

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Aiken County

Honorable J. Mark Hayes, Circuit Court Judge

—————
WILLIAM R. PEARSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

RECEIVED

JUL 08 2019

S.C. SUPREME COURT

APPELLATE CASE NO. 2018-001946

—————
APPENDIX
—————

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State of South Carolina)
County of Aiken)
In the Court
Of General Sessions

Indictment No.: 2012-GS-02-01518

State of South Carolina,)
Plaintiff.)
vs.)
William Ralph Pearson,)
Defendant.)
Transcript of Record

October 15-16, 2012
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early III, Judge and a jury.

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

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1 doubt. He has pled not guilty to these charges, so as I
2 said, he is presumed to be innocent and that's what this
3 trial will be about. The State has the burden of proving
4 his guilt to you beyond a reasonable doubt.

5 Let me ask you some questions about the indictment
6 or about the allegations or about the case and if any of
7 these questions apply to you, please stand, identify
8 yourself once again, and we will address the question.

9 All right. Any member of the jury panel now or in
10 the past, have you been related by blood or marriage do you
11 now or have you in the past had a close personal or social
12 relationship with the defendant, William J. Pearson -- hold
13 on a second.

14 The indictment on the front says William R. The
15 body says William J. What is it?

16 **MR. MILLER:** No, sir, the body is William R.
17 Pearson, along with William J. Pearson.

18 **THE COURT:** Any member of the jury panel related by
19 blood or marriage or do you now or have you in the past had
20 a close personal or social relationship with the defendant,
21 William R. Pearson? If so, please stand.

22 (WHEREUPON there was no answer.)

23 **THE COURT:** I am informed that the potential
24 witnesses in the trial of this case are as follows -- is
25 the victim, John Hinds?

1 **MR. MILLER:** Your Honor, it's John Hinds and a Sue
2 Beerman. Ms. Beerman is the one who will be testifying.

3 **THE COURT:** All right. Potential witnesses are
4 one, John Hinds, Sue Beerman, William James Pearson, Jr.,
5 Detroit Spires.

6 (WHEREUPON Officer Spires stood.)

7 **THE COURT:** Thank you.

8 And Investigator Thomas Galardi.

9 (WHEREUPON Officer Galardi stood.)

10 **THE COURT:** Thank you.

11 Any member of the jury panel related by blood or
12 marriage or do you know or have you in the past had a close
13 personal or social relationship with any of the potential
14 witnesses? If so, please stand.

15 **THE JUROR:** Yes, sir, Juror No. 22. I used to work
16 with Tom Galardi and I also know him from an Aiken County
17 Leadership Class we were in together.

18 **THE COURT:** The fact that you at one time in the
19 past were involved, I guess that was volunteer work or
20 regular work?

21 **THE JUROR:** This was at SRS. He actually worked at
22 a different department, but I knew him previously from the
23 Leadership Aiken County class that I was in.

24 **THE COURT:** I understand. The fact that y'all were
25 employed together at one time in the past, would that, sir,

1 in any way keep you from being a fair and impartial juror
2 in this case?

3 THE JUROR: No, sir.

4 THE COURT: Thank you. You may be seated.
5 Yes, sir?

6 THE JUROR: Juror 118, Rick McLeod, I also know Tom
7 Galardi from Sertoma, which is a civic organization.

8 THE COURT: I understand. The fact that you and
9 Mr. Galardi were associated in a civic organization in the
10 past, would that preclude or keep you, sir, from being fair
11 and impartial and try the case based solely on what you
12 hear in the courtroom?

13 THE JUROR: No, sir, it wouldn't.

14 THE COURT: Thank you very much.

15 This case, the State of South Carolina will be
16 represented by two assistant solicitors, Mr. David Miller
17 and Mr. Sam Grimes.

18 The defendant will be represented by members of the
19 Aiken County Public Defender's Office, Mr. Barry Thompson
20 and Mr. Andy Smith.

21 Any member of the jury panel now or in the past
22 have had legal work, services, performed by any of the four
23 lawyers? If so, please stand.

24 Any member of the jury --

25 (WHEREUPON one juror was standing.)

1 **THE COURT:** Yes, sir, your name?

2 **THE JUROR:** 138, Brad Powell. I had -- I got a DUI
3 and it was in the public defender's office like a couple of
4 years ago.

5 **THE COURT:** DUI, first, second, third, fourth?

6 **THE JUROR:** DUI first.

7 **THE COURT:** First?

8 **THE JUROR:** And I also have family that works in
9 the courthouse here, Jessie Busby.

10 **THE COURT:** Okay. The fact that they helped you
11 out at one time or represented you, would that in any way
12 keep you from being a fair and impartial juror?

13 **THE JUROR:** No, sir.

14 **THE COURT:** Thank you, you may be seated.

15 Any member of the jury panel related by blood or
16 marriage or do you know or have you in the past had a close
17 personal or social relationship with any of the lawyers
18 I've just called? If so, please stand.

19 (WHEREUPON there was no answer.)

20 **THE COURT:** Ladies and gentlemen, the indictment,
21 which is not evidence in the case, is simply the charging
22 document by way this case comes into the courtroom. It
23 sets out certain allegations and I will tell you what the
24 allegations are. As I said, that is not evidence in the
25 case. The State still has the burden of proving the case

1 beyond a reasonable doubt. It is alleged that here in
2 Aiken County, Mr. Pearson, William R. Pearson, along with a
3 person named William J. Pearson, on or about May 28th of
4 2012, willfully and unlawfully entered the dwelling of one
5 John Hinds, located at [REDACTED], Avenue, in New
6 Ellenton without consent and with intent to commit a crime
7 therein. Anybody know anything about an event that took
8 place at [REDACTED] Avenue in New Ellenton, South Carolina,
9 on May 28, 2012, where it's alleged that the -- Mr. William
10 R. Pearson unlawfully and without consent entered that
11 dwelling? Anybody know anything at all about it? Anybody
12 read anything about it, seen anything on TV? Seen anything
13 on the internet? Anybody discussed it with you? Know
14 anything at all about it?

15 (WHEREUPON there was no answer.)

16 **THE COURT:** Ladies and gentlemen, any member of the
17 jury panel, have you ever been a victim of a burglary? You
18 or your family member? Please stand.

19 **THE JUROR:** I'm Juror 134, Susan Pate. My home was
20 burglarized just last week.

21 **THE COURT:** Last week?

22 **THE JUROR:** Yes, sir.

23 **THE COURT:** The fact that you had an unfortunate
24 event, ma'am, would that in any way preclude or keep you
25 from being a fair and impartial juror in the trial of this

1 case?

2 THE JUROR: Being that it's so new to me, I would
3 say yes, sir. At this time.

4 THE COURT: All right. We're going to just remove
5 her from this panel.

6 You stay with us, please, ma'am.

7 THE JUROR: Yes, sir.

8 THE COURT: Yes, sir, your name?

9 THE JUROR: 164, Scott Smith, our cars were broken
10 into in July.

11 THE COURT: The fact that your car was broken into
12 in July, would that in any way preclude or keep you, sir,
13 from being a fair and impartial juror in the trial of this
14 case?

15 THE JUROR: No, Your Honor.

16 THE COURT: Thank you, you may be seated.

17 THE JUROR: Juror 19, Daniel Brown. I was
18 burglarized two or three years ago.

19 THE COURT: And sir, I ask you the same question,
20 would that in any way have any affect on you being a fair
21 and impartial juror in the trial of this case?

22 THE JUROR: Yes, sir, it will.

23 THE COURT: All right. Remove him, but let him
24 stay with us.

25 THE CLERK: You have another one, sir.

1 **THE COURT:** Yes, sir, my Sertoma man. Your name?

2 **THE JUROR:** Juror 118, Rick McLeod, I had a vehicle
3 brake in and my house.

4 **THE COURT:** All right. The fact that you
5 experienced that, sir, would that preclude or keep you from
6 being fair and impartial in the trial of the case?

7 **THE JUROR:** No, sir.

8 **THE COURT:** Thank you, you may be seated.

9 Have any others?

10 Yes, sir, your name?

11 **THE JUROR:** Juror No. 81, James Harrtman. My home
12 was burglarized about fifteen years ago.

13 **THE COURT:** Would that have any affect on you being
14 a fair and impartial juror?

15 **THE JUROR:** No, sir.

16 **THE COURT:** Thank you, you may be seated.

17 Anybody else?

18 (WHEREUPON there was no answer.)

19 **THE COURT:** Ladies and gentlemen of the jury panel,
20 do I have anyone who has a family member or you, yourself
21 employed with law enforcement, solicitor's office, attorney
22 general's office, FBI, or any law enforcement agency,
23 please stand.

24 Yes, sir? Your name again.

25 **THE JUROR:** 138 Brad Powell. My cousin Jessie

1 Busby works here and I have another cousin that works for
2 the public defender's office.

3 THE COURT: For the record, Jessie who?

4 THE JUROR: Busby.

5 THE COURT: Thank you.

6 THE JUROR: Jessie Busby.

7 THE COURT: And the fact that you have those
8 relatives in law enforcement, sir, would that keep you from
9 being fair and impartial in the trial of the case?

10 THE JUROR: No, sir.

11 THE COURT: Thank you. You may be seated.

12 Do I have any member --

13 Yes, sir, your name?

14 THE JUROR: Juror 160, Richard Shelley, my brother
15 works for Department of Public Safety.

16 THE COURT: In Aiken?

17 THE JUROR: Yes, sir.

18 THE COURT: The Department of Public Safety?

19 THE JUROR: Yes, sir.

20 THE COURT: This is in New Ellenton, right?

21 MR. MILLER: Yes, Your Honor.

22 THE COURT: The fact that you have a brother-in-law
23 enforcement, sir, would that preclude or keep you from
24 being fair and impartial in the trial of this case?

25 THE JUROR: No, sir.

1 **THE COURT:** Thank you. Do I have -- yes, ma'am?

2 Y'all stand up at once for me, please.

3 Your name, please?

4 **THE JUROR:** Juror No. 29, I'm Lewanda Campbell. My
5 son, John Campbell is a deputy for McCormick County.

6 **THE COURT:** The fact that you have a son in law
7 enforcement, ma'am, would that preclude or keep you from
8 being fair and impartial?

9 **THE JUROR:** No, sir.

10 **THE COURT:** Thank you. Anyone else with family
11 members in law enforcement?

12 Next question: Do I have any member of the jury
13 panel who is a contributor to or a member of organizations
14 that has -- that have as their primary concern the
15 enforcement of law, such as CAVE, Citizens Against Violent
16 Crime; SADD or MADD, those are Mother's Against Drunk
17 Driving and Students Against Drunk Driving; or any police
18 auxiliary organization or citizens groups, please stand.

19 (WHEREUPON there was no answer.)

20 **THE COURT:** Ladies and gentlemen, this is sort of a
21 catch all, last question. One of my main responsibilities
22 as a trial judge is to make sure that whoever is being
23 tried in this courtroom, whether it be a criminal case or a
24 civil case, they receive a fair trial. It's a fundamental
25 right guaranteed to every citizen of the United States.

1 And the way we do that is we actually have two judges that
2 work in the case. I'm the judge of the law. I tell you
3 what or I instruct you what the law is, but more
4 importantly, when we select twelve people, you act
5 collectively as the judges of the facts in the case. And
6 the way that works is, obviously, the State presents
7 witnesses to prove their case beyond a reasonable doubt and
8 the defendant has the opportunity if they choose to present
9 their defense.

10 Now, I've been doing this a long time, about
11 thirty-eight years, and I've tried a lot of cases as a
12 lawyer and a lot of cases as a judge. One thing you can
13 always pretty much count on is that you'll hear different
14 views or entirely different testimony from the witnesses
15 who testify in the case. Somebody might say it's gray,
16 somebody might say it's purple. Somebody might say it's
17 yellow. Somebody might say it's day, somebody might say
18 it's night.

19 So being the judges of the facts you have to listen
20 to everybody who testifies up here and you have to judge
21 their credibility or their believability just like speaking
22 with your grandchildren or your children or your wife or
23 your husband or your employees, you just know sometimes how
24 some people are telling the truth or they're not. But the
25 twelve of you determine what the true facts are in the case

1 and you take those true facts as you find them to be and
2 you apply it to the law as I give it to you and that's how
3 we reach a decision in a criminal case.

4 Now, my question is this: Knowing what your
5 responsibility is, do I have any member of the jury panel
6 who is unable for any reason whatsoever, to perform that
7 valuable civic duty? Do I have anyone for religious
8 reasons, personal reasons, political reasons, any kind of
9 reasons? I need to know now. Anybody who cannot perform
10 that very, very important civic duty?

11 (WHEREUPON there was no answer.)

12 THE COURT: Any additional questions by the State?

13 MR. MILLER: Not by the State, Your Honor.

14 THE COURT: By the defendant?

15 MR. THOMPSON: Nothing from the defense, Your
16 Honor.

17 THE COURT: All right. Five and ten?

18 MR. MILLER: Yes, sir.

19 Ready?

20 THE CLERK: Two alternates?

21 THE COURT: Ladies and gentlemen, if we were trying
22 a car wreck case, or whether somebody was accusing their
23 lawyer of malpractice or a breach of contract case where
24 you were suing for damages, in a civil case, right now,
25 Ms. Goddard would give me twenty names and the plaintiff

1 bringing the lawsuit and the defendant who's being sued,
2 they would get a list and the plaintiff would have four
3 strikes and the defendant would have four strikes, leaving
4 us with twelve.

5 In a criminal case, we choose the jury a little
6 different. We will randomly select from you and as your
7 name is called randomly, you will come forward and stand
8 right here in the front here between the two tables and the
9 State has five strikes, the defendant has ten strikes and
10 they can strike you for most any reason they want to, if
11 you've got a red dress on, if you've got -- you know, they
12 just don't like how you look, they do like your look,
13 whatever. I don't know. They've got certain bounds they
14 have to be within, so they can't just strike you for no
15 reason, but they know what the bounds are, boundaries are.

16 So we'll go through that, the State having five and
17 the defendant having ten, until I get twelve jurors and
18 then I'll select two alternates. And the alternates, the
19 State has one, the defendant has two. If your name is
20 called, please come forward. If you have a purse or other
21 personal items, bring it with you in the event that you are
22 selected and keep it with you up here.

23 We now do it by computer. It's a random selection,
24 some type of program that they have that gives me a random
25 selection. We used to do it the old-fashioned way with a

1 little gray box, put your names in it, shake it, and pull
2 it out. That's a lot quicker than this computer.

3 Just kidding, Ms. Goddard.

4 I think Ms. Goddard, if she had her rathers, she'd
5 rather go back to the box. But when it works it works
6 good. When it prints out.

7 (WHEREUPON there was a pause while waiting on the
8 computer to print the random strike sheet.)

9 JURY SELECTION

10 THE COURT: Thank you for bearing with us. Okay.
11 If your name the called, please come forward.

12 THE CLERK: Ladies and gentlemen, as I call your
13 name, please come forward to the bar, turn and face the
14 attorneys. If you have any belongings with you, please
15 gather them and bring them with you.

16 Juror No. 187, Martha D. Wheeland. (White female.
17 What say you to the State?

18 MR. MILLER: Please present this juror.

19 THE CLERK: What say you to the defense?

20 MR. THOMPSON: Please excuse this juror.

21 THE COURT: You may have a seat.

22 THE CLERK: Please return to your seat.

23 Juror No. 138, Brad D. Powell. (White male.

24 What say you to the State?

25 MR. MILLER: Please excuse this juror from the

1 trial of the case.

2 THE CLERK: Please return to your seat.

3 Juror No. 72, Hazel C. Gresham (black female.

4 What say you to the State?

5 MR. MILLER: Please present the juror.

6 THE CLERK: What say you to the defense?

7 MR. THOMPSON: Please excuse this juror.

8 THE CLERK: Return to your seat, thank you.

9 Juror No. 153, Steven Salzman (white male.

10 What say you to the State?

11 MR. MILLER: Please present the juror.

12 THE CLERK: What say you to the defense?

13 MR. THOMPSON: Please seat this juror.

14 THE CLERK: Please have a seat in the jury box on
15 the left, sir.

16 Juror No. 141, Alysia Ritch. (White female.

17 What say you to the State?

18 MR. MILLER: Please present this juror.

19 THE CLERK: What say you to the defense?

20 MR. THOMPSON: Please seat this juror.

21 THE CLERK: Please have a seat in the jury box on
22 the left.

23 Juror No. 67 Edward F. Girardeau, Jr. (White male.

24 What say you to the State?

25 MR. MILLER: Please present the juror.

1 THE CLERK: What say you to the defense?

2 MR. THOMPSON: Your Honor may we approach?

3 (WHEREUPON, there was a bench conference out of the
4 hearing of the jury and the Court Reporter.)

5 THE COURT: Mr. Girardeau, you may have a seat.

6 Mr. Thompson, remind me when we finish to put that
7 on the record.

8 MR. THOMPSON: Yes, sir.

9 THE CLERK: Juror No. 179, Hazel E. Truitt. (White
10 female.

11 MR. THOMPSON: I apologize, Madame Clerk, did you
12 say 179?

13 THE CLERK: 179:

14 THE COURT: Ms. Truitt, one of the rules is that
15 you have to smile when you come up.

16 THE CLERK: What say you to the State?

17 MR. MILLER: Please present this juror.

18 THE CLERK: What say you to the defense?

19 MR. THOMPSON: Please excuse this juror.

20 THE CLERK: Please have a seat. Thank you.

21 Juror No. 76, Dana Hall. (White female.

22 What say you to the State?

23 MR. MILLER: Please present the juror.

24 THE CLERK: What say you to the defense?

25 MR. THOMPSON: Please seat this juror.

1 **THE CLERK:** Please have a seat in the jury box.
2 Thank you.
3 Juror No. 40, John D. Claussen. (White male.
4 What say you to the State?
5 **MR. MILLER:** Please present the juror.
6 **THE CLERK:** What say you to the defense?
7 **MR. THOMPSON:** Please seat this juror.
8 **THE CLERK:** Have a seat in the jury box to the
9 left. Thank you.
10 Juror No. 114 Rita McCracken. (White female.
11 **THE COURT:** You skipped one.
12 **THE CLERK:** I'm sorry. Juror No. --
13 **THE COURT:** Hold on Ms. McCracken.
14 **THE CLERK:** I'm sorry, Ms. McCracken.
15 Juror No. 37, Robert B. Caudle. (White male.
16 What say you to the State?
17 **MR. MILLER:** Please present this juror.
18 **THE CLERK:** What say you to the defense?
19 **MR. THOMPSON:** Please seat this juror.
20 **THE CLERK:** Have a seat in the jury box on the
21 left. Thank you.
22 Juror No. 114, Rita McCracken. (White female.
23 What say you to the State?
24 **MR. MILLER:** Please present the juror.
25 **THE CLERK:** What say you to the defense?

1 MR. THOMPSON: Please seat this juror,

2 THE CLERK: Have a seat in the jury box to my left.

3 Thank you.

4 Juror No. 182, Anthony J. Vangelas. (White male.

5 What say you to the State?

6 MR. MILLER: Please present the juror.

7 THE CLERK: What say you to the defense?

8 MR. THOMPSON: Please excuse this juror.

9 THE CLERK: Please return to your seat. Thank you.

10 Juror No. 79, Savannah M. Harris. (White female.

11 What say you to the State?

12 MR. MILLER: Please present this juror.

13 THE CLERK: What say you to the defense?

14 MR. THOMPSON: Please seat Ms. Harris.

15 THE CLERK: Please have a seat in the jury box on

16 the left.

17 Juror No. 93, Douglas G. Jackson. (White male.

18 What say you to the State?

19 MR. MILLER: Please present Mr. Jackson.

20 THE CLERK: What say you to the defense?

21 MR. THOMPSON: Please seat Mr. Jackson.

22 THE CLERK: Please have a seat in the jury box.

23 Juror No. 10, Joshua B. Beard. (White male.

24 What say you to the State?

25 MR. MILLER: Please present the juror.

1 **THE CLERK:** What say you to the defense?
2 **MR. THOMPSON:** Please seat this juror.
3 **THE CLERK:** Please have a seat in the jury box on
4 the left.
5 Juror No. 113, Robert F. McClearen. (White male.
6 What say you to the State?
7 **MR. MILLER:** Please present the juror.
8 **THE CLERK:** What say you to the defense?
9 **MR. THOMPSON:** Please excuse this juror.
10 **THE CLERK:** Please return to your seat.
11 The State has exhausted one strike, the defense,
12 five.
13 Juror No. 155, Wendy M. Sanderson. (White female.
14 What say you to the State?
15 **MR. MILLER:** Please present the juror.
16 **THE CLERK:** What say you to the defense?
17 **MR. THOMPSON:** Please excuse this juror.
18 **THE CLERK:** Please return to your seat. Thank you.
19 Juror No. 192, Houston R. Williams. (White male.
20 What say you to the State?
21 **MR. MILLER:** Please excuse this juror.
22 **THE CLERK:** Please return to your seat, sir. Thank
23 you.
24 Juror No. 60, Deborah Flippen. (White female.
25 What say you to the State?

