANCASTER, SC

This matter comes before the Court by way of an application for post-conviction relief filed on January 4, 2017, by Beneco A. Ganson (Applicant). Respondent made its Return on or about June 8, 2017. An evidentiary hearing into the matter was convened on July 16, 2018, at the Lancaster County Courthouse in Lancaster, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel T. Brandon Steen, Esquire, Esquire also testified. This Court had before it a copy of the records of the Lancaster County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant

to orders of commitment of the Lancaster County Clerk of Court. In April 2014, the Lancaster County Grand Jury indicted Applicant for burglary, first degree (2014-GS-29-0445). Brandon Steen, Esquire, represented Applicant. Solicitor Randy Newman, Esquire, prosecuted the case. On June 24-25, 2014, Applicant proceeded to trial before the Honorable Brian M. Gibbons. The jury found Applicant guilty as indicted. Judge Gibbons sentenced Applicant to imprisonment for twenty years for burglary, first degree.

Applicant filed a timely notice of appeal. LaNelle Canty DuRant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on March 2, 2016. State v. Ganson, Op. No. 2016-UP-107 (S.C. Ct. App. March 2, 2016). The remittitur was returned to the circuit court on April 5, 2016.

FACTUAL HISTORY

On the morning of December 6, 2013, Rodynka Howze was home with her two young children when two men kicked in her front door and entered her house. She came down the hall and confronted the intruders as they were attempting to grab the victim's TV and a ring. The men fled, leaving the TV and the ring behind.

After jury selection, the jury was excused while the trial court addressed pretrial matters. The judge referenced a previous meeting in chambers wherein the State indicated it intended to call "two additional witnesses" which apparently had not been previously disclosed to the defense. The solicitor explained one of those witnesses was Appellant's mother, Linda Thompson. Appellant's counsel stated: "Your Honor, I just received notice that she is going to be testifying, and I have not had a chance to speak with her or anything." The solicitor responded that Thompson lives out of town and that he had no idea she was coming to the trial until he saw her in the courtroom. The trial judge stated: "Okay, what I will do is I will withhold



ruling on your objection until you've had an opportunity to talk to her." (Tr.p.14, line 2-p.16, line 8). The trial court then ruled on the admissibility of several pieces of evidence before swearing the jury and proceeding to trial. (Tr.p.16, line 10-p.29, line 16).

At trial, the solicitor made an opening statement briefly describing the State's theory of the case. He said Appellant kicked in Howze's door and was attempting to take a TV from the shelf when Howze caught him in the act, and that Appellant then took off running when Howze said she was going to call the police. Appellant's counsel responded by saying Appellant did not commit or attempt to commit the crime. He argued Howze had severe credibility issues, noting she had falsely accused someone in the case already. (Tr.p.29, line 17-p.32, line 9).

The State then called Howze to the stand. She testified that in December of 2013 she lived at 400 North White Street with her sister and their children. Howze identified Appellant in the courtroom and explained they had been friends for a while. She said Appellant had visited her home before and was actually at the house the night before the incident. The morning of the burglary, while the children were still sleeping, Appellant sent a text message asking Howze if she was home. Howze heard Appellant and another person on her front porch and texted back that she was not home even though she was inside. At that point, Howze heard Appellant tell his friend to "kick the door in." They kicked in the door as Howze was putting her kids in the crib. She came down the hallway, confronted the intruders, and asked what they were doing. Howze said that when she walked in the room she saw them moving the TV and they had their hands on her citizenship class ring. She told the men she was going to call the police and when they ran, she called to report the burglary. Howze described the damage to the door and testified that neither man had permission to be in her house. (Tr.p.32, line 12-p.38, line 1; p.40, line 1-p.41, line 1).

After the incident, Howze told the police about the two intruders and she gave two names: Shawn Quavos and Appellant. She acknowledged she was wrong about Quavos because she only saw the side of the second man's face, but that she knows Appellant. Howze testified she had been with Appellant more than three times before. She said that when she mistakenly picked Quavos out of a photo lineup she thought it had been him, but that when it came to identifying Appellant, she had no doubt he was in her home during the burglary. Howze testified that after the incident she got an apology text message from Appellant. He said he was sorry, he should not have done it, and that there was no excuse for what he had done. (Tr.p.38, line 2-p.39, line 25; p.41, line 2-p.42, line 3).

Next the State called Howze's sister, Cheyennae Howze. She testified she lived with the victim at the time of the incident and confirmed the damage caused to the front door. (Tr.p.46, line 23-p.48, line 19). Sergeant Dustin Burlingame of the Lancaster City Police Department then described responding to the scene to take photographs and look for fingerprints. He discovered two fingerprints on the TV but neither was a match to Appellant. (Tr.p.49, line 2-p.52, line 20). The State then called latent print examiner Ken Taylor of the Lexington County Sheriff's Office to the stand. He was admitted as an expert in latent fingerprint examination and confirmed the only fingerprint found at the scene with sufficient detail for comparison did not match Appellant. (Tr.p.52, line 24-p.59, line 7).

Next, the solicitor advised the trial court he was indeed planning to call Thompson to the stand to say she called Howze after the incident and offered to pay for the damages. The trial judge stated: "All right. Your objection is already in the record. So you are good to go with that." (Tr.p.60, lines 17-25). Thompson then testified for the State. She lives in Atlanta and learned of the incident when her sister, who lives in Lancaster, called to say she heard

Appellant's name on a police scanner in regard to a break-in. She tried to call Appellant to ask about it but was unable to reach him. She then called Howze, who was an acquaintance, to ask what was going on. Thompson offered to pay Howze for the damage to the door. Appellant elected not to cross-examine Thompson. (Tr.p.62, line 7-p.64, line 10).

Finally the State called investigator Phillip Hall of the Lancaster City Police. He received a phone call from Howze the day after the burglary identifying the burglars by name. Hall said Howze named Appellant and described him as a "friend with benefits" and then identified Allen Shaquavous by his street name, Quavos. She proceeded to pick both men from photo lineups prepared by the police. Although they were both charged with the crime, the charges against Shaquavous were later dropped when the police confirmed he was not present at the scene. (Tr.p.64, line 13-p.72, line 15). At the close of Hall's testimony, the State rested and the jury exited the courtroom. Appellant moved for a directed verdict and the trial court denied the motion. Appellant chose not to testify and after the defense rested the parties made closing arguments. (Tr.p.72, line 22-p.77, line 14).

During closing arguments, the solicitor went through the evidence that had been presented. In regard to Thompson, he said: "The Defendant's mother told you she called Ms. Howze to try to cover the cost of any damages. Why would she do that? That is something for you all to decide." (Tr.p.78, line 2-p.80, line 25). Appellant's closing argument focused on the alleged unreliability of Howze's testimony. (Tr.p.81, line 1-p.83, line 3).

The trial judge charged the jury on the respective roles of the judge and jury, including the jury being the sole judge of the credibility of witnesses. He also charged the State's burden of proof, the presumption of innocence, the defendant's right not to testify, direct evidence and circumstantial evidence, expert witnesses, credibility of witnesses, criminal intent, and the

elements of first-degree burglary. (R.p.83, line 4-p.95, line 14). After deliberating for a little under an hour, the jury found Appellant guilty of first-degree burglary. (Tr.p.95, line 22-p.96, line 19). After hearing from the solicitor and Howze, Appellant stated: "I have made a lot of mistakes and I can't do at this time change anything I did, so I've got to accept responsibility and take my medicine." (Tr.p.99, lines 14-18). The trial court sentenced Appellant to twenty (20) years' imprisonment. (Tr.p.100, lines 16-22).

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel," in that:
 - a. "Counsel [committed] acts or omissions including but not limited to fail[ing] to properly research and investigate the true facts and laws surrounding my whole case;"
 - b. Counsel "did not properly cross-examine the State's Star witness Rodynka Porchlee Howze;"
 - c. "Counsel Steen did not have a clear line of defense before going to trial, Which there is a reasonable probability that, but for counsel's unprofessional errors, the result of my trial and appeal would have been different."