1 MR. MILLER: Please present the juror.

2 THE CLERK: What say you to the State -- I'm sorry
3 the defense?

4 MR. THOMPSON: Please seat this juror.

5 THE CLERK: Please have a seat in the jury box to
6 my left, please. Thank you.

7 Juror No. 127 Cheryl P. Morse. (White female.

8 What say you to the State?

9 MR. MILLER: Please present the juror.

10 THE CLERK: What say you to the defense?

11 MR. THOMPSON: Please seat this juror.

12 THE CLERK: Please have a seat in the jury box on
13 the left, please.

14 Juror No. 133. Santos Pagan. (Hispanic male.

15 What say you to the State?

16 MR. MILLER: Please present the juror.

17 THE CLERK: What say you to the defense?

18 MR. THOMPSON: Please seat in juror.

19 THE CLERK: Please have a seat in the jury box to
20 my left.

21 THE COURT: Let me have two alternates. Two and
22 one.

23 THE CLERK: Juror No. 34, Marion Carter. (Black
24 male.

25 What say you to the State?

1 MR. MILLER: Please present the juror.

2 THE CLERK: What say you to the defense?

3 MR. THOMPSON: Please seat this juror.

4 THE CLERK: Please have a seat in the jury box to
5 my left, please.

6 Alternate No. 2. Juror No. 152, Alfred V. Russo.

7 (White male.

8 What say you to the State?

9 MR. MILLER: Please present this juror.

10 THE CLERK: What say you to the defense?

11 MR. THOMPSON: Please excuse this juror.

12 THE COURT: Please return to your seat, sir.

13 THE CLERK: Juror No. 86, Jeremy R. Helmick.

14 (White male.

15 What say you to the State?

16 MR. MILLER: Please present this juror.

17 THE CLERK: What say you to the defense?

18 MR. THOMPSON: Please excuse this juror.

19 THE CLERK: Please return to your seat, sir. Thank
20 you.

21 Juror No. 27, Linda H. Calhoun. (White female.

22 What say you to the State?

23 MR. MILLER: Please present the juror.

24 THE CLERK: What say you to the defense?

25 MR. THOMPSON: Please seat this juror.

1 **THE CLERK:** Please have a seat in the jury box on
2 the left.

3 **THE COURT:** Any motions by the State or the
4 defendant in connection to the selection of the jury?

5 **MR. MILLER:** None from the State, Your Honor.

6 **MR. THOMPSON:** Nothing from defense, Your Honor.

7 **THE COURT:** Ladies and gentlemen, you should have
8 on your sheet that was given to you or mailed to you, a
9 number to call back. Please call back after six for
10 instructions. If I do not see you again, I thank you for
11 coming. We cannot run court without jurors being ready,
12 willing, and able to serve. So I thank you and have a
13 wonderful day.

14 Everybody else remain seated.

15 You jurors are free to go.

16 (WHEREUPON the jury panel left the courtroom.)

17 **THE COURT:** Ladies and gentlemen, we're going to
18 start at ten o'clock in the morning. Number one, we have a
19 witness that can't be here until tomorrow. The other
20 reason is we have some pretrial things that we have to take
21 care of and it will probably take us an hour to do it and I
22 don't want you sitting back there waiting on me. Instead
23 we want to get all that out of the way.

24 When you get here in the morning at ten, we'll be
25 ready to go. Normally, we will provide you with some hot

1 coffee and either a sausage biscuit or fruit or donuts.

2 What's your pleasure.

3 THE JUROR: Coffee and fruit.

4 THE COURT: Guys, you got the fruit. I guarantee
5 you my guy in the green shirt doesn't want fruit.

6 Mr. Whittle can you get us some bananas and peaches
7 and nectarines and kiwi? Get the normal.

8 Okay. We'll have you some hot coffee and fresh
9 fruit tomorrow and we'll get into the trial of the case and
10 see how far we get and move along very quickly. I look
11 forward to working with each one of you. I'd ask you not
12 to go home tonight and do any independent research on
13 burglary or anything else.

14 I don't think anybody would probably try to talk to
15 you about the case, if they do, just tell them you're on
16 the jury. If they insist on talking, just get their names
17 and I'll deal with it.

18 I look forward to working with you. You can step
19 back with Ms. Barbara, she'll show you where to return in
20 the morning and we'll start right at ten o'clock.
21 Therefore, if you want some fruit and some hot coffee, be
22 here a little ahead of time because you can't bring it into
23 the courtroom.

24 Everybody else remain seated. Thank you. Y'all
25 have a pleasant evening.

1 (WHEREUPON the jury left the courtroom at 3:04
2 p.m.)

3 THE COURT: Okay. Let the record reflect that we
4 had a side bar on Juror No. 67, Edward Girardeau. Defense
5 moved to strike for cause. They overheard him make some
6 comments out in the hall that would indicate that he
7 perhaps could not be fair and impartial, that he would say
8 yes so that we move along fast, basically is what they
9 heard him say. There was no objection by the State.

10 Is that correct, gentlemen?

11 MR. MILLER: That's correct, Your Honor.

12 MR. THOMPSON: That's correct, Your Honor.

13 THE COURT: All right. And there was no motions as
14 far as the jury went. So what do we have left to get ready
15 so we can start right at ten o'clock in the morning?

16 MR. MILLER: Judge, the State will be ready to
17 proceed. There are no statements, no pretrial motions that
18 I'm aware of.

19 MR. THOMPSON: There are no pretrial motions, Your
20 Honor, from the defense.

21 THE COURT: And this is a burglary first with two
22 priors. Have you moved -- are there strikes involved?

23 MR. MILLER: No, sir, it's not a strike-out case.
24 I did intend to discuss with Mr. Thompson a stipulation as
25 to the record, just to keep us from having to call clerk

1 personnel. They are Aiken convictions and I don't think --

2 MR. THOMPSON: We haven't discussed it, but we're
3 prepared to do that.

4 THE COURT: Very well. What's the offer on the
5 table?

6 MR. MILLER: Fifteen years, Your Honor.

7 MR. THOMPSON: It's a burglary second, violent.

8 THE COURT: He's being tried for burg first with
9 two prior? What's his record?

10 MR. MILLER: He's got --

11 THE COURT: I know he's got two prior burglaries.

12 MR. MILLER: He does, Your Honor.

13 MR. THOMPSON: He is also, Your Honor, currently on
14 probation.

15 THE COURT: For what?

16 MR. THOMPSON: For burg second.

17 THE COURT: And what was that sentence?

18 MR. THOMPSON: Twelve -- it was a sentence to four
19 active, eight suspended.

20 THE COURT: So he's looking at eight if he's
21 violated?

22 MR. THOMPSON: That's correct, Your Honor.

23 Although those would be nonviolent years is my
24 understanding.

25 THE COURT: I understand. Well --

1 **MR. MILLER:** He's got a number of petit larceny,
2 criminal domestic violence, simple assault and battery,
3 burglary second, possession of drug paraphernalia, burglary
4 second again in 2009.

5 **MR. THOMPSON:** That's my understanding as well.

6 **THE COURT:** Well, I assume you've advised your
7 client burglary carries -- what is it --

8 **MR. MILLER:** Fifteen to life, Your Honor.

9 **MR. THOMPSON:** That's correct.

10 **THE COURT:** Fifteen to life.

11 **MR. THOMPSON:** Fifteen and it's a no parole
12 offense, so it's 85 percent.

13 **THE COURT:** 85 percent and the State's willing to
14 plea him to burg second, which is not an 85 percent.

15 **MR. THOMPSON:** That's my understanding, Your Honor.

16 **MR. MILLER:** Burg second, nonviolent would carry
17 zero to ten. State hasn't -- violent would be zero to
18 fifteen.

19 **THE COURT:** What y'all -- violent?

20 **MR. MILLER:** Yes, sir. Fifteen negotiated on a
21 burg second violent was the offer.

22 **THE COURT:** That's not an 85 percent and I'd run
23 them concurrent.

24 **MR. THOMPSON:** I'll discuss it with my client
25 again, Your Honor.

1 **THE COURT:** I'm not -- no, I'm just talking out
2 loud.

3 **MR. THOMPSON:** Yes, sir.

4 **THE COURT:** All right. Anything else for this
5 afternoon?

6 **MR. MILLER:** We have a plea, Your Honor, but we're
7 waiting on Mr. Anderson to get here so that can be done.
8 He was supposed to be on his way.

9 **THE COURT:** Mr. Pearson, anything you need to ask
10 me? You okay? Any questions?

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** Okay. See you in the morning. All
13 right?

14 **THE DEFENDANT:** All right, sir.

15 **THE COURT:** Thank you. We'll stand at ease.

16 (WHEREUPON the case was in recess until the
17 following morning.)

18 **THE COURT:** Is the State ready to proceed?

19 **MR. MILLER:** State's ready to proceed, Your Honor.

20 **THE COURT:** Bring the defendant out.

21 You ready?

22 **MR. THOMPSON:** Your Honor, I have one issue I need
23 to make you aware of. I have subpoenaed --

24 **THE COURT:** Let's get your client out here.

25 **MR. THOMPSON:** Yes, sir.

1 (WHEREUPON there was a pause in the proceedings.)

2 (WHEREUPON the defendant entered the courtroom.)

3 THE COURT: Yes, sir?

4 MR. THOMPSON: Your Honor, may it please the Court,
5 I just wanted to make the Court aware that I had subpoenaed
6 a -- a rebuttal witness just in case one of those witnesses
7 for the State says something he might say. We had
8 subpoenaed him while he was incarcerated at the Aiken
9 County Detention Center. Last week he pleaded before this
10 Court and I made him aware again that he was under subpoena
11 to be here.

12 THE COURT: Where is he? I mean is he in the
13 department of corrections?

14 MR. THOMPSON: He is not in the department of
15 corrections. He is on the street. And I have had my
16 investigator looking for him yesterday and I had my
17 investigator looking for him today. This may not be an
18 issue, depending on what the State's witness says.

19 THE COURT: What do you want me to do?

20 MR. THOMPSON: At some point in time, I just wanted
21 to make the Court aware that I may be moving for a
22 continuance in order to try --

23 THE COURT: I'm not -- I'll issue a bench warrant
24 for him this morning. He's subpoenaed to be here now?

25 MR. THOMPSON: He is, Your Honor.

1 THE COURT: Who is it.

2 MR. MILLER: His name is Rogier, Your Honor. We
3 can look it up and find out what he got sentenced to. He
4 might be on probation.

5 MR. THOMPSON: He got time served.

6 MR. MILLER: Oh, he got time served.

7 THE COURT: Well --

8 MR. THOMPSON: I would ask the Court to issue a
9 bench warrant.

10 THE COURT: I can get you one real quick and turn
11 it over to law enforcement.

12 MR. THOMPSON: Very fine.

13 THE COURT: Anything else?

14 MR. THOMPSON: Nothing from the defense, Your
15 Honor.

16 THE COURT: Yes, sir, Mr. Defendant?

17 THE DEFENDANT: Can I speak?

18 MR. THOMPSON: You may.

19 THE DEFENDANT: Your Honor --

20 THE COURT: Yes, sir?

21 THE DEFENDANT: I got eight witnesses I asked to
22 get subpoenaed to court.

23 THE COURT: Yes, sir.

24 THE DEFENDANT: And I -- they said that I only had
25 two yesterday. I have not talked to my attorney but maybe

1 thirty minutes the whole time I've seen him and I'm going
2 to be on trial for my life.

3 THE COURT: No, sir, you're not on trial for your
4 life.

5 What is the charge? Burglary first?

6 MR. MILLER: Burglary first, Your Honor.

7 THE COURT: You could conceivably get it.

8 MR. THOMPSON: And Your Honor, for the record, in
9 order to not be subject to allegations of having cumulative
10 testimony, I believe that there are only two witnesses that
11 are really necessary for what Mr. Pearson's talking about
12 and we have subpoenaed both of those witnesses.

13 THE COURT: Mr. Pearson, your lawyers are seasoned,
14 experienced, and if the witnesses are just going to repeat
15 what the other witnesses said, then they would not be
16 allowed to testify anyway under Rule 403. So I'm going to
17 trust his judgment. Thank you.

18 THE DEFENDANT: Can I say one more thing?

19 THE COURT: You certainly may.

20 THE DEFENDANT: He's told me I had no chance of
21 winning my case.

22 THE COURT: Well, I don't know.

23 THE DEFENDANT: I don't -- I don't feel like I'm
24 being represented right.

25 THE COURT: He certainly has a right to his opinion

1 as to your likelihood of success in the case. A lot of
2 times when I was a lawyer, I told my clients, I don't think
3 you stand a chance of winning, the evidence is overwhelming
4 against you. A lot of times that is the case.
5 Unfortunately more times likely than not, that's the case
6 and that's why it's part of his duty is to try to reach
7 a -- reach some kind of compromise with the solicitor's
8 office to get you the best deal possible. You're looking
9 at a minimum of fifteen years up to life, doing 85 percent
10 of whatever I gave you. He's worked out a deal with the
11 State. The State had offered you at one time a plea to
12 burglary second violent, which is up to fifteen years and
13 you would do 85 percent of whatever that was. And you've
14 got a probation violation on top of that. And I think I
15 mentioned a lot of that to you yesterday.

16 It's not unusual for a lawyer, after having
17 assessed the facts and applying those facts to the law to
18 tell you your chances are slim. He would not be doing his
19 job if he tried to build up in your mind that you were
20 going to walk out of here. He knows what the facts are.
21 He knows the case is difficult. He has to tell you that if
22 that's his opinion.

23 Anything else?

24 **THE DEFENDANT:** No, sir. I --

25 **THE COURT:** I mean, you know what the facts are as

1 well as he does. I assume that offer has been withdrawn.

2 MR. MILLER: It has, Your Honor.

3 THE COURT: Would the State allow him to plead to
4 burglary second, violent?

5 MR. MILLER: No, sir.

6 THE COURT: Thank you. Well, what's on the table
7 now if you want to plead straight up to burglary in the
8 first-degree, you're looking at a minimum of fifteen years
9 to life; and if you plead guilty, obviously, I would take
10 into consideration the fact that you have admitted your
11 guilt and you're not making the State go through a trial.
12 That's up to you. The jurors are here, we're ready to
13 proceed.

14 Anything else?

15 THE DEFENDANT: No, sir. Your Honor, I don't think
16 I've been getting anything but a run around. That's all
17 I've done. They charged me with burg first, they charged
18 my son with burglary second and they give him probation and
19 they charged me with burglary first. I don't understand
20 that, Your Honor.

21 THE COURT: I can't explain that to you.

22 Anything else you want to tell me?

23 THE DEFENDANT: No, sir.

24 THE COURT: Bring the jury in.

25 (WHEREUPON the jury entered the courtroom at 10:07

1 a.m.)

2 **THE COURT:** Mr. Miller, y'all approach for a
3 second.

4 (WHEREUPON, there was a bench conference out of the
5 hearing of the jury and the Court Reporter.)

6 **THE COURT:** Good morning. Everybody eat their
7 fruit? You know the one person that I thought would not
8 want fruit, he was the first one here. Was there any left
9 for all of y'all?

10 The first thing we have to do to get started is you
11 have to be sworn in once again. So please stand and raise
12 your right hand.

13 (WHEREUPON the jury was sworn at 10:10 a.m.)

14 **THE CLERK:** You may be seated.

15 **OPENING REMARKS BY THE COURT**

16 **THE COURT:** Ladies and gentlemen, as I have told
17 you when we selected the jury that in this case,
18 Mr. William R. Pearson has been charged and indicted for
19 the offense of burglary in the first-degree. Please bear
20 in mind the fact that he's been arrested, charged, and
21 indicted is not evidence in the case. He has pled not
22 guilty to these charges and under the constitution,
23 obviously, he is presumed to be innocent of the charges
24 unless the State is able to prove each and every element of
25 the offense as outlined in the indictment to you beyond a

1 reasonable doubt. And I will explain to you the elements
2 of the offense of burglary in the first-degree as we go
3 along.

4 Now, as I said, the burden is on the State to prove
5 his guilt to you beyond a reasonable doubt. That is the
6 standard of proof in a criminal case. And we sometimes
7 illustrate that by the scales of justice, if these were the
8 scales of justice. If we were trying an automobile wreck
9 case or a medical malpractice case or a legal malpractice
10 case or a breach of contract, that's a civil case. The
11 parties come in on equal footing and the scales are in this
12 manner, they're equal.

13 Well, for the plaintiff, the person bringing the
14 suit to prevail, they have to prove their case by the
15 preponderance or greater weight of the evidence. They have
16 to tip the scales ever so slightly in their favor, the
17 scales of evidence, the weight of evidence.

18 In a criminal case, because the constitution says
19 that everyone is presumed innocent until proven guilty
20 beyond a reasonable doubt, they come into the courtroom
21 with the scales of justice tipped heavily in their favor
22 and for the State to prove his guilt to you beyond a
23 reasonable doubt, they have to tip the scales in that
24 manner. So the burden of proof in a criminal case is much
25 more than in a civil case.

1 Now, the way we try cases is this: Since the State
2 has the burden of proof, they will put up their case first.
3 They will call their witnesses first. After they've
4 presented their testimony and/or exhibits, the defendant
5 has the opportunity to present his side if he chooses to
6 put up any defense. Once we complete all of the testimony,
7 then the lawyers will make their closing arguments, and
8 then I will instruct you or charge you on the law of the
9 case.

10 Prior to all of that, the lawyers will have an
11 opportunity to make an opening statement. Please bear in
12 mind that the opening statements and the closing statement
13 or closing arguments, that is not evidence in the case.
14 That is simply what the lawyers will argue that the
15 evidence shows in their favor. The opening statements is
16 sort of a road map as to what they intend to prove or they
17 intend to show you.

18 As I told you yesterday when we were selecting the
19 jury, you and I have separate functions to perform. My
20 job, I am the judge of the law in the case and my position
21 makes me the judge of the law in the case. If you come
22 into the courtroom with some preconceived idea about what
23 the law is or what it should be and it does not agree with
24 what I tell you, you have to set aside that preconceived
25 idea and accept the law as I give it to you, I charge or I

1 tell or I instruct you what the law is in the case.

2 My other main function in the trial of the case is
3 to rule on the admissibility of evidence. The lawyers on
4 both side have to ask questions that conform with our rules
5 of evidence. And 99 percent of the time they do, perhaps a
6 hundred percent of the time. Every now and then you may
7 hear an objection. But once the testimony is admitted into
8 the trial of a case, then you twelve people, acting
9 collectively as one, you are the most important judge in
10 the case. You are the judges of the facts of the case. So
11 as I told you when we selected a jury, you use your common
12 sense to judge the credibility or the believability of the
13 witnesses and when you determine what the true facts are in
14 the case, you apply it to the law as I give it to you and
15 you'll be in a position to determine whether or not the
16 State has proven their case beyond a reasonable doubt to
17 you.

18 So that's sort of your function and my function.

19 I try to run an efficient courtroom. I try to
20 start on time. I try to keep the lawyers moving, but on
21 the upside of the coin, I'm not trying to run a race up
22 here, so if at any time during the trial of the case you
23 become uncomfortable, you need a bathroom break, you need
24 to just go stretch your legs or get something to drink or
25 whatever, just get uncomfortable, raise your hand and I

1 will make sure any needs you have are met. We will go
2 until about 11:30, take a morning break and then come back
3 and probably go until about one o'clock and we'll see where
4 we are at that time. I will either let y'all walk down to
5 the Bowery for lunch or we can order in just depending on
6 where we are with the trial of the case. But we'll make
7 that decision around the first break.

8 I will instruct you every time that we take a break
9 or break for the evening to please do not discuss the case,
10 do not start any type of deliberations. It is improper to
11 do that until all of the evidence has been introduced in
12 the trial, the lawyers have made their final arguments and
13 I've instructed you on the law.

14 I will also ask that when he take our first break
15 that the twelve of you, my regular jurors, if you would
16 select a foreperson from the twelve of you to serve as the
17 spokesperson for the jury. That's the person if y'all have
18 any problems or any questions, they will present it to me.
19 You head up the deliberations at the conclusion of the
20 trial. So please try to select somebody for that job.

21 I think you'll find this to be interesting. This
22 is not court TV. This is the real world. I've been doing
23 this a long time, as I told you yesterday, over
24 thirty-eight years. And you know, we look around the world
25 today and we see all the craziness that's going on, but in

1 our country, if you are accused of committing a crime, you
2 have the right to come into this courtroom before twelve
3 citizens from the community. And y'all are asked to decide
4 what the facts are and apply the law. It's not some
5 dictator, it's not some firing squad, it's not some
6 revolutionary army like you see so much in other parts of
7 the world.

8 This is the best system of justice that's ever been
9 devised and you're a part of it today. So I ask that you
10 pay close attention. I think you'll enjoy your experience
11 and I look forward to working with you.

12 Any objections to my opening remarks by the State?

13 MR. MILLER: None, Your Honor.

14 THE COURT: By the defendant?

15 MR. THOMPSON: Nothing from the defense, Your
16 Honor.

17 THE COURT: Thank you. Mr. Miller?

18 MR. MILLER: Thank you, may it please the Court?

19 THE COURT: Yes, sir.

20 OPENING STATEMENTS

21 MR. MILLER: Mr. Thompson, ladies and gentlemen of
22 the jury, we're here today on an important case. It's
23 important to the State; it's important to the victim who is
24 coming here now; it's important to Mr. Thompson and his
25 client, Mr. Pearson. And I point that out to you to tell

1 you this: The judge made mention to the TV trials. This
2 isn't CSI. This isn't NCIS. This isn't Law and Order.
3 But it's also not going to drag on for days and days and
4 days. You are going to hear testimony from witnesses put
5 up by the State who are going to tell you why Officer
6 Spires suspected something was going on, what he did to
7 follow up on those suspicions; how it was discovered that a
8 burglary had occurred at [REDACTED] and what the officer did
9 following up on that information to make arrests in the
10 case.

11 And one of the people that you're going to hear
12 from is Mr. Pearson's son. So let's get this out of the
13 way for the sake of everybody's clarity: The defendant is
14 William Ralph Pearson. We will refer to him as the
15 defendant. We will refer to him as Ralph Pearson, we may
16 refer to him as the father. When we say any of those three
17 things, we're talking about the defendant sitting over
18 there. Okay?

19 His son is William James Pearson. So he may be
20 referred to by someone as James, the son, Jimmy or Junior,
21 but they're the only two parties in this thing. They're
22 the only two people that were accused of breaking into that
23 house.

24 And you're going to probably hear from Mr. Thompson
25 a good bit about the fact that on the day of the arrest,

1 James Pearson lied to the police. James Pearson tried to
2 tell Officer Spires that all of the stuff that Officer
3 Spires had caught him and his father with came from some
4 place besides [REDACTED] [REDACTED]. Well, that was a lie. Ralph
5 Pearson, Mr. Pearson, the father, is actually the person
6 who told the police where the break-in had occurred. He
7 showed it to them. He took them to where the burglary
8 happened.

9 Ladies and gentlemen, the only one way he knew
10 where the burglary happened, he was there when it happened.
11 You'll hear about that. I just don't want there to be any
12 confusion. You're going to hear that James Pearson, the
13 son, pled guilty to his burglary charge and he's going to
14 be up here testifying for the State today because when he
15 looked at all of the evidence that the State had, he knew
16 he couldn't lie anymore. So he pled guilty and he's here
17 today.

18 This is going to be a quick trial. Quick is a
19 relative term. Quick for attorneys -- a quick trial for an
20 attorney can seem like a long trial for a jury. I
21 understand that. We're going to try to be as efficient as
22 we can with you. In addition to being the judge of the
23 law, Judge Early is also pretty strict on us about being as
24 efficient as we possibly can. But we will do our best to
25 be as efficient as we possibly can.

1 But yesterday, we went through a process that took
2 almost two hours. We went through the process where y'all
3 each stood up and you told us what you did, whether or not
4 you were married. You told us where you worked, if your
5 husband or wife worked. Then after that, the judge went
6 through a long list of questions. And those were all to
7 qualify you as jurors. And you were all obviously
8 qualified because you're here today. Then the judge went
9 through the series of questions about this incident and
10 there's a reason that the judge does that. That is done to
11 make sure that you can be fair jurors. That is to make
12 sure that you don't come into this jury box with
13 preconceived notions about this case.

14 But, ladies and gentlemen, I want you to consider
15 the one that the judge didn't ask you yesterday. The judge
16 did not ask, is there anybody in the jury panel who can use
17 common sense because common sense is something that you're
18 supposed to bring into this jury box. Common sense and
19 rationality is something that you were supposed to use when
20 you perform your duties as the judges of the facts. We
21 want our jurors to have common sense. And, ladies and
22 gentlemen, I submit to you that at the end of the trial,
23 you're going to be able to take the evidence that you have
24 heard and you're going to be able to go back into that jury
25 room and you are going to apply your good common sense to

1 everything that you've seen and everything that you've
2 heard and you're going to be able to find William Pearson,
3 William Ralph Pearson, Mr. Pearson, guilty of burglary in
4 the first-degree because when you apply the facts that you
5 know beyond a reasonable doubt -- when you apply those
6 facts to the law that the judge is going to give to you,
7 there's only going to be one conclusion and that conclusion
8 is going to be guilty.

9 I thank you for your time. Please pay attention to
10 Mr. Thompson. Thank you.

11 MR. THOMPSON: Your Honor, may it please the Court?

12 THE COURT: Yes, sir.

13 MR. THOMPSON: Mr. Miller, Mr. Grimes.

14 MR. MILLER: Yes, sir.

15 MR. THOMPSON: Don't get nervous because I'm going
16 to be real brief. Good morning. I'm Barry Thompson. I
17 represent Ralph -- I like what he said during this trial,
18 I'm going to probably refer to the daddy as Ralph and the
19 son as James. That way we won't have any confusion from
20 anybody. Ralph is my client who's -- he's the defendant
21 here. Mr. Andy Smith is with the public defender's office.
22 He's here with me, helping me today.

23 This case is about a burglary. Now, there's no
24 doubt that Mr. James committed this burglary. He's already
25 pleaded guilty to that. You are going to -- this is an

1 adversarial system. What we have, is we have two different
2 sides, different lawyers that kind of put together two
3 different viewpoints and y'all decide what the truth is and
4 whether somebody's guilty or not. Mr. Miller and
5 Mr. Grimes are very fine lawyers. I'm sure they'll do a
6 wonderful job. Their job is to come here and tell you all
7 the reasons why Ralph's guilty. As you might surmise, at
8 some point in this trial, I'm going to come up and I'm
9 going to give you reasons why he's not and why I think he
10 probably committed a crime, but that he probably didn't
11 commit the crime that we're talking about here today,
12 probably didn't commit the crime of burglary and why you
13 should find him not guilty of burglary.

14 But more than anything else, this morning -- I'll
15 get to that later. This morning in my opening statement,
16 what I really wanted to ask you to do is this: In our
17 adversarial system, one side has to go first and it's the
18 prosecution. The prosecution's going to go first and
19 they're going to present their case. And all I want to ask
20 you at this point in time is just to be able to keep an
21 open mind and give us the fairness of not making up your
22 mind about the case until you've heard both sides. I know
23 you will and I appreciate your time. Thank you.

24 **THE COURT:** Mr. Miller, you may call your first
25 case -- witness.

1 **MR. GRIMES:** State calls Officer Spires.

2 DETROIT SPIRES,

3 having been duly sworn, testified as follows:

4 **THE CLERK:** Have a seat in the witness box. State
5 your full name for the Court, spelling your last.

6 **THE WITNESS:** I'm Corporal Detroit Spires, Spires.

7 **DIRECT EXAMINATION**

8 **BY MR. GRIMES:**

9 Q Officer Spires, by way of introduction, can you
10 tell us who you work for?

11 A I work for the New Ellenton Police Department.

12 Q How long have you worked for New Ellenton Police
13 Department?

14 A Just short of five years.

15 Q Just short of five years. When you work for a law
16 enforcement agency -- well, did you go to criminal justice
17 academy?

18 A I did.

19 Q Okay. And is that law-enforcement-specific
20 training?

21 A Yes, sir.

22 Q Is it required for the position that you have now?

23 A Yes, sir.

24 Q Okay. And were you working with the New Ellenton
25 Police Department in May of this year?

Detroit Spires - Direct Examination by Mr. Grimes

- 1 A Yes, sir.
- 2 Q Okay. Specifically on -- well, do you know William
3 James Pearson?
- 4 A Yes, sir.
- 5 Q Do you know where he lives?
- 6 A Yes, sir.
- 7 Q And where does he live?
- 8 A He lives at [REDACTED] Avenue.
- 9 Q Henry Avenue?
- 10 A Yes, sir.
- 11 Q And on May 28th, 2012, did you have an opportunity
12 to go to Henry Street, Henry Avenue?
- 13 A I did.
- 14 Q Okay. And what was that in relation to?
- 15 A I went there on a disturbance call earlier that
16 day.
- 17 Q And did you see James Pearson there?
- 18 A I did.
- 19 Q I'm going to refer to him as James Pearson.
20 Actually -- hopefully that's not going to confuse you?
- 21 A Not at all.
- 22 Q Okay. Did you see James Pearson there at Henry
23 Avenue?
- 24 A I did.
- 25 Q Okay. And what was James Pearson doing there when

Detroit Spires - Direct Examination by Mr. Grimes

1 you were there?

2 A The reason I was there was for a disturbance.

3 We -- James and the neighbor across the street -- I spoke
4 to James and he was near his vehicle or the vehicle that
5 was in the yard, which was a Mercury Cougar. I spoke to
6 him about the disturbance and we cleared that call up.

7 Q Was he working on that vehicle?

8 A He was inside of it doing something inside of it.

9 Q Did you have an opportunity to see how that vehicle
10 looked at the time?

11 A I did.

12 Q Okay. Do you know what time of day that was?

13 A I believe it was around midday, twelve.

14 Q Were you there a long time?

15 A We were there for approximately thirty minutes.

16 Q And what did you do when you left that residence?

17 A Went back on patrol in the city limits of New
18 Ellenton.

19 Q Did you have an opportunity to notice that vehicle
20 later in the day?

21 A I did.

22 Q About how much longer -- about how long after you
23 were at the house did you notice the vehicle?

24 A It was no more than forty-five minutes later I
25 noticed the vehicle.

Detroit Spires - Direct Examination by Mr. Grimes

1 Q Did you notice anything different about the vehicle
2 at that time?

3 A I did. The vehicle had a lot of items inside of
4 it. The trunk was propped open with an item hanging out
5 the back of it when I passed the vehicle as it came forward
6 me on Old Whiskey Road.

7 Q Did you have an opportunity to notice what type of
8 stuff was in the vehicle?

9 A Nothing that I could specifically detail out. It's
10 just that the vehicle was loaded down. I noticed that
11 James was sitting in the center of the front of the vehicle
12 and Mr. Ralph Pearson was driving the vehicle.

13 Q When you say in the center of the front, does that
14 vehicle have a bench seat in the front?

15 A No, sir. It has a center console.

16 Q So he was sitting on the center console?

17 A Yes, sir.

18 Q Who was driving the vehicle?

19 A The defendant.

20 Q Ralph Pearson?

21 A Yes, sir.

22 Q Okay. Did this vehicle pique your interest?

23 A Yes, sir, it did because the vehicle was empty the
24 first time I saw it and now it was loaded down full of
25 stuff. So I turned around and followed the vehicle as it

Detroit Spires - Direct Examination by Mr. Grimes

1 proceeded back toward the residence on Henry Avenue.

2 Q You mentioned that James Pearson lives on Henry
3 Avenue. Does Ralph Pearson live there?

4 A Yes, sir.

5 Q Who else lives there?

6 A I believe Mr. Pearson's significant other and her
7 children. James Pearson's significant other.

8 Q And this vehicle that you were following, did it
9 actually pull into the residence at Henry Avenue?

10 A It did.

11 Q Okay. Did you pull into the residence on Henry
12 Avenue?

13 A I did.

14 Q Who did you talk to when you got there?

15 A When I -- the vehicle actually drove in behind the
16 residence and parked, which was another odd thing to me.
17 When I exited my vehicle, Mr. James Pearson's significant
18 other came out of the residence and I asked her what was in
19 the vehicle and she stated to me that she didn't know and
20 we both proceeded around to the back of the residence when
21 I observed Mr. Ralph Pearson pulling a Chargoal grill
22 smoker out of the trunk of the vehicle and Mr. James
23 Pearson was just now attempting to get out of the vehicle.

24 Q So when you noticed the vehicle, Ralph Pearson was
25 pulling a grill out of it. James wasn't out of the vehicle

Detroit Spires - Direct Examination by Mr. Grimes

1 yet?

2 A James hadn't made it out of the vehicle yet.

3 Q Did you ask where the charcoal grill came from?

4 A I asked both Pearsons where the items came from.

5 Mr. Ralph Pearson didn't really say much. He didn't say
6 anything at all. Mr. James Pearson kind of stammered and
7 stuttered and advised me that it came from a guy.

8 Q Ralph Pearson didn't mention anything about --

9 A No, sir.

10 Q What did he do when you asked?

11 A He just pretty much looked at his son.

12 Q Did that answer from James satisfy your curiosity?

13 A No, sir, it didn't. And the look of shock on both
14 of them's face kind of was another red flag.

15 Q How did you follow up on that with James?

16 A I asked James where it came from and he said, Well,
17 I bought it from a guy. And I asked him what's the guy's
18 name. Well, I just know him as and I can't remember at
19 this time the name he gave me. It was just a first name.
20 I said, Well does he live here? Where does he live at.
21 And he kind of thought for a second and finally gave me,
22 Well, a house around the corner.

23 So I said okay. I asked him, Well, is the
24 gentleman home today. Oh, well, he's not home today. And
25 I said, Well, when did you buy the stuff. He said, Well,

Detroit Spires - Direct Examination by Mr. Grimes

1 you know I buy this stuff to sell at the flea market and I
2 bought it about a month ago.

3 I said so it took you a month to go pick up stuff
4 that you bought and this gentleman is not home. And at
5 that time I contacted dispatch and asked them to have
6 another unit en route to assist me with it and that's when
7 Chief Rushton from Jackson responded that he would be en
8 route to my location.

9 Q What agency is Chief Rushton with?

10 A He works for the Jackson Police Department.

11 Q And did he actually respond to that location?

12 A He did.

13 Q What did you do when he got there?

14 A When Chief Rushton arrived, I asked Mr. James
15 Pearson to take me around to the residence that he was
16 referring to while Chief Rushton secured the scene and kept
17 an eye on Mr. Ralph Pearson. We went around to a residence
18 at [REDACTED] Avenue.

19 Q When you say we, was this --

20 A Myself and Mr. James Pearson --

21 Q Okay.

22 A -- went around to the residence at [REDACTED]
23 Avenue.

24 Q And what happened when you got there?

25 A When we got there, Mr. Pearson advised me that's

Detroit Spires - Direct Examination by Mr. Grimes

1 where I got the stuff from. I looked and I'm familiar with
2 this residence because I've been there on several calls
3 before. The residence -- the lady that owns the residence
4 was sitting on the front porch and Mr. Pearson stayed in
5 the back seat of my car while I went and spoke with her. I
6 asked her if she was familiar with Mr. Pearson. She said
7 she knew him, but she had not sold him anything nor had he
8 taken anything from her house that day. She had been at
9 home all day.

10 Q Did you ask Mr. Pearson about that response from
11 her?

12 A I didn't at that time.

13 Q Where was Ralph Pearson during this?

14 A He was with Chief Rushton back at the Henry Avenue
15 residence.

16 Q Did you get a call from Chief Rushton?

17 A I did once -- once I returned back, Chief Rushton
18 decided that he would take the defendant to see if they
19 could locate the house, the same house -- he took him to
20 the same house. A short time later when I was standing by
21 the Henry Avenue residence, Chief Rushton called me on the
22 phone and told me I needed to come to [REDACTED] Avenue
23 because he believed they had a break in.

24 Q Did you go to Sabra Avenue?

25 A I did.

Detroit Spires - Direct Examination by Mr. Grimes

- 1 Q Okay. And what was that address again?
- 2 A [REDACTED] Avenue.
- 3 Q [REDACTED] Avenue. Is Sabra Avenue in New Ellenton?
- 4 A Yes, sir.
- 5 Q And that's in Aiken County?
- 6 A Yes, sir.
- 7 Q Who was at the house when you got there?
- 8 A When I arrived, Chief Rushton was standing by his
- 9 patrol vehicle with Mr. Ralph Pearson.
- 10 Q Ralph Pearson was in the patrol?
- 11 A I believe he was standing out in front of Chief
- 12 Rushton's bumper. Chief Rushton had told him to stand by
- 13 the bumper of the truck.
- 14 Q He was outside of the residence?
- 15 A Yes, sir.
- 16 Q Okay. And what did you notice about the residence
- 17 at this time?
- 18 A As soon as I arrived, which at that time, I placed
- 19 Mr. James Pearson in detention in the back of my vehicle.
- 20 So when we both arrived, I exited the vehicle and I
- 21 observed a window to be broken out of the residence.
- 22 Q Where was the window that was broken out of the
- 23 residence?
- 24 A It was on the right side of the residence. If
- 25 you're standing in front of the residence, it was on the

Detroit Spires - Direct Examination by Mr. Grimes

1 right side of the front door.

2 Q Is it fairly close to the front door?

3 A Yes, sir.

4 Q Did you notice anything else around the window?

5 A I noticed there was large pieces of glass that were
6 on the ground outside of the window. There was some shards
7 of glass on the inside. There was also a hammer laying on
8 the ground.

9 Q Did you find out who owned -- or who was living in
10 that residence?

11 A I did. The residence had a sign that was For Rent.
12 I contacted that number and they advised me that the
13 current tenants were in the process of getting ready to
14 leave, but they gave me the number of the current tenants,
15 which was a Mr. Hinds. I contacted Mr. Hinds and advised
16 him of the situation. I did ask him on the phone if he
17 knew James Pearson or Ralph Pearson and he told me he had
18 no idea who they were and that nobody should have been
19 inside his residence.

20 Q Did he indicate to you that anybody had permission
21 to be in the residence?

22 A He advised me that nobody had permission to be
23 inside that residence. He was in Florida at this time.

24 Q Did he indicate to you that anybody had permission
25 to take anything from the residence?

Detroit Spires - Direct Examination by Mr. Grimes

1 A No, sir.

2 Q Okay. And what did you do at that point?

3 A At that point, I obtained some photographs of the
4 area. I contacted the actual landlord back and advised him
5 that they would need to come out and secure the window
6 because Mr. Hinds said he couldn't make it back from
7 Florida by that evening to make sure the residence was
8 secure. Chief Rushton placed Mr. Ralph Pearson back in his
9 patrol vehicle. We went back to the address at [REDACTED] [REDACTED]
10 Avenue and gave an escort for Mr. James Pearson's
11 significant other to escort the vehicle up to the police
12 department so we could remove the items that I believed to
13 be stolen.

14 Q I'm going to show you some pictures -- one moment.
15 (WHEREUPON State's Exhibits 1 through 7 was marked
16 for identification.)

17 BY MR. GRIMES:

18 Q Let me show you what's been marked as State's
19 Exhibit 1 for identification purposes and ask you if you're
20 familiar with that picture?

21 A I am.

22 Q And what is that a picture of?

23 A That is a picture of inside the Mercury Cougar, the
24 passenger side of that vehicle. And I took this photo.

25 Q Okay. And does it fairly and accurately depict

Detroit Spires - Direct Examination by Mr. Grimes

1 what the inside of the vehicle looked like that day?

2 A Yes, sir.

3 Q Okay.

4 MR. GRIMES: At this point, the State would move
5 the introduce State's Exhibit 1 into evidence.

6 MR. THOMPSON: No objection.

7 (WHEREUPON State's Exhibit 1 was entered into
8 evidence.)

9 BY MR. GRIMES:

10 Q I'm going to show you what's been marked previously
11 for identification purposes as State's Exhibit 2 and
12 State's Exhibit 3. If you could start with State's Exhibit
13 2 and tell us what's in that picture.

14 A This is going to be the window of the residence at
15 [REDACTED] Avenue that was broken out.

16 Q Did you take that picture?

17 A I took this photo as well.

18 Q Okay. And does it fairly and accurately depict
19 what the window looked like that day?

20 A Yes, sir, it does.

21 Q And State's Exhibit 3, could you tell us what's in
22 State's Exhibit 3?

23 A In this picture, this is Mr. Ralph Pearson's hand
24 that had a laceration that was very thin and what I
25 observed it to be was from the glass of the residence.

Detroit Spires - Direct Examination by Mr. Grimes

1 Q Does it fairly and accurately depict Mr. Ralph
2 Pearson's hand as it appeared that day?

3 A Yes, sir.

4 Q I'm going to show you State's Exhibit 4, which was
5 previously marked for identification purposes. What is
6 that a picture of?

7 A That is a picture of the vehicle as it looked when
8 I walked around from the corner of the residence to go
9 behind the residence to check the vehicle the first time.

10 Q And did you take that picture?

11 A I did.

12 Q Does it fairly and accurately depict the way it
13 looked that day?

14 A Yes, sir.

15 Q State's Exhibit 5 -- what's been marked as State's
16 Exhibit 5, did you take that picture?

17 A I did. This is going to be a picture of the grill
18 smoker that was removed from the trunk and as it was placed
19 by Mr. Ralph Pearson on the back porch.

20 Q Does it fairly and accurately depict the way that
21 grill was placed that day?

22 A Yes, sir.

23 Q State's Exhibit -- what's been marked as State's
24 Exhibit 6?

25 A I took this photo as well. This is a picture of

Detroit Spires - Direct Examination by Mr. Grimes

1 the rear of the vehicle from the rear window that was
2 already broken out with a lot of items in the backseat.

3 Q Is that a fair and accurate representation of that?

4 A Yes, sir, it is.

5 Q And State's Exhibit 7?

6 A This is going to be a map of the area, including
7 the defendant's residence as well as the residence where
8 the break in occurred.