Applicant amended his PCR application for ineffective assistance of counsel, further alleging:

1. Counsel was ineffective, in that:
 - a. Counsel failed to cross-examine Ms. Howze regarding a text Applicant sent her.
 - b. Counsel failed to cross-examine "Ms. Howze and the fact that she had made up that [I had] kicked in her door and entered her home. . . ."
 - c. Counsel failed to cross-examine Ms. Howze "on why would my clothes be at her home and who took my clothes to my mother after this alleged burglary."
 - d. "Counsel caused me to reject the 7 year plea offer, which I would have accepted. But counsel said he can show that I was not at her house. . . . Although counsel failed to tell me that the State's plea offer was more desirable than his no line defense. . . counsel never put the State's case through a test at all"

- e. Counsel failed to object to a prejudicial statement made during the solicitor's closing argument indicating "the hands of one – the hands of all," even though the Applicant was not charged with nor was the jury instructed on "the hands of one."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified he was represented by Trial Counsel on his charges. He testified Trial Counsel should have investigated his case more prior to trial. Applicant also testified Trial Counsel also failed to properly cross-exam the star witness in his case, the victim, Rodynka Howze. He testified on the day of the burglary he sent a text message to Ms. Howze because he wanted to get his things he had left at her place. Applicant testified Trial Counsel had those texts messages excluded from coming into trial. He testified Trial Counsel did not properly show to the jury that the star witness had made inconsistent statements to the police and that her creditability was in question Applicant testified Trial Counsel did not bring up the fact that he did not know his alleged co-defendant. He testified after the crime it was also not brought up that his clothes that were at the victim's house were taken from there to his grandmother's house by the victim herself. Applicant testified he was staying at the victim's house intermittently. He testified he told Trial Counsel about his relationship with the victim. Applicant testified Trial Counsel caused him to reject a seven year plea offer and that he would have taken it had he known Trial Counsel did not a good strategy for trial. He testified during trial, Trial Counsel failed to show he was not at the house during the crime.

Applicant testified Trial Counsel had his case for one month prior to trial and there was no way Trial Counsel was prepared to go forward to trial. He testified Trial Counsel was not his original attorney and that he had a disagreement with his original attorney, Mark Grier, Esquire, and had him relieved. Applicant testified Trial Counsel failed to object during the State's closing

argument as it was prejudicial. He testified Trial Counsel did not investigate anything in his case including the victim as he had told the victim prior to the crime he was leaving her. Applicant testified Trial Counsel did not object to a voir dire question about whether any members of the jury were victims of crimes.

On cross-examination, Applicant testified he fired his previous attorney. He testified his mother testified for the State at trial that she texted the victim and offered to pay for her damaged door as a result of the crime. Applicant testified he did not give the name of his co-defendant to his attorney. He testified during trial, Trial Counsel brought out issues with the victim's misidentification of his alleged co-defendant. Applicant testified he rejected plea offers from the State. He testified he felt like he should have been charged with breaking and entering.

Trial Counsel's Testimony

Trial Counsel testified he had been practicing law since 2011, and the majority of his career had been devoted to criminal law. He testified he was appointed to represent Applicant and that he was Applicant's second attorney. Trial Counsel testified he started with the Public Defender Office on May 24, 2014 and then met with Applicant on May 28, 2014 for their first meeting. He testified during his representation of Applicant he reviewed the discovery in Applicant's case with him. Trial Counsel also testified during his meetings with Applicant he discussed the indictments, elements of the offenses, possible punishments, his constitutional rights, and the State's burden of proof with Applicant. He testified Applicant never indicated to him he did not understand the discussions they had about Applicant's rights or charges.

Trial Counsel testified there were text messages communications between Applicant and the victim on the day of the crime. He testified Applicant wanted the text messages excluded from his trial. He testified the victim and Applicant appeared to have had some type of

relationship. Trial Counsel testified he attempted to contact the victim but Applicant did not want him to contact her. He testified Applicant was adamant the victim would not show up to trial to testify against him. Trial Counsel testified his trial strategy going into trial was to show that Applicant was not present during crime. He testified since the text messages had been excluded, if the victim did not show up to testify Applicant would have had a very good chance at proving he was not there. Trial Counsel testified however, once trial started, the victim did show up to testify. He testified his trial strategy then was to attack the victim's credibility showing how she had misidentified one of the defendants and questioning her about her criminal record. Trial Counsel testified Applicant's mother also testified at trial that she sent a text message to the victim offering to pay for her broken door to her home because of the burglary.