9 Q Is that a fair and accurate representation of where
10 that part of New Ellenton looks?

11 A Yes, sir.

12 MR. GRIMES: Your Honor, at this time, the State
13 would move to introduce into evidence State's Exhibit 2
14 through 7.

15 MR. THOMPSON: Without objection.

16 (WHEREUPON State's Exhibit No. 2 through State's
17 Exhibit No. 7 were introduced into evidence.)

18 BY MR. GRIMES:

19 Q You mentioned a cut on Mr. Ralph Pearson's hand.
20 When did you notice there was a cut on his hand?

21 A When Mr. Pearson was removed from Chief Rushton's
22 patrol vehicle and secured with handcuffs I observed the
23 cuts on his hand. But prior to that, I had also observed
24 blood on his shirt when I spoke with him the first time
25 when I arrived at Henry Avenue.

Detroit Spires - Direct Examination by Mr. Grimes

1 Q I'm going to show you again State's Exhibit 4 and
2 State's Exhibit 5. Which residence is that?

3 A This is going to be the Henry Avenue residence.

4 Q Okay. Is that where James and Ralph Pearson live?

5 A Yes, sir.

6 Q Okay.

7 **MR. GRIMES:** Your Honor, at this time, I'd move to
8 publish State's Exhibit 1 through 7 to the jury. We would
9 like to do this on this projector.

10 **THE COURT:** Okay.

11 (WHEREUPON the solicitor's office personnel was
12 setting up a projector to use.)

13 **MR. GRIMES:** Your Honor, we're going to ask that
14 Officer Spires get up and come down and point to some of
15 these pictures.

16 (WHEREUPON the defendant left the witness box to
17 publish the exhibits to the jury.)

18 **BY MR. GRIMES:**

19 Q Officer, this is State's Exhibit 7. What is this a
20 depiction of?

21 A This is actually a view of the city of New
22 Ellenton. This is actually going to be the defendant's
23 residence right here.

24 Q And is that on Henry Street?

25 A That is on Henry Street. Your incident location

Detroit Spires - Direct Examination by Mr. Grimes

1 where the actual break in occurred is going to be right
2 here.

3 Q You have any estimate of about how far this is? I
4 know this is blown-up picture. How long would it take to
5 drive from one area to the other?

6 A It takes approximately two minutes at the most.
7 Not even that.

8 Q When you noticed the defendant's vehicle, where
9 were you?

10 A I was currently working on Old Whiskey Road. The
11 defendants actually passed me traveling southbound toward
12 Risher Avenue. I observed the vehicle drive past me. I
13 saw both defendants inside the vehicle as well as the
14 vehicle loaded down. I turned around at this residence
15 right here and I followed the vehicle up to Risher Avenue
16 to James Street and then as it turned on Henry Street, I
17 watched it pull in behind the residence there on Henry
18 Street.

19 Q Okay. I'm going to show you State's Exhibit 1. I
20 know you described it. This was the defendant's vehicle?
21 This is the vehicle the way you saw it?

22 A It is. When I arrived, everything was exactly in
23 that place. There was nowhere for anybody to sit in the
24 front passenger seat as it was loaded down.

25 Q Is that the console in the middle that you were

Detroit Spires - Direct Examination by Mr. Grimes

1 talking about?

2 A That is, yes, sir.

3 Q And is that where James Pearson was sitting?

4 A Right. He was sitting just about where your
5 armrest would be.

6 Q And are those the items that were in the vehicle?

7 A Yes, sir.

8 Q No. 4. Is that --

9 A This is how it looked when I walked around the
10 corner of the residence with Mr. James Pearson's
11 significant other. That's exactly how the vehicle was
12 parked and that's what I observed when I got around behind
13 the residence.

14 Q And that Mercury Cougar is the vehicle that we're
15 talking about?

16 A Yes, sir.

17 Q All right. No. 6, please.

18 (WHEREUPON there was a pause in the proceedings.)

19 BY MR. GRIMES:

20 Q Officer Spires, the court reporter is actually to
21 your back. So if you could speak up a little bit to make
22 it a little easier for her to hear.

23 A Sorry.

24 Q What's in State's Exhibit 6, this picture?

25 A This is going to be the passenger side, rear window

Detroit Spires - Direct Examination by Mr. Grimes

1 that had been broken out, like I said, previously. It just
2 has a bunch of items that completely took up the entire
3 backseat.

4 Q What are we looking at there that's blue?

5 A That was actually a blowup mattress and there's
6 some various other -- I believe compressors and things,
7 vehicle parts that were below it, including a jack.

8 Q Was the backseat filled with stuff?

9 A Yes, sir, it was.

10 Q And No. 5, please. Is that a picture of the
11 Charcoal grill you were talking about earlier?

12 A Yes, sir, it is. This grill was actually being
13 removed from the trunk of the vehicle when Mr. Ralph
14 Pearson was placing the grill -- he placed it up there just
15 in that manner. That's exactly how it looked.

16 Q So Ralph Pearson is the person that placed that
17 Charcoal grill on the deck?

18 A Yes, sir.

19 Q And that's the deck at the Henry Street -- Henry
20 Avenue home?

21 A Yes, sir.

22 Q And did you see him do that?

23 A Yes, sir.

24 Q And that grill came from the trunk of that vehicle?

25 A Yes, sir. The trunk was actually propped up by the

Detroit Spires - Direct Examination by Mr. Grimes

1 grill.

2 Q So the grill didn't fit in the trunk?

3 A No, sir.

4 Q Okay. Did you notice that before the vehicle
5 stopped?

6 A I did.

7 Q State's Exhibit No. 2, please.

8 A This is the window at the Sabra Avenue residence
9 that was broken out. There was a few shards on the inside
10 near there were several large shards of glass laying on the
11 ground just below this window. There is still some glass
12 left in the window itself.

13 Q Is there a hammer near that window?

14 A There was.

15 Q And I think you mentioned earlier about how far is
16 this window from the front door of that residence?

17 A If you walk up approximately two feet, it's just to
18 the right of the window.

19 Q And State's Exhibit 3, whose hands are those?

20 A That is Mr. Ralph Pearson's right hand. There's a
21 laceration, like I said, right there. It's a very small,
22 thin laceration and there was also another laceration on
23 his left hand.

24 Q And that was on his hand the day he was arrested?

25 A Yes, sir.

Detroit Spires - Cross-Examination by Mr. Thompson

1 Q Thank you. Please have a seat back up on the
2 witness stand.

3 (WHEREUPON the witness returned to the witness
4 box.)

5 BY MR. GRIMES:

6 Q Officer Spires, please answer any questions defense
7 counsel has for you.

8 A Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. THOMPSON:

11 Q Good morning, Officer Spires. Very briefly. Did
12 you take any fingerprints at all on any of this merchandise
13 in the car?

14 A No, sir, no fingerprints were taken. The day that
15 this incident occurred, we had a very strong rain. As I
16 was actually speaking with both defendants at the Henry
17 Avenue residence, and pretty much everything got rained on.

18 Q Okay. Did you take any fingerprints inside the
19 house?

20 A No, sir.

21 Q It was -- the only cuts on Mr. Ralph's body were on
22 his hands right?

23 A Yes, sir.

24 Q Okay. And he had blood on his shirt?

25 A Yes, sir.

Detroit Spires - Cross-Examination by Mr. Thompson

1 Q And it was really apparent to you that he'd been
2 cut?

3 A Yes, sir.

4 Q First time you saw him, you looked at him and
5 thought, He's been cut.

6 A Yes, sir.

7 Q Right.

8 MR. THOMPSON: Beg the Court's indulgence.

9 (WHEREUPON there was a pause in the proceedings.)

10 MR. THOMPSON: No further questions.

11 THE COURT: Redirect, if any.

12 MR. GRIMES: None, Your Honor.

13 THE COURT: You may step down.

14 Next witness.

15 MR. MILLER: Your Honor, the State calls William
16 James Pearson.

17 WILLIAM JAMES PEARSON,

18 having been duly sworn, testified as follows:

19 THE CLERK: Have a seat in the witness box, state
20 your full name for the Court, spelling your last.

21 THE WITNESS: Williams James Pearson.

22 THE COURT: Speak up Mr. Pearson.

23 THE WITNESS: William James Pearson.

24 ///

25 ///

William James Pearson - Direct Examination by Mr. Miller

DIRECT EXAMINATION

1
2 BY MR. MILLER:

3 Q Mr. Pearson, I am going to ask you to speak up
4 because I understand this is an uncomfortable time, but the
5 court reporter needs to be able to hear you, the jurors
6 need to hear you.

7 Mr. Pearson, were you involved in the burglary of
8 the residence at [REDACTED] Avenue in New Ellenton, South
9 Carolina that we're here about today?

10 A Yes, sir.

11 Q Who was involved with that burglary with you, if
12 anyone?

13 A My father.

14 Q And what was your involvement in the burglary?
15 What did you do?

16 A I would put stuff from the porch, take stuff from
17 the porch to the car.

18 Q Okay. How did you get to [REDACTED] Avenue that
19 day?

20 A I was with my dad.

21 Q Were you in a plane, helicopter, car?

22 A Car.

23 Q Okay. What car was it?

24 A A Mercury.

25 Q Let me show you what's been previously entered as

William James Pearson - Direct Examination by Mr. Miller

1 State's Exhibit 4. Do you recognize that vehicle?

2 A Yes, sir.

3 Q Okay. Is that the vehicle that you went to [REDACTED]

4 [REDACTED] Avenue in?

5 A Yes, sir.

6 Q Okay. Who was driving the vehicle?

7 A My dad.

8 Q You don't have a driver's license, do you?

9 A No, sir.

10 Q Okay. Why did you go to that residence in the
11 first place?

12 A We went to look at it. It was for rent.

13 Q Okay. Does your dad or at this time, did your dad
14 live with you?

15 A Yes, sir.

16 Q Over on Henry Avenue?

17 A Yes, sir.

18 Q Okay. So you got to the residence. What did you
19 do whenever you got to the residence?

20 A We just -- we just looked at it, you know, and
21 called --

22 Q Were you looking in the windows or were you just
23 standing outside kind of looking at it from the outside?

24 A We just -- from the front side, we just looked at
25 it through the window.

William James Pearson - Direct Examination by Mr. Miller

1 THE COURT: Speak up, please, sir.

2 By MR. MILLER:

3 Q Okay. So what happened next? You're looking at
4 the window and then what happened? Or looking at the
5 residence and then what happened?

6 A The door was unlocked.

7 Q Which door? The front or the back?

8 A The front door.

9 Q Okay.

10 A My dad went in and there was some stuff right there
11 at the door.

12 Q What kind of stuff was it.

13 A I don't remember. It was just --

14 Q Stuff?

15 A (Witness nodded head.)

16 Q Okay.

17 A Yeah.

18 Q Okay. And so what did you do?

19 A We took the stuff and put it in the car.

20 Q Okay. Was the car parked in front of the house or
21 was the car parked behind the house?

22 A To the side.

23 Q Beside the house?

24 A (Witness nodded head.)

25 Q So you were taking stuff out of the front door?

William James Pearson - Direct Examination by Mr. Miller

1 A (Witness nodded head.)

2 Q Or getting stuff from your father at the front
3 door, taking it to the car?

4 A (Witness nodded head.)

5 Q Okay.

6 A Yes, sir.

7 Q Did you load up all that stuff in the back of the
8 car and in the passenger seat of the car?

9 A Yes, sir.

10 Q I want to show you what's been marked as State's.
11 Exhibit 1. Is that what the front seat of the car,
12 the passenger seat of the car looked like that day?

13 A Yes, sir.

14 Q Okay. I need you to speak up, now. State's
15 Exhibit No. 5, is this the -- did you take that grill and
16 smoker from Sabra?

17 A Yes, sir.

18 Q Okay. And where did you put it in the car?

19 A In the trunk.

20 Q Okay. Was the trunk lid able to close with that in
21 the back of it?

22 A No.

23 THE COURT: Speak up, please.

24 BY MR. MILLER:

25 Q I'm showing you State's Exhibit No. 6. Is this

William James Pearson - Direct Examination by Mr. Miller

- 1 what the backseat of the car looked like that day?
- 2 A Yes, sir.
- 3 Q Now, when you left the Sabra Avenue address, who
- 4 was with you?
- 5 A My dad.
- 6 Q Okay. Were you riding in the car or were you
- 7 driving the car?
- 8 A I was riding.
- 9 Q Where were you sitting?
- 10 A Right where that microwave was at.
- 11 Q Okay. You were sitting in the front seat?
- 12 A Yes, sir.
- 13 Q Between all of this stuff and your dad? Or between
- 14 all this stuff and the window?
- 15 A The window. The right side of the window.
- 16 Q Okay. So you're sitting up on top of all that?
- 17 A Yeah.
- 18 Q Okay. Now, when you first encountered Officer
- 19 Spires, you didn't tell him the truth about where all this
- 20 stuff had come from, did you?
- 21 A No, sir.
- 22 Q And ultimately -- ultimately, Officer Spires found
- 23 out where all this stuff came from, didn't he?
- 24 A Yes.
- 25 Q How did Officer Spires find out where all this

William James Pearson - Direct Examination by Mr. Miller

1 stuff came from?

2 A My dad brought them back to the house.

3 Q At Sabra?

4 A Yes, sir.

5 Q Okay. Now, you've been in this courtroom before,
6 haven't you, sir?

7 A Yes, sir.

8 Q And isn't it true that a month or so ago, you
9 actually pled guilty to this burglary?

10 A Yes, sir.

11 Q And as part of your guilty plea, did you cooperate
12 and provide a statement to the State for use if we needed
13 to against your father?

14 A Yes, sir.

15 Q And at that plea hearing, it wasn't Judge Early, it
16 was another judge, correct?

17 A Right.

18 Q And that judge told you what the penalties for
19 perjury were before you made your statement?

20 A No, sir.

21 Q He told you that you could be charged with perjury
22 if you lied?

23 A Yeah.

24 Q And you were under oath, correct?

25 A Yes, sir.

William James Pearson - Cross-Examination by Mr. Thompson

1 Q Okay. And the facts that you just testified to
2 here today, are the same ones that you stated on the record
3 that day, aren't they?

4 A Yes, sir.

5 Q Mr. Pearson, I know this is difficult. We've been
6 talking about your dad. Who is your father?

7 A William Pearson.

8 Q Is he seated over at the defense table?

9 A Yes, sir.

10 Q Okay. And does he ever go by Ralph Pearson?

11 A No.

12 Q Okay. That's what we've been -- okay. And you go
13 by Jimmy or James Pearson?

14 A James.

15 Q Okay.

16 MR. MILLER: Thank you, Your Honor. No further
17 questions.

18 Please answer any questions Mr. Thompson has.

19 THE COURT: Mr. Thompson?

20 MR. THOMPSON: Beg the Court's indulgence.

21 **CROSS-EXAMINATION**

22 **BY MR. THOMPSON:**

23 Q Okay. Just so we don't confuse anyone, James,
24 you're not in jail right now because of pleading guilty to
25 burglary; correct?

William James Pearson - Cross-Examination by Mr. Thompson

- 1 A Correct.
- 2 Q Okay. What are you in jail for now?
- 3 A Driving under suspension.
- 4 Q Okay.
- 5 A DUI.
- 6 Q Okay. DUS and DUI. Anything else?
- 7 A Possession of a controlled substance.
- 8 Q Okay. And when you were charged, you were charged
- 9 with what related to this burglary? Charged with burglary?
- 10 A Second.
- 11 Q Second.
- 12 A Second degree.
- 13 Q Second degree, nonviolent?
- 14 A Yes, sir.
- 15 Q Okay. And could have gotten how much time?
- 16 A Ten years.
- 17 Q Could have gotten ten years, right?
- 18 A Uh-huh, yes, sir.
- 19 Q And you got a pretty good record when you pleaded
- 20 guilty, right?
- 21 A Yes, sir.
- 22 Q A lot of stuff on your record?
- 23 A Not nothing major.
- 24 Q Other property crimes?
- 25 A No.

William James Pearson - Cross-Examination by Mr. Thompson

- 1 Q No? No fraudulent check charges?
- 2 A Fraudulent check, yes, sir.
- 3 Q Okay. Several DUS charges. Shoplifting?
- 4 A Yeah, shoplifting.
- 5 Q Okay. And criminal domestic violence?
- 6 A Yes, sir.
- 7 Q Okay. Any drug charges?
- 8 A Several possession, simple possession.
- 9 Q Okay. And giving false information to the police?
- 10 A Yes, sir.
- 11 Q Not once, but at least twice?
- 12 A (Witness nodded head.)
- 13 Q So you'd been convicted of lying to the police at
- 14 least twice; correct?
- 15 A Yes, sir.
- 16 Q But you didn't get ten years, right?
- 17 A No. No.
- 18 Q No. Did you get nine years?
- 19 A No, sir.
- 20 Q No. In fact, you didn't get any time, did you?
- 21 You got probation, right?
- 22 A I got five years suspended to probation.
- 23 Q Okay. Got probation, correct?
- 24 A Yes, sir.
- 25 Q And now you're in jail now. When this was first

William James Pearson - Cross-Examination by Mr. Thompson

1 being investigated, did you tell Officer Spires the truth
2 the first time he asked you about --

3 A No, sir.

4 Q -- this thing?

5 A No.

6 Q In fact, tried to take him somewhere else, correct?

7 A Yes, sir.

8 Q At some point in time though, you actually told
9 them that your father didn't have anything to do with it
10 and that would be on an in car video, correct?

11 A Maybe.

12 Q In fact, you told Officer Spires that your father
13 didn't have anything to do with this.

14 A I may have. I may have, yes, sir.

15 Q May have. But when it came time to get this charge
16 dealt with for you, you told them something different,
17 correct?

18 A Yes, sir.

19 Q Now, you've talked to the police about this.
20 You've talked to your father about this, correct?

21 A Yes, sir.

22 Q In fact, you talked to him over the telephone?

23 A Yes, sir.

24 Q Because you got out?

25 A Yeah.

William James Pearson - Cross-Examination by Mr. Thompson

1 Q And while you were on the telephone with him, you
2 told him, Look, I'm going to tell them the truth, I'm going
3 to tell them this is my fault, correct?

4 A (Witness nodded head.)

5 THE COURT: Answer the question.

6 BY MR. THOMPSON:

7 A I don't remember the conversations, I mean...

8 Q So you don't remember talking to him over the
9 phone? You don't remember what you told him on the phone?

10 A I don't remember every conversation. I talked to
11 him a lot.

12 Q Okay. But you wouldn't disagree with me that you
13 might have -- in this big web of God knows how many stories
14 you've told, you wouldn't disagree with me that you might
15 have told him that you were going to say the truth, that he
16 had nothing to do with this, correct?

17 A Correct.

18 Q Okay. One more. You spoke with other inmates at
19 the jail about your charges, right?

20 A No, sir.

21 Q No?

22 A No.

23 Q And -- well, let me ask you a different question.
24 At any point in time, did you talk -- strike that. Do you
25 admit or deny that you told David Rogier that your father

William James Pearson - Redirect Examination by Mr. Miller

1 had nothing to do with this?

2 A I did not.

3 Q Did not?

4 A I don't know David Rogier.

5 Q Okay. Do you admit or deny that you told Jimmy
6 Sikes that your father had nothing to do with this?

7 A I don't know Jimmy Sikes.

8 Q Do you admit or deny that you told --

9 A I deny it.

10 Q Okay.

11 **MR. THOMPSON:** Beg the Court's indulgence.

12 (WHEREUPON there was a pause in the proceedings.)

13 **MR. THOMPSON:** I have no further questions.

14 **THE COURT:** Mr. Miller?

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

16 **REDIRECT EXAMINATION**

17 **BY MR. MILLER:**

18 Q Mr. Pearson, has the State promised you anything
19 relative to these new charges to get you to testify here
20 today?

21 A No, sir.

22 Q Were you promised anything? Coerced, forced? Did
23 somebody force you to testify here today?

24 A No, sir.

25 Q You said in your testimony that you talked to your

William James Pearson - Redirect Examination by Mr. Miller

1 dad a lot?

2 A (Witness nodded head.)

3 Q Is that a fair statement?

4 A Yes, sir.

5 Q When you got out of jail and you talked to your dad
6 the first time on the telephone and after you were out of
7 jail, do you recall telling him that you remember having
8 problems with your significant other, with your wife and
9 that you had had to leave the house?

10 A Yes, sir.

11 Q And at this time you told your dad that you had
12 been forced to use his own debit card to purchase clothing,
13 didn't you?

14 A Yes, sir.

15 Q And what did your dad tell you whenever you told
16 him that?

17 A Don't worry about it.

18 THE COURT: What? Say that again.

19 THE WITNESS: He said don't -- he said that's all
20 right.

21 BY MR. MILLER:

22 Q He told you not to worry about it. You didn't tell
23 your dad in that conversation after you told him, I just
24 had to use your debit card, you didn't tell him, Oh, by the
25 way, I'm testifying for the State against you, did you?