On cross-examination, Trial Counsel testified he had notes in his record that he talked to Applicant's former attorney prior to trial. He testified Applicant wrote several letters to his previous attorney indicating he did not want to plead guilty.

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 can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel 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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

Ineffective Assistance of Counsel

Failure to Investigate



Applicant alleges Trial Counsel was ineffective for failing to investigate his case. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Trial Counsel done more investigation. Even so, Trial Counsel testified credibly that he reviewed all of the discovery with Applicant and attempted to contact the victim in the case. This Court finds Trial Counsel's investigation was beyond reasonable. Therefore, Applicant has failed to meet his burden to prove Trial Counsel was ineffective. This allegation is denied and dismissed with prejudice.

Failure to Cross-Exam

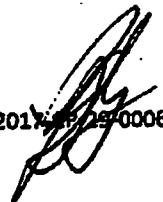
Applicant alleges Trial counsel was ineffective for failing to properly cross-exam the victim at trial. This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to properly cross-examine the State's witnesses meritless. This Court finds Trial Counsel's representation was well within reasonable professional norms.

Here, Trial Counsel's cross-examination and argument that he advanced at trial fully set forth enough information so that the jury could properly assess the witness' credibility and counsel could demonstrate the supposed lack of it. Sec. e.g., Fugate v. Head, 261 F.3d 1206, 1219 (11th Cir. 2001) ("The decision as to whether to cross-examine a witness is a tactical one

well within the discretion of a defense attorney.... Absent a showing of a single specific instance where cross-examination arguably could have affected the outcome of either the guilt or sentencing phase of the trial, a[n] [applicant] is unable to show prejudice necessary to satisfy the second prong of *Strickland*") (citations and internal quotation marks omitted); Delaware v. Fensterer, 474 U.S. 15, 20 (1985) (per curiam) ("the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish") (emphasis in original); Mills v. Singletary, 161 F.3d 1273, 1288 (11th Cir. 1998) (defendant's Sixth Amendment right to confront witnesses is satisfied where the cross-examination permitted exposes the jury to facts sufficient to evaluate the witness' credibility and "enables defense counsel to establish a record from which he can properly argue why the witness is less than reliable").

Trial Counsel thoroughly cross-examined the victim to elicit the proper testimony. Trial Counsel thoroughly questioned the victim regarding her credibility by showing she had misidentified one of the defendants, leaving out information to police during her original statement, and questioning her about her criminal record. (Tr.p.42-46) This Court finds that Trial Counsel's strategic decisions of how to cross-examine the witnesses was proper and reasonable.

Furthermore, Applicant has failed to show exactly what information should have been elicited if the witnesses were properly cross-examined. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). This Court cannot speculate as to what testimony could have been elicited upon a different strategy of cross-examination, and thus Applicant cannot meet his burden of proving prejudice. Because



Applicant has failed to meet either prong of the Strickland test, this allegation must be denied and dismissed with prejudice.

Failure to Object to Closing Argument and Jury Voir Dire

Applicant alleges Trial Counsel was ineffective for failing to object during the State's closing argument. Applicant testified during closing arguments the State made references to the legal theory of "hands of one is the hands of all" and those comments were prejudicial. Applicant further alleged that he was not charged with nor was the jury instructed on "the hands of one." This court finds this allegation to be without merit. After a review of the record, this court finds the solicitor's comments were an appropriate comment on the facts of the case. The prosecution "may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony." State v. New, 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999). The solicitor's closing argument is permissible where it stays within the record and reasonable inferences to it. Humphries v. State, 351 S.C. 362, 570 S.E.2d 160 (2002). Accordingly, Applicant has failed to show trial counsel was deficient for not objecting and he was prejudiced by the solicitor's comments as he was charged with committing burglary first degree. Because Applicant has failed to meet either prong of the Strickland test, this allegation must be denied and dismissed with prejudice.