William James Pearson - Redirect Examination by Mr. Miller

1 MR. THOMPSON: Objection.

2 THE COURT: What's the objection.

3 MR. THOMPSON: Object to leading, Your Honor.

4 THE COURT: Sustained. Rephrase your question.

5 That was awful leading.

6 BY MR. MILLER:

7 Q You said you talked to your dad a lot?

8 A Yes, sir.

9 Q Do you still talk to your dad a lot up until now?
10 You can't talk to him while you're in jail, can you?

11 A No, sir.

12 Q They keep you separated from each other?

13 A Yes, sir.

14 Q When you were out, did you talk to him a good bit
15 on the telephone?

16 A Yeah.

17 Q You don't want to be here testifying against your
18 father, do you?

19 A No, sir.

20 Q Have you talked to your grandparents or your
21 girlfriend or anybody else about this?

22 A Not no specifics, no.

23 Q And you didn't want to tell people in the jail that
24 you were testifying against your father, did you?

25 A No, sir.

William James Pearson - Recross-Examination by Mr. Thompson

1 Q What do they call people that testify against their
2 codefendants?

3 A Snitches.

4 Q Snitches. It's not a good thing to be in jail; is
5 it?

6 A No, sir.

7 MR. MILLER: No further questions, Your Honor.

8 THE COURT: You may step down.

9 MR. THOMPSON: Your Honor, may I recross?

10 THE COURT: You know my rules. You need to ask him
11 something?

12 MR. THOMPSON: Just one briefly for --

13 THE COURT: Go ahead.

14 **RECROSS EXAMINATION**

15 **BY MR. THOMPSON:**

16 Q Mr. Miller asked you about whether you'd been
17 promised anything; you're currently, though, facing
18 revocation of your probation; is that correct?

19 A Yes.

20 THE COURT: You may step down.

21 MR. MILLER: Your Honor, may we approach, briefly?

22 (WHEREUPON, there was a bench conference out of the
23 hearing of the jury and the Court Reporter.)

24 THE COURT: Ladies and gentlemen of the jury, we're
25 going to take a morning break just a tad early. I'll tell

William James Pearson - Recross-Examination by Mr. Thompson

1 you exactly why. The next witness has landed in Augusta
2 and she's en route; and I've already fussed at Mr. Miller,
3 but anyway we're doing the best we can. And it may be --
4 we'll just see how it goes.

5 Let's take about a ten minute break and then we'll
6 assess the situation. I don't want y'all to sit in there
7 waiting and doing nothing. Y'all select me a foreperson,
8 then we'll be back and see where we are. Don't discuss the
9 case, don't deliberate.

10 Everybody else remain seated.

11 (WHEREUPON the jury left the courtroom at 11:17
12 a.m.)

13 **THE COURT:** All right. Anything for the record
14 before we break?

15 **MR. MILLER:** Nothing from the State, Your Honor.

16 **MR. THOMPSON:** Nothing from the defense, Your
17 Honor.

18 **THE COURT:** Let me see the two of y'all, or the
19 four of y'all, however many of you there are.

20 We'll stand at ease for about ten or fifteen
21 minutes.

22 (WHEREUPON a recess was observed.)

23 **THE COURT:** Mr. Miller anything for the record
24 before we start?

25 **MR. MILLER:** Nothing from the State, Your Honor.

William James Pearson - Recross-Examination by Mr. Thompson

1 MR. THOMPSON: Nothing from the defense, Your
2 Honor.

3 THE COURT: All right. Bring the jury in, please.

4 MR. MILLER: Mr. Grimes will be handling the next
5 witness, Your Honor.

6 (WHEREUPON the jury entered the courtroom at 11:39
7 a.m.)

8 THE COURT: Congratulations. You were elected
9 unanimously?

10 THE FOREMAN: I volunteered.

11 THE COURT: Quick story. I came out here one day
12 and the person sitting right there after they came out, all
13 frowning. I said what's wrong, ma'am; she said, I went to
14 the bathroom and when I came back they had elected me as
15 foreman.

16 Mr. Miller, you may call your next witness.

17 MR. GRIMES: State calls Sue Beerman.

18 THE COURT: Ms. Beerman. Come right here and place
19 your left hand on the Bible and raise your right, please.

20 Sue Anne Beerman,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box. State
23 your full name for the Court, spelling your last.

24 THE WITNESS: My name is Sue Anne Beerman,
25 B-e-e-r-m-a-n.

Sue Anne Beerman - Direct Examination by Mr. Grimes

DIRECT EXAMINATION

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BY MR. GRIMES:

Q Good morning, Ms. Beerman.

A Good morning.

Q Ms. Beerman, in May of this year, where did you live?

A [REDACTED] Avenue.

Q Is that in New Ellenton?

A Yes.

Q In Aiken, South Carolina?

A Yes.

Q I'm going to show you what's in evidence as State's Exhibit 2. Do you recognize that?

A That is the window on the right side of the house.

Q Okay. On Sabra Avenue?

A Yes.

Q Okay. Ms. Beerman who did you live on Sabra Avenue with?

A John Hinds, H-i-n-d-s, my fiance.

Q And had the two of you lived there long?

A It was a total of two months because he got laid off from his job, so...

Q Where was he working when he was here?

A At Savannah River Site.

Q Okay. And where do you live now?

Sue Anne Beerman - Direct Examination by Mr. Grimes

- 1 A Florida.
- 2 Q Still live with him?
- 3 A Yeah.
- 4 Q What is he doing today?
- 5 A He is working. He's an iron worker. He's working
6 at Sea World.
- 7 Q He's working at Sea World?
- 8 A Yeah.
- 9 Q And were you in Florida earlier this morning?
- 10 A Yes, I was.
- 11 Q Plan on being in Florida later today?
- 12 A Yes, I do.
- 13 Q Okay. On May 28, 2012, were you with Mr. Hinds?
- 14 A Yes, we were in Tampa.
- 15 Q Y'all were in Tampa?
- 16 A Yes.
- 17 Q And were you there temporarily?
- 18 A Just visiting family for the weekend.
- 19 Q All right. At that point you still lived here; is
20 that correct?
- 21 A Yes.
- 22 Q Okay. And did you get a call from -- did y'all get
23 a call from Officer Spires?
- 24 A Yes, we did. Sunday, I believe. And we left
25 Monday morning to get back as quick as we could to identify

Sue Anne Beerman - Direct Examination by Mr. Grimes

1 the items that they had.

2 Q Before we get there, do you recall what the call
3 was about?

4 A They said that the house has been burglarized. She
5 had a for rent sign out, so that's why they called the
6 landlord and then the landlord called us.

7 Q The landlord called you?

8 A And then we got a call from Spires also.

9 Q Okay. And that was in relation to the burglary?

10 A Yeah.

11 Q Do you know Mr. Pearson?

12 A No.

13 Q Ralph Pearson is actually sitting at that table
14 over there. Let me know if you recognize him. Does
15 Mr. Hinds know Mr. Pearson?

16 A No.

17 Q Does he know James Pearson, his son?

18 A No.

19 Q And you don't know James Pearson either?

20 A No.

21 Q Okay. When y'all left that house for the weekend
22 for the trip, did anyone have permission to go in the
23 house?

24 A No.

25 Q Did anyone have permission to take y'all's stuff

Sue Anne Beerman - Direct Examination by Mr. Grimes

1 from inside the house?

2 A No.

3 Q When you got back from the trip, did you meet with
4 Officer Spires?

5 A Yes.

6 Q Where was that?

7 A At the New Ellenton police station.

8 Q And what was at the New Ellenton police station?

9 A We were identifying the items that they had gotten
10 from them and they were all out of our house.

11 Q They were out of the inside of your house?

12 A Yes.

13 Q And do you remember what a few of those things
14 were?

15 A I know they had a grill, a blowup mattress, they --
16 I mean they even stole bath soap, mop, broom. There was
17 some air-conditioning items for his truck that we were
18 going to have installed.

19 Q Whose truck?

20 A John Hinds.

21 Q John Hinds' truck?

22 A Yeah.

23 Q I'm going to ask you if you recognize --

24 MR. GRIMES: I'm not sure if you can even see,
25 Mr. Foreman.

Sue Anne Beerman - Direct Examination by Mr. Grimes

1 **THE WITNESS:** I've never seen that one, but that is
2 the blowup mattress that was John Hinds. That's the grill
3 there.

4 **MR. GRIMES:** Just for the record, this is State's
5 Exhibit 6 I'm pointing to.

6 **BY MR. GRIMES:**

7 **Q** And is this the air mattress that was inside your
8 house?

9 **A** Uh-huh, in the tool box.

10 **Q** And in State's Exhibit 5, do you recognize that
11 Charcoal grill?

12 **A** Uh-huh.

13 **Q** And where did that come from?

14 **A** That was on the front porch.

15 **Q** And y'all were renting this house?

16 **A** Yes.

17 (WHEREUPON there was a pause in the proceedings.)

18 **BY MR. GRIMES:**

19 **Q** Ms. Beerman?

20 **A** Yes.

21 **Q** The window on the side of the house, was that
22 broken when you left for Florida?

23 **A** No, it wasn't.

24 **Q** Please answer any questions defense counsel may
25 have for you.

Sue Anne Beerman - Cross-Examination by Mr. Thompson

1 A Okay.

2 CROSS-EXAMINATION

3 BY MR. THOMPSON:

4 Q Hi, Ms. Beerman?

5 A How you doing?

6 Q Very briefly. You said that y'all were renting
7 that house, correct?

8 A Yes, we were.

9 Q And you actually weren't there when this house was
10 broken into, correct?

11 A No.

12 Q And your fiance wasn't there when the house was
13 broken into either, right?

14 A No.

15 Q Y'all were both in Tampa, Florida?

16 A Uh-huh.

17 Q And so other than what the police had told you of
18 their investigation, you don't have any firsthand knowledge
19 of what actually happened, correct?

20 A No.

21 Q And I think you said the grill was on the front
22 porch, right?

23 A Yes.

24 Q Okay. Thank you. I have no further questions.

25 **THE COURT:** Anything on redirect?

1 **MR. GRIMES:** Nothing, Your Honor.

2 **THE COURT:** All right. Ma'am, you may step down.
3 Thank you for coming and making the effort. I hope you get
4 home safely.

5 **THE WITNESS:** Thank you.

6 **MR. MILLER:** Your Honor, we would ask Ms. Beerman
7 be released from her subpoena if there's no objection.

8 **MR. THOMPSON:** No objection.

9 **THE COURT:** All right. Next witness, please.

10 (WHEREUPON State's Exhibit No. 8 was marked for
11 identification.)

12 **MR. MILLER:** Your Honor, at this time, the State
13 would move to introduce what's been previously -- it has
14 not been previously marked, what would be marked as State's
15 Exhibit No. 8 for identification purposes. That is a
16 stipulation that we have agreed to with defense counsel and
17 the State would move to publish that to the jury upon its
18 entry.

19 **MR. THOMPSON:** No objection, Your Honor.

20 **THE COURT:** All right. Mr. Foreman, ladies and
21 gentlemen, a stipulation is where the lawyers are able to
22 agree that these facts are not items in dispute. They are,
23 in fact, the truth; so therefore, no testimony will be
24 necessary. So accept the stipulation as truthful facts.

25 (WHEREUPON State's Exhibit No. 8 was entered into

1 evidence.)

2 **MR. MILLER:** Your Honor, in regards to State of
3 South Carolina versus William Ralph Pearson, Indictment No.
4 2012-GS-02-01518, the State and the defense stipulate that
5 the defendant, William Ralph Pearson, has prior convictions
6 for burglary on September 12th of 2005 and July 23rd of
7 2009. Done in Aiken, South Carolina and dated October 16th
8 of 2012.

9 **THE COURT:** Thank you.

10 **MR. MILLER:** Thank you, Your Honor.

11 **THE COURT:** Anything else? Next witness, please.

12 **MR. MILLER:** Your Honor, the State rests.

13 **THE COURT:** Thank you.

14 Ladies and gentlemen, that concludes the State's
15 evidence.

16 Mr. Thompson, may I see you over here, please.

17 (WHEREUPON, there was a bench conference out of the
18 hearing of the jury and the Court Reporter.)

19 **THE COURT:** Mr. Foreman, ladies and gentlemen,
20 normally at this time at the conclusion of the State's
21 case, we have to take a break and I have to consider
22 certain matters of law. The lawyers have agreed that to
23 keep y'all from having to wait around, we're going to go
24 ahead and take one defense witness and then we're going to
25 break for lunch and --

1 How about call down to the Bowery and tell them I'm
2 sending 14 down there and to set up that back room.

3 Y'all want to eat at the bowery? You may want to
4 eat somewhere else.

5 **A JUROR:** That's fine.

6 **THE COURT:** They've got a special on fruit this
7 afternoon.

8 They're going to leave here in the about 15 or 20
9 minutes.

10 That suit? Mr. Foreman, you're the boss. That
11 suit?

12 **THE FOREMAN:** Yes, sir.

13 **THE COURT:** All right. Call your witness,
14 Mr. Thompson.

15 **MR. THOMPSON:** Your Honor, defense would call
16 Mr. Jimmy Sikes.

17 **THE COURT:** All right. Mr. Sikes, come around
18 please.

19 Y'all please get him for me.

20 (WHEREUPON Mr. Sikes entered the courtroom.)

21 **JIMMY SIKES,**

22 having been duly sworn, testified as follows:

23 **THE CLERK:** Have a seat in the witness box.

24 **THE COURT:** Have a seat, please.

25 **THE CLERK:** State your full name for the Court,

Jimmy Sikes - Direct Examination by Mr. Thompson

1 spelling your last.

2 **THE WITNESS:** Jimmy Daniel Sikes, S-i-k-e-s.

3 **MR. THOMPSON:** Your Honor, may it please the Court,
4 Mr. Miller, Mr. Grimes.

5 **DIRECT EXAMINATION**

6 **BY MR. THOMPSON:**

7 Q Mr. Sikes, do you know Mr. James Pearson?

8 A Yes, sir.

9 Q How did you meet Mr. James Pearson?

10 A In the holding cell back here.

11 Q At the courthouse?

12 A Yes, sir.

13 Q About when did you meet him?

14 A I really couldn't give you the exact date. It was
15 like two or three months ago.

16 Q Okay. At the time did you have any idea about what
17 kind of charges he was facing?

18 A No, sir.

19 Q Okay. Did he speak with you at all about a
20 burglary charge?

21 A Yes, sir.

22 Q Can you tell me what he said about his burglary
23 charge?

24 A Told me -- he asked me to relay a message to his
25 father, that his father had nothing to do with it and he

Jimmy Sikes - Cross-Examination by Mr. Miller

1 was going to take the rap for everything because his dad
2 was in the car the whole time.

3 Q And so you did meet him?

4 A Yes, sir.

5 Q And did speak with him?

6 A Yes, sir.

7 **MR. THOMPSON:** I have no further questions. Please
8 answer any questions Mr. Miller has.

9 **CROSS-EXAMINATION**

10 **BY MR. MILLER:**

11 Q Hey, Mr. Sikes.

12 A How you doing?

13 Q You remember me?

14 A Yes, sir.

15 Q Okay. Why are you in the detention center right
16 now?

17 A Fleeing the scene of a deadly accident.

18 Q All right. So that's still that same charge?

19 A I'm waiting to go up the road now.

20 Q Okay. So you were convicted, or you pled guilty,
21 in fact, to leaving the scene of an accident involving a
22 death, correct?

23 A Yes, sir.

24 Q How much time did that carry?

25 A Twenty-five years.

Jimmy Sikes - Cross-Examination by Mr. Miller

1 Q Okay. You said you were in the holding cell with
2 Jimmy Pearson?

3 A Well, Jimmy's the father, right?

4 Q No, Jimmy's the son, that's the father.

5 A Oh, yeah, I just get the names mixed up.

6 Q Okay. That's fine. We've been confused with
7 that -- well, the jury hasn't, but we've been confused
8 about it all day.

9 Let me ask you this -- and I didn't hear part of
10 your testimony there for the second. You said that Jimmy
11 was in the holding cell back there with you and that Jimmy
12 asked you to relay a message to his father, correct?

13 A Yes, sir.

14 Q And what was that message?

15 A Told him to keep his mouth shut that he was
16 responsible for it because his dad stayed in the car the
17 whole time.

18 Q Okay. Let me ask you this question, if you know:
19 If his dad really stayed in the car the whole time and
20 Jimmy wanted to take the rap for it, why would he have to
21 get that message to his dad?

22 A I honestly couldn't answer that for you, sir.

23 **MR. MILLER:** No further questions.

24 **MR. THOMPSON:** No redirect, Your Honor.

25 **THE COURT:** All right. You may be excused.

1 Any additional witnesses other than the defendant?

2 MR. THOMPSON: None from the defense, Your Honor.

3 THE COURT: How long do you think he will be? Not
4 long?

5 MR. THOMPSON: With cross, probably 45 minutes.

6 THE COURT: Really?

7 MR. THOMPSON: Or shorter.

8 MR. MILLER: Yes, sir.

9 THE COURT: All right. Mr. Foreman, and ladies and
10 gentlemen, we've got about probably 30 or 35 minutes worth
11 of testimony left. Y'all want to do that before you go to
12 lunch or after you go to lunch? Somebody make a decision.

13 A JUROR: We're here.

14 THE COURT: All right. I need to spend about three
15 minutes with them and I'll bring you right back out and
16 we'll do the last witness. Step right back outside.

17 (WHEREUPON the jury left the courtroom at 11:57
18 a.m.)

19 THE COURT: Mr. Pearson, would you please stand for
20 me? Raise your right hand.

21 WILLIAM RALPH PEARSON,

22 having been duly sworn, testified as follows:

23 THE COURT: All right. You can put your hand down.
24 You can be seated if you want to, Mr. Pearson. That's
25 fine, have a seat.

1 Mr. Pearson, we've reached the stage in the trial
2 now where, obviously, you can testify in your own defense.
3 In other words, you can come up and tell your side of the
4 story, tell the jury what your involvement was, if any, or
5 whatever. I mean you can testify as to whatever questions
6 your lawyer asks. You understand that?

7 **THE DEFENDANT:** (Witness nodded head.)

8 **THE COURT:** You --

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Can you hear me?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** If you do decide to testify, you'll be
13 subjected to the same rules that everybody else who
14 testifies is subjected to. In other words, you'll be
15 subjected to being cross-examined by the solicitor. And as
16 I understand, you have a record that would be used -- in
17 other words, to impeach you. In other words to attack your
18 credibility under our rules. You understand that?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** You also have the right under the Fifth
21 Amendment not to testify. You have the right to remain
22 silent. No one who is charged with the crime can be
23 compelled to testify. In other words, you can take your
24 Fifth Amendment right to remain silent. If you choose to
25 do that, when I instruct the jury at the conclusion of the

1 case, I will tell them that you've exercised your
2 constitutional right to remain silent. By doing that, the
3 jury cannot discuss that when they deliberate your guilt or
4 innocence. They can't even bring it up. They can't
5 consider it when they decide your guilt or innocence and I
6 will tell them you have the absolute constitutional right
7 to remain silent and that's not to be mentioned, talked
8 about, or discussed in their deliberations. Do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You need to let me know now whether or
12 not you wish to testify.

13 THE DEFENDANT: I'll testify.

14 THE COURT: All right, sir. And you understand
15 that you have the right not to and what all that means?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Any questions you want to ask me about
18 testifying?

19 THE DEFENDANT: Not -- I --

20 THE COURT: That's your decision. It's your
21 personal decision. In other words, if you get up there and
22 testify, Mr. Miller or someone can cross-examine you like
23 you've seen here this morning. If you don't testify,
24 obviously, they can't ask you any questions. I'll tell the
25 jury you didn't have to.

William Ralph Pearson - Direct Examination by Mr. Thompson

1 **THE DEFENDANT:** Yeah, I got no problems, Your
2 Honor, with testifying.

3 **THE COURT:** Very well.

4 **MR. THOMPSON:** Bring them back.

5 (WHEREUPON the jury entered the courtroom at 12:00
6 p.m.)

7 **THE COURT:** All right. You may call your next
8 witness.

9 **MR. THOMPSON:** Your Honor, the defense calls
10 Mr. Ralph Pearson.

11 **THE COURT:** Mr. Pearson, come around and place your
12 left hand on the Bible and raise your right, please.

13 WILLIAM RALPH PEARSON,

14 having been duly sworn, testified as follows:

15 **THE CLERK:** Have a seat in the witness box. State
16 your full name for the record, spelling your last.

17 **THE WITNESS:** My name is William Ralph Pearson.
18 People know me by Jimmy. That's my nickname.

19 **DIRECT EXAMINATION**

20 **BY MR. THOMPSON:**

21 **Q** Okay. Mr. Pearson, first thing I want to do,
22 you've been here sitting in the courtroom. There's this
23 Exhibit 8 that talks about you having two prior convictions
24 for burglary.

25 **A** Yes, sir.

William Ralph Pearson - Direct Examination by Mr. Thompson

1 Q You been charged with burglary before, right?

2 A Yes, sir.

3 Q And when you were charged with burglary before,
4 what happened?

5 A I --

6 Q Did you plead guilty or not guilty?

7 A I pled guilty. Any time in my whole life if I done
8 something, I man up to it.

9 Q Okay. Why are you not pleading guilty here today?

10 A I didn't do anything. I went to carry my son to a
11 rental house with my little grandbaby.

12 Q Let me ask you this. Let's slow down. Why did you
13 and James go to the house on Sabra Avenue?

14 A My son was about to get in a fight with his
15 neighbor and he said, Daddy, will you please carry me down
16 here. I seen a rental house. And my son has got a drug
17 problem and my daughter-in-law told me that he took six
18 Xanax, two milligram --

19 Q You can't talk about what other people told you?

20 A Okay. I'm sorry.

21 Q That's all right. So you went to the house on
22 Sabra to do what?

23 A Well, he was talking to some lady, he said, about
24 renting the house. He was on his cell phone.

25 Q Do you remember thinking about the conversation

William Ralph Pearson - Direct Examination by Mr. Thompson

1 that he had about --

2 A I remember him saying \$960.

3 Q To rent the house?

4 A To move in the house.

5 Q Okay. Y'all pulled up to the house.

6 A Yes, sir.

7 Q What happened next?

8 A Well, my guy was -- my little three-year-old grand
9 baby, she might be four, I'm not sure. But Jamie -- and,
10 you know, I love my grandbabies to death. I mean, my son
11 just lied on this. I can't believe it.

12 Q Hold on Mr. Pearson.

13 A All I done was try to help my kid all my life. I
14 made my mistakes in my life, but I paid for them.

15 Q I want you to hold on.

16 A I didn't do this.

17 Q All right. I want you to hold it together and
18 answer my questions.

19 A I didn't do this.

20 Q I understand. I want you to hold it together and I
21 want you to answer my questions. Slow down. Slow down.

22 **THE COURT:** Take a deep breath, Mr. Pearson, so you
23 can answer his questions.

24 **BY MR. THOMPSON:**

25 Q Slow down. I just want you to tell me what

William Ralph Pearson - Direct Examination by Mr. Thompson

1 happened. So you got to the house. Who was driving?

2 A I was.

3 Q You were driving?

4 A Yes, sir.

5 Q You got to the house. Y'all were there to look at
6 the rental property?

7 A Yeah.

8 Q And did you get out of the car?

9 A Yes, sir.

10 Q You heard Mr. Sikes say something about you stayed
11 in the car or whatever. Is that true?

12 A I was in the back, yes, sir. They've got a
13 fenced-in yard and it's got a road behind it and a road in
14 front of it. And I worried about that grandbaby getting
15 out back; and I was back there shaking that fence and I
16 think I was talking to my mama on the cell phone.

17 Q So you went back to the backyard?

18 A Yeah.

19 Q And you were looking at the fence?

20 A Yeah.

21 Q And you were talking on the phone?

22 A To my knowledge, I was on my cell phone. I feel
23 sure. I ain't a hundred percent sure.

24 Q Okay. So you were in the backyard talking on the
25 phone, looking at the fence?

William Ralph Pearson - Direct Examination by Mr. Thompson

- 1 A Yeah.
- 2 Q And was James with you?
- 3 A No. I don't know where he went. I -- I heard a
4 noise and I thought it was the lady that he was talking to
5 on the cell phone.
- 6 Q Okay.
- 7 A And so I don't know how long I was in the backyard.
8 I really don't.
- 9 Q Okay.
- 10 A And I heard that noise, so I think I got off -- I'm
11 not a hundred percent sure, but I think I was talking to my
12 mama.
- 13 Q Okay.
- 14 A But I can't swear to it. I do have really bad
15 nerves and I can't help it.
- 16 Q Okay.
- 17 A And --
- 18 Q So some time passed, you were in the backyard?
- 19 A Yes, sir.
- 20 Q And at some point in time, what happened next?
- 21 A I went around to the house. My car was right close
22 to the house.
- 23 Q Right.
- 24 A And I went around there and I seen a window broke.
- 25 THE COURT: You saw what?

William Ralph Pearson - Direct Examination by Mr. Thompson

1 THE WITNESS: A window broke.

2 BY MR. THOMPSON:

3 Q Okay.

4 A So I -- and so I -- I just went like shock. I
5 didn't know -- I didn't know what to do.

6 Q Was it fair to say --

7 A I was hollering at my youngin. Huh?

8 Q Is it fair to say you were scared?

9 A Yeah, I was scared. I mean, I got prior burglaries
10 on my -- you know in my life and I'm on probation. I can't
11 afford to get in no trouble. I mean I just -- I didn't
12 know what to do.

13 Q Okay.

14 A So I noticed stuff in my car.

15 Q Did you touch the window?

16 A Yes, sir. I went like that right there and I
17 hollered, James, James, and he wouldn't answer me.

18 Q Okay.

19 A So I kept -- and finally -- I don't know how long
20 it was, but he said, yeah, daddy. I said, I said, daddy --
21 I'm sorry, I said, James, what are you doing. I'm coming,
22 I'm coming, like that. So I started from the window around
23 there and he liked to run over me with a microwave in his
24 hand.

25 Q Okay?

William Ralph Pearson - Direct Examination by Mr. Thompson

1 A And he threw it in my car. I didn't know what to
2 do. I just threw my hands up. I was -- I don't know
3 what I done.

4 Q Okay.

5 A And he went around there and jumped in there in the
6 middle of my car, and I went; and he yelled, Turn to the
7 right; and then he said, Turn to the left. I remember and
8 I liked to run into the ditch.

9 Q Okay.

10 A I did not -- I don't know that much about New
11 Ellenton. I was just down there trying to help my son.
12 They had cut his lights off. I took my disability check
13 and got them back on.

14 Q I want you to stay with what happened next, but --

15 A Well, I drove and I went to his house.

16 Q Okay. And when you went to his house --

17 A I got out of the car, went around and the policeman
18 come around there.

19 Q Okay. Let me -- let me ask you this: Did you go
20 into the house?

21 A No.

22 Q Did you take anything out of the house?

23 A No, sir.

24 Q All right. And I want you to listen very carefully
25 to this question. Did you do anything wrong?

William Ralph Pearson - Direct Examination by Mr. Thompson

1 A Well, if I had to go back, I would have left the
2 car, him, and everything. But I --

3 Q So you realize you shouldn't have driven off with
4 it?

5 A Yeah. If you ever have that happen to you, you
6 would know, but I didn't know what to do. I was wrong by
7 leaving. I understand that now, but I done everything I
8 could do. I told the police where the stuff was.

9 Q And you told them the truth?

10 A I told them the truth.

11 Q Okay. Okay.

12 MR. THOMPSON: I have no further questions for the
13 witness.

14 Please answer any questions Mr. Miller has for you.

15 **CROSS-EXAMINATION**

16 **BY MR. MILLER:**

17 Q Let's start with what we can agree on.

18 A Yes, sir.

19 Q You were present at [REDACTED] Avenue during a
20 burglary?

21 A Yes, sir.

22 Q You were?

23 A Yes, sir.

24 Q Okay. You drove a car filled with stuff that came
25 out of the house at [REDACTED] Avenue, from [REDACTED] Avenue

William Ralph Pearson - Direct Examination by Mr. Thompson

1 over to Henry Avenue?

2 A Yes, sir.

3 Q Okay. And it's your testimony before this jury,
4 under oath, is that you were playing with your
5 grandchild --

6 A No, no, sir. I was concerned about my grandbaby
7 with the fence in the back.

8 Q The grandbaby wasn't there?

9 A No, sir.

10 Q I'm sorry. I misunderstood you. You were checking
11 the perimeter of the property to make sure that if your son
12 moved there with his grandchild -- with his child, that it
13 would be safe for her?

14 A Yes, sir.

15 Q That's what you were doing?

16 A Yeah.

17 Q How long did that take you to do?

18 A Sir, I don't know.

19 Q Okay. Well, you say when you came back, the
20 window's broken out, so you started yelling to your son to
21 get out of the house, correct?

22 A Yeah.

23 Q Why did you put your hands on the glass and cut
24 your hands if you were yelling to your son? Why didn't you
25 just stand outside the window and yell in? Why would you

William Ralph Pearson - Direct Examination by Mr. Thompson

1 put your hands on the glass?

2 A I don't know.

3 Q But that was your testimony, that you just put your
4 hands on the glass, correct?

5 A To my knowledge, yes, sir.

6 Q Do you remember the first conversation that you had
7 with your son when your son was out of jail and you were
8 still in jail?

9 A No, sir.

10 Q Okay. Would it help your memory if I told you that
11 it was on September 29th and it was when your son told you
12 that he had been using your debit card since he'd been out
13 of jail. You remember that conversation?

14 A Yeah, I think, yes, sir.

15 Q Okay. Do you remember telling your son, I broke
16 that window out trying to get you out of the house? Do you
17 remember telling him that?

18 A I'm sure I must have.

19 Q Okay. You must have. Well, did you break the
20 window out trying to get him out of the house and that's
21 how you got the cuts on your hand or did you put your hands
22 up against the window that was already broken and that's
23 how you got the cuts on the hand?

24 A I just went like that, though. The window was
25 already broke.

William Ralph Pearson - Direct Examination by Mr. Thompson

1 Q Sure. Now, you've talked up here about prior
2 burglary convictions that you have.

3 A Yes, sir.

4 Q You know what a burglary is?

5 A Yes, sir.

6 Q Okay. Why didn't you leave?

7 A I don't know.

8 Q You said your son almost ran you over with the
9 microwave?

10 A Yes, sir.

11 Q Who put the grill and the smoker in the trunk?

12 A That was in there when I got around the house.

13 Q How did the trunk get open?

14 A I don't know. My trunk thing is broke.

15 Q Okay. Broken trunk thing. That's how you get into
16 it without the key.

17 Where was the grill, smoker -- this thing here in
18 this picture right here? Where was this item in your car?

19 A I don't know.

20 Q You don't know?

21 A No.

22 Q Okay. So it's your testimony is that you didn't
23 take it out of the trunk of the car and put it right there
24 on the porch where Officer Spires said --

25 A To my knowledge, I didn't, sir. It's got two decks

William Ralph Pearson - Direct Examination by Mr. Thompson

1 there at my son's house and that -- to my knowledge, that's
2 his smoker that's up there, up to the higher deck.

3 Q You don't know anything about that smoker, huh?
4 You know nothing about it?

5 A No, sir, I don't.

6 Q Don't know where it came from?

7 A No. I do now. From the -- from the patrol.

8 Q You don't know how it got propped open in the trunk
9 of your car when Officer Spires saw it and -- if you took
10 it out --

11 A My son had me so upset, I didn't know -- I don't --
12 to my knowledge -- I don't know.

13 Q It's all your son's fault?

14 A No. My fault for not leaving that car.

15 Q So how long did you stand there watching your son
16 fill up this car with stuff that was stolen out of the
17 inside of this house?

18 A I'm telling you when I come around there, that's
19 the way it was. I don't know what he put in that car. All
20 I know is that microwave was there and that's all I know.
21 And he was in the middle --

22 Q Was that --

23 A -- and I was arguing with him.

24 Q Well, there was -- the smoker --

25 A Yes, sir.

William Ralph Pearson - Direct Examination by Mr. Thompson

1 Q -- takes two hands to carry, doesn't it?

2 A I would think so.

3 Q Okay. So that's one trip. Air mattress,
4 air-conditioning parts, tools all of the stuff that Ms.
5 Beerman testified too, that's got to be a couple of trips,
6 wouldn't you think?

7 A I don't know. I didn't see that stuff.

8 Q Okay. Is this the window you cut your hands on
9 when you were yelling?

10 A Yes, sir, I guess so.

11 Q What's that on top of the microwave right there?

12 A I don't know.

13 Q Here, I'll bring it closer for you?

14 A I don't know what that is.

15 Q It was in your car, correct?

16 A Yes, sir.

17 Q All right. So while your son was doing all this
18 stuff, what were you doing?

19 A I was in the back on my phone to my knowledge, I
20 was. I was concerned about my grandbabies. I wasn't even
21 thinking about him.

22 Q And it's your testimony that you never picked up
23 that black grill. You never touched it?

24 A My nerves is so bad, I might have, but I don't --
25 to my knowledge, I didn't.

William Ralph Pearson - Direct Examination by Mr. Thompson

- 1 Q Okay. When the police arrive, Officer Spires --
- 2 A Yes, sir.
- 3 Q -- he asked you where the stuff came from?
- 4 A Yes, sir.
- 5 Q And you didn't tell him right away?
- 6 A Yes, sir.
- 7 Q You did?
- 8 A Uh-huh.
- 9 Q You told him [REDACTED] Avenue, or I'll take you
10 over there?
- 11 A I said I'll try to help you find -- I don't know
12 that area.
- 13 Q Well, why did your son --
- 14 A It wasn't that officer, it was the other officer.
- 15 Q The other officer -- Officer, Chief Rushton from
16 Jackson?
- 17 A It's a big guy.
- 18 Q Okay. So you told Chief Rushton where this had
19 happened, correct?
- 20 A Uh-huh. He asked me did I know -- could I find
21 that house and I said, yeah, I'll try.
- 22 Q Okay. But you didn't tell this officer you'd try
23 to find the house, did you?
- 24 A I don't know, I --
- 25 MR. THOMPSON: Objection, relevance.

William Ralph Pearson - Direct Examination by Mr. Thompson

1 THE COURT: Rephrase the question.

2 BY MR. MILLER:

3 Q How long was it before Chief Rushton showed up
4 after Officer Spires got there?

5 A All I know is he was there and then the other
6 officer was in the front of the -- James' house. He was
7 back -- excuse me, backed up and I went over there talking
8 to him and I think that officer was with -- talking with my
9 son.

10 Q Why didn't you drive away when you saw your son was
11 burglarizing that house?

12 A If I had to do it over, sir, I believe I would. I
13 don't know why.

14 Q But you do admit that you were present whenever the
15 burglary occurred?

16 A Yeah, but I didn't know it was -- even doing that.

17 Q You didn't know what the burglary was?

18 A Yes, sir. I said I didn't know what he was doing.

19 Q You said -- wasn't it your testimony that he almost
20 ran over you with the microwave coming out of the house?

21 A Yeah, after I come around there. I'm talking about
22 when I was in the back. I didn't know what he was doing.

23 Q And then you drove away?

24 A Yes, sir.

25 Q And you didn't break out the window on the house?

William Ralph Pearson - Direct Examination by Mr. Thompson

1 A No.

2 Q But you probably told your son when you talked to
3 him from the jail on the recorded phone call that you had
4 broken the window on the house because you were trying to
5 get him out of there?

6 A I don't know. I mean --

7 Q We can play the phone call, if you want.

8 A Well, that's -- I mean -- I'm not denying that I
9 did. I may have broke it or leaning up against it --
10 either way, I don't know how it happened.

11 Q So you might have broken it leaning up against it
12 which would account for the cuts on your hand or you might
13 have gotten the cuts on your hand when you were yelling
14 through it because it was all ready broken.

15 (WHEREUPON there was a pause in the proceedings.)

16 MR. MILLER: No further questions, Your Honor.

17 MR. THOMPSON: No redirect, Your Honor.

18 THE COURT: All right. Mr. Pearson, you may step
19 down.

20 Any additional witnesses?

21 MR. THOMPSON: None from the defense, Your Honor.

22 THE COURT: Anything on reply?

23 MR. MILLER: Your Honor, if we could have one
24 minute?

25 (WHEREUPON there was a pause in the proceedings.)

1 **MR. MILLER:** Nothing in reply, Your Honor.

2 **THE COURT:** Thank you.

3 All right. Mr. Foreman, ladies and gentlemen,
4 we're going to break for lunch. I'm going to let you walk
5 up -- anybody have any problem walking? We're going to
6 walk up to the Bowery. Y'all order your lunch, nothing
7 alcoholic. Ms. Barbara is going to pay for it.

8 You going with us, Ms. Barbara?

9 **THE BAILIFF:** No, Ms. Jimmy and Mert's going.

10 **THE COURT:** Ms. Jimmy and Mr. Mert's going. So
11 they'll pay.

12 Anyway, we're going to start back about 2:15. I
13 know that's a little bit long, but we've got about three or
14 four things during lunch. I don't want you having to wait
15 on me. And we'll start right at 2:15. So if you get back
16 and it's not 2:15, you want to tarry around outside and
17 enjoy the beautiful day, do that. I'll see you at 2:15.

18 Please don't discuss the case. Don't deliberate
19 and don't let anybody talk about it with you. Go with
20 Ms. Barbara. Enjoy your lunch. Be sure and thank Mert
21 because he's got the credit card.

22 (WHEREUPON the jury left the courtroom at 12:22
23 p.m.)

24 **MR. THOMPSON:** Your Honor, may it please the Court,
25 at this point in time, I'd like to make a --

1 THE COURT: Hold on a second.

2 (WHEREUPON there was a pause in the proceedings.)

3 THE COURT: Directed verdict?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Hold on a second. Gentlemen, let me
6 see y'all back here for just a second and we'll come back
7 and do motions and --

8 (WHEREUPON a recess was observed.)

9 MOTIONS

10 THE COURT: Mr. Thompson I appreciate you letting
11 us do this directed verdict motion nunc pro tunc; so go
12 ahead and make it and...

13 MR. THOMPSON: Yes, sir, Your Honor. May it please
14 the Court, I'd like at this point in time to make the
15 directed verdict motion -- the motion for directed verdict
16 at the close of the State's case. I want to talk about the
17 State's case first.

18 THE COURT: All right.

19 MR. THOMPSON: Your Honor, it's my understanding
20 that the rule says that --

21 THE COURT: Well, the rule says this: It says on
22 your motion or on my motion -- it says on the motion of the
23 defendant or on its own motion, I shall direct a verdict in
24 the defendant's favor on any offense charged in the
25 indictment after the evidence on either side the closed, if

1 there is a failure of competent evidence tending to prove
2 the charge in the indictment, period. In ruling on the
3 motion, the trial judge shall consider only the existence
4 or nonexistence of the evidence and not its weight. So go
5 ahead and tell me what I should do.

6 MR. THOMPSON: Your Honor, again, this rule says
7 the existence of competent evidence.

8 THE COURT: It does say that, but it goes to the
9 other sentence and says, in ruling I shall consider only
10 not competent, but the evidence or nonexistence of the
11 evidence, not its weight.

12 MR. THOMPSON: Yes, sir.

13 THE COURT: So in one sentence it says competent
14 evidence, in the next one it says only the weight and not
15 the existence or nonexistence.

16 MR. THOMPSON: Your Honor, I would argue that this
17 is more than just the threshold, though, of probable cause.
18 This is competent evidence, tending to be able to prove the
19 charge and --

20 THE COURT: Well, there -- your client's son says
21 he, being your client, was the one who did the break in,
22 did the burglary. There is evidence that your client did
23 the burglary. Is that competent evidence? I think that's
24 for the jury to judge its credibility, not me. If I had to
25 judge his credibility, I know what I would do, but I'm not

1 sitting on the jury and I'm not the judge of the facts; and
2 even if I found that not to be competent evidence, there's
3 still the existence of that evidence.

4 So how do I reconcile those two things?

5 MR. THOMPSON: Your Honor, I would just argue that
6 the State's evidence in this trial -- I would agree with
7 you, it really does boil down to the testimony of James
8 Pearson. The -- other than the testimony of James Pearson,
9 there's really no other evidence that --

10 (WHEREUPON there was a pause in the proceedings.)

11 THE COURT: Go ahead.

12 MR. THOMPSON: There's really no other evidence
13 that he actually entered the home or that he actually
14 has -- that the State's met all of the evidence of the
15 charge against him.

16 THE COURT: Well, if I believe the son, have they
17 not? Entering the dwelling, taking the stuff out.

18 MR. THOMPSON: Your Honor, I'm trying to remember
19 which --

20 THE COURT: I'm treating your motion right now as
21 if Mr. Pearson, the defendant, has not testified. So the
22 only thing that we can consider would be the testimony of
23 the son, James Pearson, who said what I just said he said,
24 plus the circumstantial evidence of the police officer
25 showing -- or riding up with your client removing the

1 smoker, grill with blood on his hands, the car full of
2 items owned by the renter --

3 MR. MILLER: Ms. Beerman, Your Honor.

4 THE COURT: Ms. Beerman. There's a lot of
5 circumstantial evidence there.

6 MR. THOMPSON: Right. Your Honor, I would agree.

7 THE COURT: How do I get around all that?

8 MR. THOMPSON: I would agree with the Court that
9 there is some circumstantial evidence that he was at some
10 point involved with the return to the home and I would
11 agree with the Court that the defendant -- that James
12 Pearson, the State's witness, did testify and I understand
13 that the Court can't consider the weight of the evidence;
14 however, the rule does say that it has to be competent
15 evidence and I would submit to the Court there is no way
16 that a reasonable jury even at the close of the State's
17 case would find any of James Pearson's testimony to be
18 credible; and therefore, the evidence is not competent.