Applicant also alleges Trial Counsel was ineffective for failing to object during voir dire to a question asked by the trial judge to the jury panel about whether any member had been victims of a crime. After a review of the record, this court finds this question was not asked by the trial judge of the jury pool during jury selection. This court would also note had this question been asked by the trial judge Applicant has failed to demonstrate sufficient prejudice from it

being potentially asked to the jury pool. Accordingly, this allegation is denied and dismissed with prejudice.

Rejection of plea offer

Applicant testified in a cursory fashion that Trial Counsel caused him to reject a seven year plea offer, which he would have accepted had he known Trial Counsel did not have a strategy for trial. This court finds this allegation to be without merit. On cross-examination, Applicant testified he rejected the plea deal that was offered to him by the State. Further, Applicant testified Trial Counsel brought out issues with the victim's misidentification of his alleged co-defendant and her inconsistent statement to police. Notwithstanding, Trial Counsel testified Applicant rejected plea offers and Applicant wrote several letters to his previous attorney indicating he did not want to plead guilty. Furthermore, this court finds Trial Counsel's trial strategy valid. Trial Counsel testified going into trial, he wanted to show that Applicant was not present during crime. He testified since the text messages between Applicant and the victim had been excluded, if the victim did not show up to testify Applicant would have had a very good chance at proving he was not there. Trial Counsel testified however, once trial started, the victim did show up to testify. He testified his trial strategy then shifted to attacking the victim's credibility showing how she had misidentified one of the defendants and questioning her about her criminal record. This court further finds Applicant's allegation that he rejected a plea offer because of Trial Counsel's lack of a trial strategy to be without merit. Applicant clearly rejected plea offers from the State prior to Trial Counsel taking over representation of his case and rejected plea offers once Trial Counsel took over his case. Accordingly, Applicant has failed to demonstrate Trial Counsel was ineffective. This allegation is denied and dismissed with prejudice.

CONCLUSION

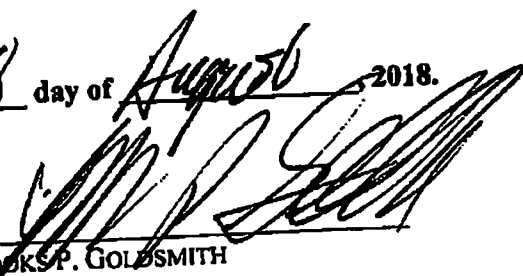
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 18 day of August, 2018.


BROOKS P. GOLDSMITH
Presiding Judge
Sixth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

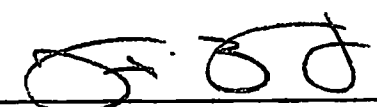
INDICTMENT

At a Court of General Sessions, convened on April 10, 2014, the Grand Jurors of Lancaster County present upon their oath:

BURGLARY, FIRST DEGREE

That Beneco Antwon Ganson did in Lancaster County on or about December 6, 2013, enter the dwelling of Rodnykka Howze without consent and with intent to commit a crime in the dwelling and Beneco Antwon Ganson has a prior record with two or more convictions for burglary or housebreaking or a combination of both in violation of §16-11-311(A)(2), *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.


 Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

✓ Hall - LPD #13-17578

ARREST WARRANT NUMBER/DOA

2013A2920301003 (DOA 01-09-14)

ACTION OF GRAND JURY

Scott B. Wilk
Foreperson of Grand Jury

Date: *10 April 2014*

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

APR 10 2014

DOCKET NO. 2014-GS-29- *445*

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

APRIL TERM 2014

**THE STATE
vs.**

Beneco Antwon Ganson

Indictment for

Burglary, First Degree

SC Code: §16-11-311(A)(2)

CDR Code: 0079

Class: Felony, EXM

FILED
OFFICE OF CLERK
OF COURT

2014 APR 10 PM 12:12

CLERK OF COURT
LANCASTER, SC

IFIED TO BE A TRUE COPY

Jeff Hammond

JEFF HAMMOND
K OF COMMON PLEAS
ERAL SESSIONS COURT
ASTER COUNTY, S.C.