19 THE COURT: Well, the case law says, it is the duty
20 of the trial court to submit the case to the jury if there
21 is any evidence -- either direct or circumstantial which
22 reasonably tends to prove the guilt of the accused or from
23 which guilt may be fairly and logically deduced. And then
24 it says unless there's a total failure of competent
25 evidence as to the charges alleged. It is the duty of the

1 trial court to direct a verdict if acquittal is not errant.

2 So I'm going to -- I'm going to apply the rule in
3 the case and I am not concerned with the weight of it, but
4 the existence of it and there is an existence. There was
5 testimony from the police officer that was circumstantial
6 and then there's direct evidence of the son. As I told the
7 jury, sometimes you'll have one say one thing and one the
8 other. So they've got to make the determination of the
9 credibility of these two witnesses. So I most respectfully
10 deny your motion for directed verdict at the point.

11 And I do that, quite honestly with both of you,
12 with some reservation. I'm concerned about the existence
13 of competent evidence, but the same token, the rules say if
14 there's any evidence. I will consider -- I don't consider
15 the weight of it, only the existence of it. So there is an
16 existence of evidence that would -- should be considered by
17 the jury. So I'll respectfully deny your motion for
18 directed verdict.

19 **MR. THOMPSON:** Thank you, Your Honor. At this
20 point in time, I would like to -- at the close of the
21 State's case, the defense does rest at this time and we
22 also at this point in time renew our motion for directed
23 verdict.

24 **THE COURT:** At the conclusion of your case?

25 **MR. THOMPSON:** That's correct, Your Honor. And we

1 do rest. The defense does rest. I would submit to the
2 Court that after the defense's case, that the State's
3 witness, the key witness, James Pearson is even less
4 credible, that he absolutely -- he said he didn't even know
5 Mr. Sikes, that he's even less credible, that the testimony
6 of Mr. Ralph Pearson does tend to fit the circumstantial
7 evidence in this case and I would argue that it is a
8 stretch to think that any reasonable juror would be able to
9 believe the State's key witness in the case.

10 **THE COURT:** Well, I know it's a stretch, but that's
11 their job. And you can argue that all day long, but it
12 might be a stretch to believe that guy, but it's their job
13 to judge the credibility and now they've got -- even
14 with -- at the end of your case, the defense case, they've
15 got the added testimony to look at.

16 Number one, the credibility of your witness or your
17 defendant and then -- I just don't -- there is evidence in
18 the record that they have to judge the weight and the
19 credibility of the witnesses. So I'm going to -- with
20 great -- I'm going to respectfully deny the motion.

21 We'll stand at ease now until -- we have a 1:30
22 hearing -- we'll start back at 1:30.

23 (WHEREUPON the case was in recess for lunch and for
24 another hearing to take place.)

25 **THE COURT:** Mr. Thompson, are you ready to proceed?

1 MR. THOMPSON: Yes, sir.

2 THE COURT: State are you ready?

3 MR. MILLER: Yes, Your Honor.

4 THE COURT: All right. We're going to argue and
5 I'm going to charge and then we'll take that plea.

6 All right. Mr. Thompson, you get your client out
7 here, please.

8 (WHEREUPON the defendant entered the courtroom.)

9 MR. MILLER: And Your Honor, if we could do one
10 very brief matter before the jury comes in.

11 THE COURT: All right. Gentlemen, my charge will
12 be my standard charge on the duties of judge and the jury,
13 burden of proof, reasonable doubt, credibility of
14 witnesses, prior record of the defendant, impeachment
15 purposes only and burglary first, mere -- hand of one is
16 the hand of all.

17 MR. MILLER: Yes, Your Honor.

18 THE COURT: Mere presence.

19 MR. MILLER: The defense has handed up a proposed
20 jury charge on mere presence and the State would not object
21 to that mere presence charge, Your Honor.

22 THE COURT: And hand of one is the hand of all?

23 MR. MILLER: Yes, sir.

24 THE COURT: Anything else that the State requests?

25 MR. MILLER: Nothing else from the State, Your

1 Honor.

2 THE COURT: Mr. Barry Thompson?

3 MR. THOMPSON: Nothing from the defense, Your

4 Honor.

5 THE COURT: All right. We need the verdict form,
6 Mr. Clerk.

7 Anything else?

8 MR. MILLER: Nothing from the State, Your Honor.

9 THE COURT: You going to waive opening on the law?

10 MR. MILLER: Yes, sir.

11 THE COURT: Y'all weren't able to do anything over
12 the lunch break?

13 MR. MILLER: Get ready for closing, Your Honor.

14 THE COURT: All right. Bring the jury in, please.

15 (WHEREUPON the jury entered the courtroom at 2:09
16 p.m.)

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, everything good at lunch?

19 THE JUROR: Yes. Fruit chicken.

20 THE COURT: Should I judge your credibility?

21 All right. Ladies and gentlemen, we have reached
22 the stage of the trial now where the final arguments are
23 going to be made. Mr. Thompson will go first followed by
24 Mr. Miller and then I will instruct you on the law and it
25 will be turned over to you for your deliberations. As I

1 said, closing arguments, like opening statements, that is
2 not evidence in the case. These lawyers will be arguing in
3 the light most favorable to their clients for the State and
4 their client.

5 So please pay close attention and then once they're
6 finished, I'll -- my charge is not very long. Y'all will
7 have the case here shortly.

8 Mr. Thompson?

9 CLOSING ARGUMENTS

10 MR. THOMPSON: Your Honor, may it please the Court?

11 THE COURT: Absolutely.

12 MR. THOMPSON: Mr. Miller, Mr. Grimes, ladies and
13 gentlemen, I think I kind of think in pictures. And I
14 think if you wanted to really sum up this case, I really
15 like the picture that Officer Spires painted when he comes
16 to the house and he comes around the back and he looks and
17 there's Mr. Ralph, there's his son, James, and he asks the
18 obvious question, What are you doing. Ralph looks to his
19 son and waits for him to tell the truth. And instead, he
20 gets this wild look in his eyes and he starts to lie. And
21 that's kind of what happened here today; and it's important
22 because he's really the key to the State's case.

23 The State has the burden of proof to prove all of
24 the elements of the offense of burglary. And the judge is
25 going to tell you what the law is as far as all the

1 different elements and I don't want to do that. You should
2 certainly listen to the judge when he tells you that. But
3 the -- one of the elements of the crime of burglary is you
4 have to go in the house or you have to actually had some
5 kind of intent to burglarize or you have to be part of the
6 deal. You have to be kind of part of the plan or know
7 what's going on.

8 The victim, who's a really nice lady -- I'm real
9 sorry this happened to her -- but she really doesn't know
10 what happened. She's in Florida.

11 Now, afterwards, she knows that her house has been
12 broken into. But she doesn't know who's in her house.
13 She's not here. She doesn't know anything. Officer
14 Spires, he can talk to you about his investigation; and he
15 can talk to you about what he finds when he comes to the
16 Pearson house; and he can talk about what's in the car and
17 about what people say. But he wasn't there either.

18 The only person who claims to know what happened at
19 the house was James Pearson. And the only problem with
20 that is this -- and I want to be very, very clear about
21 this and this is usually not something that people like to
22 say in a polite society, but here goes: James is a liar.
23 James is a liar. James lied to Officer Spires, he took him
24 on this bunny rabbit hunt, going and looking for where did
25 the stuff come from. James lied to his father. He lied to

1 us here today. He got on the witness stand and said, I
2 don't even know who Jimmy Sikes is. Well, Jimmy Sikes
3 comes in and says, Yeah, I know him; he was in the pod with
4 me in the detention center.

5 He's actually -- he's lied here today. He's
6 actually convicted of lying to the police, not once, but
7 twice on his criminal record. He's lied to the police and
8 we talked about that. I asked him about that on the
9 witness stand and he had to admit, yes, I lied to the
10 police. I've been convicted of lying to the police. He's
11 a liar. Always has been.

12 But most do things for reasons. In common sense
13 kind of vernacular, most people do what they do for a
14 reason. So why do we lie? Why would he lie? What
15 possible reason could he have to lie? It's because he's
16 facing ten years in prison. That's why he has a reason to
17 lie. He's got ten years of prison he 's looking at. He
18 gets probation, but he's a drug addict, so he gets caught
19 again. He was here today in the court in a red jumpsuit
20 because he's been arrested again. We talked with him about
21 that. I forget which drug he said he'd been arrested for
22 this time, but that's the reason he lied. He's looking to
23 get out of stuff and he's dodging as hard as he can, just
24 like he was when Officer Detroit Spires came and questioned
25 him the first time. He's a liar. And I would argue to you

1 that you shouldn't believe him. You have every reason in
2 the world not to believe this man. He is a liar.

3 We could stop there. That's really the key to
4 their case, is the testimony of this liar. We could stop
5 there and I would submit to you that at that point there's
6 more than a reasonable doubt as to whether or not
7 Mr. Ralph's guilty or not. The burden is on the State.
8 They've got a key witness that can't be trusted. And you
9 should find Ralph not guilty. He doesn't have to prove
10 anything. And he's innocent until proven guilty. But he
11 wanted to testify. So he got up on the witness stand and I
12 submit to you he told the truth. He was honest with you
13 about his record. He told you, Yeah, I've pleaded guilty
14 to burglary before and every other time I've been charged
15 with burglary, I've manned up and I sat there and I said,
16 yes, I did it.

17 We talked about why we're here today. Why not
18 plead guilty today and he told you why: Because I didn't
19 do it. I'm not guilty.

20 We talked about why he was at the house and he said
21 his story was, Well, I drove to the house because my son
22 told me that he needed to go find another house to rent.
23 And you heard other pieces of evidence that support his
24 story. Officer Spires told you he'd been there earlier
25 that day and there's some kind of disturbance, he's having

1 trouble with where he's at. You heard the victim talk
2 about, Yeah, the house is for rent.

3 Mr. Pearson got on the phone, he even remembers a
4 little bit the conversation -- remembers a little bit about
5 how much they were talking about charging rent for the
6 house. His state of mind and his intent is important for
7 crime. Your state of mind is important. His state of mind
8 and his intent when he's going over to the house is to help
9 his son look at the house that's for rent. We talked about
10 what he was doing while his son was robbing the house. And
11 he told you that he went to the backyard because he was
12 concerned about there being a street behind that house.
13 And I encourage you to look at the pictures. I think one
14 of them -- beg the Court's indulgence just a moment.

15 (WHEREUPON there was a pause in the proceedings.)

16 MR. THOMPSON: One of them is an aerial paragraph.
17 It's going to show you who's telling the truth. There's a
18 street behind the house and he was looking at the fence.
19 He talked to you about how you know I was back there, his
20 mama called. He was talking to his mother on the telephone
21 and he really doesn't remember how long he's back there,
22 standing in the backyard talking to his mom because he
23 thinks his son is meeting with whoever the landlord is and
24 looking at the house.

25 We talked about going around to the front and he

1 told you about how he cut his hand. You can look at the
2 pictures and you can tell that's not how people got into
3 the house. You can look at this. But he told you about
4 how he cut his hand. He also told you what he did wrong.
5 He got up on the stand and frankly admitted to being an
6 accessory after the fact, after this burglary has occurred,
7 after it's over with, he admitted to you, you know, I
8 should have walked away. I should have just left his
9 behind there at the house and left that car, just walked
10 away; but instead, I was scared for my son and I get in the
11 car and we drove off. And he told you that he knows that
12 was wrong.

13 Now, that's not the charge we're here about today.
14 It's not the charge we're here about today. You're going
15 to hear a little bit, probably from Mr. Miller, probably
16 about accessory. To be an accessory before the fact, you
17 have to be somebody who's kind of participating or
18 assisting somehow the actual burglary. He really starts
19 his -- he really screws up after the burglary is over. But
20 he told you about what he said to the police. He's the one
21 that told the police the truth. While Mr. James Pearson is
22 leading Officer Spires on this wild goose chase, Ralph
23 says, Yeah, I know where the house is, I'll take you. And
24 he was honest with him and he told the truth. And at each
25 point, he's got up and he's told the truth. I mean he's

1 got his problems, but he's gotten up and he's told you the
2 truth.

3 He's not a saint. But he's not guilty of burglary,
4 which is the question that we're here to answer today. He
5 said he didn't go in. He didn't have anything to do with
6 the plan or the intent. Didn't cooperate with his son in
7 any way other than being an accessory after the fact. And
8 you should find him not guilty.

9 In just a second I expect Mr. Miller's going to get
10 up and he's going to tell you something that's really
11 tricky. He mentioned this is his opening statement. He
12 said, you know, this is not a perfect world and it's not a
13 TV show. This is not CSI, there's not going to be a point
14 at which there's going to be some kind of DNA or some kind
15 of strange forensic evidence that -- but you should at
16 least expect fingerprints. There -- there's no evidence of
17 any even attempt to fingerprint any of the items in the
18 car. And I know they say that one of the windows is out of
19 the car, but it's not raining inside the car and it's not
20 raining inside the house. There's no intent to get a
21 fingerprint on the inside of the house. You should expect
22 more than just the testimony of a liar.

23 And that's really the only real evidence against
24 him today. He's not guilty beyond a reasonable doubt. I
25 would argue to you that he's probably not guilty beyond a

1 probable doubt, if there is such a thing. You should
2 expect more. Mr. Ralph deserves better and he's not
3 guilty. Thank you.

4 MR. MILLER: Thank you, Your Honor, Mr. Thompson,
5 ladies and gentlemen, we prepare for these cases and
6 prepare for these arguments and we all kind of have an idea
7 of what we think is going to happen, what we think is
8 going to come out from the witness stand, what we think we
9 are going to argue. And then inevitably, if I'm going
10 last, the defense says stuff that I can't let go. I have
11 to end up starting with that.

12 Let's start with some law. That's going to come
13 from the judge. Mr. Thompson -- and I don't for a second
14 think he did this intentionally, but he misstated the law.
15 The law does not require someone to go into the house for
16 them to be convicted of burglary. Simple as that. There
17 is no requirement that we prove he went into that house.
18 But he said, wait a minute, they didn't prove -- the only
19 person who claims to have any knowledge about what happened
20 in that house is James Pearson. That's not accurate.
21 Ralph Pearson claims to have knowledge of what happened at
22 that house. And the judge is going to tell you for us to
23 prove somebody guilty of committing an offense, we have to
24 prove to you that the person was a participant in the
25 crime. He's going to say that person must personally

1 commit the crime or be present at the scene and
2 intentionally aid, abet, or assist in the commission of
3 that crime through some overt act.

4 Think about this, ladies and gentlemen, the person
5 who acts as the lookout during the burglary is just as
6 guilty as the person who's inside the house. The person
7 who drives the get away vehicle for the burglary is just as
8 guilty as the guy who was in the house. This is defense's
9 problem. The defense's problem is that he has no burden,
10 but he chose to testify. This is the defense's problem.
11 The defense's problem is Mr. Thompson just sat up here and
12 through 90 percent of his closing statement, he talked
13 about James Pearson and how he's not credible.

14 The defense's problem is, even if you believe Ralph
15 Pearson's story, he's still guilty of burglary in the
16 first-degree. And here's why: James Pearson didn't get
17 some kind of sweetheart deal whenever he pled. He's
18 charged for exactly the same thing his father is charged
19 with. Ralph Pearson and James Pearson are charged with the
20 same thing.

21 Well, Mr. Thompson talks about he's only charged
22 with burglary in the second degree, not burglary in the
23 first-degree. Why? Because Ralph Pearson has two prior
24 convictions for burglary. He has a burglary in '05, he had
25 a burglary in 2009. That's why they're treated

1 differently. James Pearson didn't have that record.
2 That's why he pled to burglary second and that's why he was
3 charged with burglary second, number one.

4 Number two, you, as the jury, have to rely on your
5 recollection, and the court reporter can help with that,
6 but you have to rely on your recollection of the testimony
7 that you heard. Jimmy Sikes didn't sit up here and tell
8 you that he was in the same pod with James at Aiken County
9 Detention Center. Jimmy Sikes told you that he was in that
10 holding cell back there. One day with James Pearson. And
11 supposedly, according to Jimmy Sikes he tells him something
12 that makes absolutely no sense: Tell my dad not to worry,
13 I'm going to take the heat for all of it, he never got out
14 of the car.

15 Why would he tell -- convey that message. If his
16 dad really never got out of the car, if his dad really
17 didn't have anything to do with it, why would he convey
18 that message to his dad? And what's more, how did William
19 Pearson ever find out about it? Ralph Pearson. Ralph and
20 Jimmy Sikes are together in the jail. That's how Ralph
21 Pearson finds out about it. That's how Jimmy Sikes knows
22 what to come up here and say. Oh, his son admitted to me
23 he didn't have anything to do with it. If that's the case,
24 why is Ralph Pearson worried about it if he didn't have
25 anything to do with it.

1 You know, ladies and gentlemen, liars are deceived
2 by their words. A liar is a liar. That doesn't mean that
3 they can't tell the truth. The judge is going to tell you
4 when you're weighing the credibility, you can believe all
5 of what somebody says, you can believe none of what
6 somebody says or you can believe part of what somebody
7 says.

8 And here is the only thing that James Pearson and
9 Ralph Pearson disagree about. James Pearson says Ralph was
10 inside the house handing him stuff. And Ralph Pearson
11 says, I was standing there watching him pull all of the
12 stuff out of the house. He also -- I think the testimony
13 was he almost ran over me with the microwave coming out of
14 the house to load it into the car. Well, you'll have these
15 photographs back there. That wasn't one trip to load up
16 that car. It wasn't two trips to load up that car. How
17 many trips does it take to load up a Mercury with this much
18 stuff? And that's where the defense's case failed.
19 Because even if -- even if you don't believe anything that
20 James Pearson said from that stand, Ralph Pearson's
21 testimony says he's guilty. Ralph Pearson's testimony says
22 that he, knowing that a crime was occurring and while he
23 was present at the scene, intentionally aided, abetted, or
24 assisted in the commission of that crime for some overt
25 act. He drove the car away. He drove the get away car.

1 Ladies and gentlemen, I told you at the beginning
2 of this trial that you have to apply common sense to these
3 cases. You have to apply common sense when you're
4 listening to all this testimony and you're looking at all
5 of this evidence. Think about the timeline from Officer
6 Spires. He's at the Henry Street address. Within 45
7 minutes, that car is loaded down and he sees them driving
8 on Old Whiskey Road. So that means that within the 45
9 minutes, according to Ralph Pearson, James Pearson has a
10 conversation with the landlord at his house, gets his dad,
11 who convinces his dad to drive him over to the house,
12 commits a burglary at the house. Then Ralph says, I had no
13 idea it was going to happen.

14 Nobody -- there's no testimony from anybody that
15 says they planned while they were at Henry Street to go
16 over and rob this house on Sabra, to burglarize this house.
17 It was, in what they call in military terms, a target of
18 opportunity. They got over there, found out that they
19 could get into the house and they burglarized the house.
20 They took stuff out of it. They took Ms. Beerman's stuff
21 and Mr. Hinds' stuff out of that house. They loaded it
22 into the car. And it doesn't matter if Ralph Pearson is
23 around back making sure nobody sees them driving by along
24 Whiskey Road. You can see where it is on the overhead. It
25 doesn't matter if he's standing in the front yard, making

1 sure nobody's coming down the street. It doesn't matter,
2 ladies and gentlemen, if he's over there on the side
3 waiting on the car to get loaded.

4 But let's think about Ralph Pearson's testimony.
5 He doesn't have the burden of proof, but he chose to
6 testify. So you as the finders of fact have to determine
7 what is his credibility. His credibility. He comes up
8 with a story of, I saw the broken window, so I put my hands
9 on it so I could yell through it. Use your common sense.
10 Who does that? And then I asked him on cross-examination,
11 isn't it true that in a recorded phone call from the jail,
12 you said to your son, I broke that window out trying to get
13 you out of the house. Well, yeah, I could have said that.
14 And then later on, it became, maybe I did break the window.
15 It's not credible. It is not credible to believe that the
16 cuts that came from his hands were made by that window
17 glass because he was holding his hands up so he could yell
18 through the window. It's not credible.

19 Ladies and gentlemen, I submit to you that 90
20 percent of what he said was true. But the only reason it
21 was, was because he knew that he had to explain the
22 evidence. He has to explain the fact that he was seen
23 driving the car with all the stuff in it and his son beside
24 him. His son has pled guilty, which means he's confessed
25 to going into the house.

1 So now, I'm in the car, with somebody who's already
2 pled guilty to burglary and I have all the stuff that's
3 stolen from the house in my car. Not just passing by
4 Officer Spires at some rate of speed, but when Officer
5 Spires gets to my house, where I live, he sees me with the
6 grill. Again, credibility. He can remember the fact that
7 he was in the backyard because he wanted to check the fence
8 because he loves his granddaughter so much. Loves his
9 grandchildren so much. I don't doubt that he loves his
10 grandchildren, but he can't remember if when Officer Spires
11 walked around the house if he was the one that was sitting
12 there putting the grill up onto the deck. He can't
13 remember if he told his son that I was the one that broke
14 out the window. He doesn't remember what the excuse for
15 breaking out the window was. If it doesn't suit his story,
16 he doesn't remember it. Or he's got bad nerves or he gets
17 real upset. You can judge their demeanor on the stand.

18 So let's look back to James and look at his
19 demeanor. He's embarrassed. He's upset. He doesn't want
20 to be here. He gains absolutely nothing by being here.
21 He's already gotten what he's going to get. What's going
22 to happen with him has already happened. There is nothing
23 he can do in this case that is going to help him because
24 it's already been done. It was done when he pled.

25 So here he is up here knowing he's got to tell the

1 truth and he's testifying against his father and that is a
2 terrible, terrible consequence of his actions. But, ladies
3 and gentlemen, life is about consequences or actions. If
4 Mr. Pearson, Mr. Ralph Pearson had walked away from that
5 house when he saw all of that stuff being loaded into the
6 car, we wouldn't be here today. If Mr. Ralph Pearson had
7 gotten into that car and driven away while his son was
8 inside, there's a reasonable chance that Corporal Spires
9 would never have seen him. He was driving down the road
10 when they passed him. But he waited. He waited until his
11 son had loaded all the stuff in the car that they could get
12 in the car, then he got his son in the car and he drove
13 away.

14 And you heard Officer Spires' testimony. He didn't
15 get in the car and start driving away and the son said, I
16 better jump in the car because dad's leaving me. All of
17 that stuff was in the passenger seat. The son had to get
18 in first and he had to get in behind him. When they were
19 done burglarizing the house, that's when they left. It's
20 common sense.

21 There's some more common sense. Officer Spires
22 says, I took the son because he said he was going to take
23 me where he'd gotten the stuff from. You know, what's
24 Ralph going to do if the son is actually going to take
25 Corporal Spires where the burglary took place, he's going

1 to look bad. So Dad says to Chief Rushton, I think I can
2 find it. I think I can take you over there. He doesn't
3 know how to get around in this three block area of New
4 Ellenton, South Carolina, but maybe I can find it. It was
5 self-serving. It was self-serving from the beginning. It
6 was self-serving from the beginning because Ralph Pearson
7 intended to hang his son out for this. He intended for his
8 son to go down for it. He did everything in his power to
9 make sure that his son would go down on it, including after
10 his son got out and him telling his son, Look, tell them I
11 didn't go in there, tell them I didn't go in there. It's
12 okay. You need my debit card, you need some money? That's
13 okay. James Pearson said that happened; Ralph Pearson said
14 that happened.

15 Ladies and gentlemen, the defense would love for
16 you to believe that James Pearson is the key to the State's
17 case. But James Pearson is not the key to the State's
18 case. The key to the State's case is Corporal Detroit
19 Spires. The icing on the State's case is Ralph Pearson.
20 Ralph Pearson admits to being there. Ralph Pearson admits
21 to seeing the burglary occurring. Ralph Pearson admits to
22 then driving away from the scene of the burglary with the
23 person he says perpetrated the crime in this car. He's
24 just as guilty of the crime as James Pearson was.

25 Mr. Thompson stated that for you to find

1 Mr. Pearson guilty of burglary, you have to find he was
2 part of the deal that he was part of the plan, that he knew
3 what was going on. Ladies and gentlemen, I submit to you
4 his own testimony was that he knew what was going on. He
5 said it himself from the stand. He'd seen burglaries
6 before. He knew what a burglary was.

7 But he made that choice. He made the choice to aid
8 and assist or abet his son in getting away. Here's another
9 choice he could have made: As his son was carrying stuff
10 out to the car, according to his testimony, his son goes
11 in, he carries stuff out to the car and puts it in the car,
12 he could have taken stuff out of the car and puts it in the
13 yard. He could have just sat it right there. I'm not
14 doing this. You're not doing this. It is disgusting and
15 pathetic that this is the father/son relationship that
16 exists in this family. It should be heartbreaking to watch
17 a son testify against his father in such a serious, serious
18 matter. But, ladies and gentlemen, this is where he's
19 from. Right here. You know, we can't call the preacher
20 from St. Mary's over here to testify about the burglary he
21 participated in with Mr. Pearson because it didn't happen.
22 Thieves hang together. But when the chips are down and
23 when it's time to look out for number one, number one does
24 look out for number one. Mr. Thompson wants you to believe
25 that it's shocking that a criminal defendant would get up

1 here and say that the person who was also charged in the
2 crime wasn't a participate in the crime. There's no honor
3 among thieves. That's what James Pearson is. He's a
4 thief. He's an admitted thief. He's a liar. That doesn't
5 mean that everything he says has to be a lie. And that's a
6 credibility and determination for you guys to make.

7 Do you believe that Mr. Pearson, Mr. Ralph Pearson,
8 went to that house, was shocked to discover it was being
9 burglarized and then did absolutely nothing in furtherance
10 of that burglary? If that is what you believe, if you find
11 Mr. Pearson's testimony, Mr. Ralph Pearson's testimony to
12 be credible on that issue -- what did you do while the
13 burglary was going on? If you find him to be credible,
14 I'll tell you right now, you should go back there and find
15 him not guilty. You should find him not guilty if you find
16 it credible that he did nothing in furtherance of this
17 burglary.

18 The problem with that is, to find him credible on
19 that issue, you have to find he was not credible on the
20 issue of then I got into the car with him and I drove away.
21 Because James Pearson doesn't get away without him driving.
22 He doesn't get away without him driving.

23 You know, ladies and gentlemen, we don't always
24 have the opportunity to do all of the things that we want
25 done in every case. There are some places that have

1 surveillance videos. That's not the case here. There are
2 some places where there are multiple eyewitnesss. That's
3 not the case here. The fact of the matter is, this crime
4 was committed with two people present and the only
5 difference between their testimony is James Pearson says he
6 was in the house, Ralph was in the house and Ralph says I
7 wasn't in the house. Ladies and gentlemen, I submit to
8 you, it doesn't matter.

9 Decide who you believe. Decide if you believe the
10 defendant. If you don't believe that the defendant wasn't
11 an active -- or if you don't believe that the defendant was
12 an active participant in this, then you should find him not
13 guilty. But if you apply your common sense to what you've
14 heard up here, you're going to understand he was an active
15 participant in this. Did he go in the house? It really
16 doesn't matter.

17 Your verdict form is going to have two choices on
18 it, guilty and not guilty. You don't have to say you
19 believe James. You don't have to say you don't believe
20 Ralph. The facts are these: A burglary occurred at [REDACTED]
21 [REDACTED] Avenue. Ralph was there for it. Ralph watched it
22 happen, knew it was going on and at the end of that
23 burglary, was the way that they got away. There is no
24 doubt that all of those things happened. It is
25 unfortunate. It is sad, but you as the conscience of this

1 community need to hold Ralph Pearson responsible for the
2 choices he made that day and you do that through finding
3 him guilty. Thank you.

4 THE COURT: Mr. Foreman, my instructions or charge
5 is maybe ten minutes. Are y'all okay without a bathroom
6 break? Everything fine?

7 (WHEREUPON there was an indication that the jury
8 was fine.)

9 JURY CHARGE

10 THE COURT: Mr. Foreman, ladies and gentlemen, let
11 me remind you that the defendant was arrested, charged and
12 indicted in this case is not evidence in the case and
13 cannot be considered by you of evidence of guilt in the
14 case nor does it create any presumption of innocence or
15 inference of guilt. The indictment, as I told you, is
16 simply the document by which this case comes into the
17 Court. It contains the formal charges against the
18 defendant.

19 As to this indictment for burglary in the
20 first-degree, the defendant has pled not guilty and that
21 plea, as I told you, of not guilty puts the burden on the
22 State of South Carolina to prove the defendant guilty
23 beyond a reasonable doubt. A person charged with
24 committing a criminal offense in South Carolina is never
25 required to prove himself innocent. I charge you that it

1 is an important rule of constitutional law that a defendant
2 in a criminal trial, no matter how serious the crime may be
3 will always be presumed to be innocent of the crime for
4 which the indictment was issued unless guilt has been
5 proven by evidence satisfying you of that guilt beyond a
6 reasonable doubt. Presumption of innocence is not a mere
7 legal theory. It's not just a legal phrase. It is a
8 substantial, constitutional right to which every defendant
9 is entitled unless you the jury are satisfied from the
10 evidence of the defendant's guilt beyond a reasonable
11 doubt.

12 Our courts have defined a reasonable doubt as a
13 kind of doubt that would cause a reasonable person to
14 hesitate to act. A reasonable doubt is the kind of doubt
15 that would cause a reasonable person to hesitate to act.
16 Proof beyond a reasonable doubt is proof that leaves you
17 firmly convinced of the defendant's guilt. There are very
18 few things in this world that we know with absolute
19 certainty.

20 In criminal cases, the law does not require proof
21 that overcomes every possible doubt. If based on your
22 consideration of the evidence you are firmly convinced that
23 the defendant is guilty of the crime charged, then you must
24 find him guilty. If, on the other hand, you think there's
25 a real possibility that he is not guilty, you must give the

1 defendant the benefit of the doubt and find him not guilty.

2 As I've told you a couple of times during the trial
3 of this case, you and I have had separate and distinct
4 duties to perform. My job is to instruct you on the law
5 and to rule on the admissibility of evidence. Your job is
6 much more important. You have to decide the believability
7 or the credibility of the witnesses who have testified in
8 the case. So if at any time during the trial of this case
9 I have smiled, frowned, raised my eyebrows, yawned,
10 stretched, whatever, and you think I have an opinion about
11 the facts, set that aside. I hear cases day in and day out
12 from Cherokee County to Charleston, so I can have no
13 opinion about the facts. That is your job. You are to
14 determine what the facts are in this case.

15 As I told you when we started, this case is like
16 most cases that I try, not unlike most cases. It is simply
17 where you've got two versions of the facts. And it is your
18 job to determine the credibility or the believability of
19 the witnesses who have testify in the case. Credibility
20 simply means believability. It becomes your duty as jurors
21 to analyze and evaluate the evidence and determine which
22 evidence convinces you of its truth.

23 In carrying out the task of determining credibility
24 or believability of the witnesses, you may believe one
25 witness over several, several over one. You can disbelieve

1 everything somebody says, you can believe everything
2 somebody says. You can believe part of it or disbelieve
3 part of it. So use your common sense that you deal with
4 people on a day-to-day basis. That's how you determine
5 whose telling the truth in this case.

6 You may consider whether any witness has exhibited
7 to you any interest, bias, prejudice, or other motive in
8 their testimony and you may even consider the appearance
9 and the manner of a witness while on the witness stand.

10 Now, Mr. Foreman and ladies and gentlemen, that's
11 sort of the general law that I charge in all the criminal
12 cases. Let's turn to this particular case. In this case,
13 the defendant is indicted and charged with what we call
14 first-degree burglary. The State must first prove beyond a
15 reasonable doubt that the defendant entered a dwelling
16 without consent. A dwelling is defined as any building or
17 portion of building in which a person ordinarily sleeps.
18 They must first prove beyond a reasonable doubt that he
19 entered a dwelling without consent. A dwelling is defined
20 as a building in which a person ordinarily sleeps. In
21 order to prove that the defendant entered the dwelling, the
22 State does not have to show that the defendant's entire
23 body entered the dwelling. The smallest entry is
24 sufficient.

25 Next, the State must prove beyond a reasonable

1 doubt that the defendant intended to commit a crime at the
2 time of the entry. The mere entry into a dwelling without
3 consent is not burglary. If the intent to commit a crime
4 is formed after the entry, it is not burglary. On the
5 other hand, if the defendant intended to commit a crime at
6 the time of the entry, it is burglary even if the intent
7 was abandoned after the entry. It does not matter that the
8 intended crime was not completed.

9 And finally, the State must prove beyond a
10 reasonable doubt that the defendant has a prior record of
11 two or more convictions for burglary. Evidence of prior
12 offenses committed by the defendant -- this is not evidence
13 offered to prove the defendant has a bad character or to
14 prove that the defendant committed the burglary on this
15 occasion. The prior convictions may be considered by you
16 only for the purpose of determining whether or not it
17 satisfies that element of the offense that makes it
18 first-degree burglary, if you enter a dwelling without
19 consent to commit a crime and you have two prior
20 convictions for burglary.

21 Now, there are certain propositions of law. One we
22 normally call it the hand of one is the hand of all. If a
23 crime is committed by two or more people who are acting
24 together in committing a crime, the act of one is the act
25 of all. A person who joins with another to accomplish an

1 illegal purpose is criminally responsible for everything
2 done by the other person which occurred as a natural
3 consequence of the acts done in carrying out the common
4 plan and purpose. If two or more people are together,
5 acting together, assisting each other in committing the
6 offense, the act of one is the act of all, or as it is
7 sometimes said, the hand of one is the hand of all. Prior
8 knowledge that the crime is going to be committed without
9 more is not sufficient to make a person guilty of that
10 crime. Mere knowledge that a person is going to commit a
11 crime, even if the defendant is present when the crime is
12 committed is not sufficient to convict the defendant as a
13 principal. Therefore, a finding of a prior arranged plan
14 or common scheme is necessary for finding guilt of a
15 person -- the State must prove beyond a reasonable doubt
16 and with competent evidence that the theory of hand of one
17 is the hand of all.

18 A principal in an a crime is one who actually
19 commits the crime or who is present, aiding, abetting or
20 assisting in committing the crime. When a person does an
21 act in the presence of and with the assistance of another,
22 the act is done by both. But I must caution you that mere
23 presence at the scene is not sufficient to prove someone
24 guilty of the crime. A defendant's presence where a crime
25 is being committed or mere association with the person who

1 commits the crime does not make a defendant an accomplice
2 or an aider or abetter or the hand of one is the hand of
3 all in of the committing person committing the crime.

4 The burden is on the State of South Carolina to
5 prove every element of the crime charged. If you find
6 after reviewing all of the evidence that the State has
7 proven or proved that the defendant was only at the scene
8 and that they have not proved beyond a reasonable doubt any
9 other participation of the crime, then you must find the
10 defendant not guilty. The law is that proof of at the
11 scene of the crime is not sufficient to find someone
12 guilty.

13 Now, ladies and gentlemen, you'll have a verdict
14 form in the jury room. Your verdict simply is we find the
15 defendant not guilty; we find the defendant guilty.

16 Mr. Foreman it's a simple verdict form. You check
17 not guilty or guilty. Your decision must be unanimous.
18 All twelve of you must unanimously agree on what the
19 verdict is.

20 You're to base your verdict solely on what you
21 heard in the courtroom and determine what the true facts
22 are from the witnesses. Judge their credibility, their
23 believability. Thus you find the true facts, you apply it
24 to the law as I've given it to you and you'll be in a
25 position to render a true and just verdict; whether he's

1 guilty or not guilty.

2 Your decision -- you're not here to punish anyone,
3 any enemy or reward any friends or anything. It's to be
4 based solely on what you heard and on the law as I've given
5 it to you. If at any time during the deliberations you
6 have a question about something, write it out on a piece of
7 paper in there --

8 **THE BAILIFF:** I'll get it for them.

9 **THE COURT:** Knock on the door and Miss Barbara will
10 bring it to me. Sometimes I can answer it, sometimes I
11 can't, depending on what your question is. I'll give you a
12 response one way or the other.

13 I want you to return to your jury room now. I'm
14 going to ask you not to start deliberating until I've asked
15 the lawyers if I've left anything out and then I have to
16 gather up all the exhibits and send it -- them -- the
17 exhibits back to you along with the verdict form. Then you
18 may start your deliberations.

19 Ms. Barbara, please separate the alternates.

20 **THE BAILIFF:** I will.

21 Everybody remain seated for a minute.

22 (WHEREUPON the jury left the courtroom at 3:02
23 p.m.)

24 **THE COURT:** Any objections, requests, additions, or
25 deletions by the State?

1 MR. MILLER: None from the State.

2 THE COURT: By the defendant?

3 MR. THOMPSON: Nothing from the defendant.

4 THE COURT: Gentlemen, please look at the exhibits
5 and make sure we're all in agreement. Check the verdict
6 form and give me your consent.

7 (WHEREUPON the exhibits were looked at by both the
8 State and the defense.)

9 THE COURT: All right. Both the State and defense
10 have reviewed the exhibits and are in agreement that
11 they're there and have reviewed the verdict form and are in
12 agreement and have agreed that that is proper.

13 All right. We'll stand at ease. It's five after
14 three.

15 Ms. Barbara, you can tell them they may start their
16 deliberations. We're going to take about a five minute
17 break for y'all to get --

18 MR. THOMPSON: Your Honor, do we want to pull the
19 alternate's out.

20 THE COURT: Thank you.

21 (WHEREUPON deliberations by the jury began at 3:05
22 p.m.)

23 (WHEREUPON it was reported to the Court that the
24 jury had reached a verdict at 3:18 p.m.)

25 ///

VERDICT

1
2 **THE COURT:** Mr. Miller, is the State ready to
3 receive the verdict?

4 **MR. MILLER:** We are, Your Honor.

5 **THE COURT:** Mr. Thompson?

6 **MR. THOMPSON:** Yes, Your Honor.

7 (WHEREUPON the jury entered the courtroom at 3:21
8 p.m.)

9 **THE COURT:** Mr. Foreman, have y'all reached a
10 verdict.

11 **THE FOREMAN:** We have.

12 **THE COURT:** If you would pass it to the clerk,
13 please.

14 Thank you, ma'am.

15 **THE CLERK:** Your Honor, we have State of South
16 Carolina, Case No. 2012-GS-02-01518, State of South
17 Carolina versus William R. Pearson, as of the offense of
18 burglary in the first-degree, we the jury find the
19 defendant guilty. Signed unanimously by Santos Pagan.

20 Members of the jury, Mr. Foreman, is this your
21 verdict? Please respond by raising your right hand.

22 All hands are raised.

23 **THE COURT:** Thank you. Anything for the jury
24 before I dismiss them?

25 **MR. MILLER:** Nothing from the State, Your Honor.

1 **MR. THOMPSON:** Nothing from the defense, Your
2 Honor.

3 **THE COURT:** Thank y'all very much. I appreciate
4 your effort and your service. I hope you enjoyed your
5 lunch. You will not be required to come back anymore this
6 week. I thank you and the citizens thank you. We cannot
7 conduct court without y'all being ready and willing and
8 able to go. Thank you very much. Ms. Barbara will show
9 you back to your jury room. You'll give her your badge.
10 If anyone needs a work excuse, Ms. Barbara will handle that
11 for you. Thank you once again.

12 (WHEREUPON the jury left the courtroom at 3:33 p.m.)

13 **THE COURT:** Mr. Probation agent, you need to do
14 anything in regards to the guilty plea?

15 **OFFICER FINCH:** I need to serve a citation.

16 **THE COURT:** Go ahead and take care of that
17 administrative matter.

18 (WHEREUPON the probation violation citation was
19 served on the defendant.)

20 **OFFICER FINCH:** Thank you, Your Honor.

21 **THE COURT:** Mr. Thompson, any motions or anything
22 you need to make?

23 **MR. THOMPSON:** Two, Your Honor. First of all I'd
24 like to renew my motion for directed verdict, Your Honor.
25 So much as taking the light most favorable to the State,

1 the State should not have been able to prove that the
2 defendant was guilty in this matter. No reasonable jury
3 should have found in favor of the State and I would like to
4 ask the Court at this point in time to renew our motion for
5 directed verdict.

6 **THE COURT:** Well, Mr. Thompson, as I said when I
7 denied your motion, it boiled down to an issue of
8 credibility and that's the province of the jury and they
9 made that decision adverse to your client, so I
10 respectfully deny your motion. Thank you.

11 Anything educational?

12 **MR. THOMPSON:** Your Honor, also, since at this
13 point in time it's moot, would like to ask that the Court
14 consider vacating the bench warrant against David Rogier.

15 **THE COURT:** I've already done so.

16 Mr. Miller, is the -- this is life, but I can
17 sentence him to no less than fifteen years. Can it be
18 suspended any?

19 **MR. MILLER:** No, sir, Your Honor.

20 **THE COURT:** Mr. Thompson, can it be suspended?

21 Mr. Thompson, I asked you a question.

22 **MR. THOMPSON:** I do not believe it can be
23 suspended. I also at this point in time would like to move
24 for a new trial. Also renew any earlier objections. I
25 don't remember that I made any on the record.

1 **THE COURT:** You didn't. What would the new trial
2 be for?

3 **MR. THOMPSON:** Your Honor, I'd like to ask the
4 Court's indulgence to be able to prepare a brief on that
5 and be able to submit that to you.

6 **THE COURT:** By when?

7 **MR. THOMPSON:** I can have it to you by close of
8 business tomorrow.

9 **THE COURT:** I'll give you ten days.

10 **MR. THOMPSON:** Very fine, Your Honor.

11 **THE COURT:** And we'll just delay -- I can go ahead
12 and sentence and if I offer you a new trial, I can vacate
13 the sentence.

14 **MR. MILLER:** Yes, Your Honor, and there's a case
15 that's relatively recent that is from Aiken County. Judge
16 Cooper, I believe that with Court of Appeals. It affirmed
17 that burglary in first-degree cannot be suspended.

18 **THE COURT:** Do you know the name of that case?

19 **MR. MILLER:** Judge, there were three defendants.
20 They're all -- I can get it to you.

21 **THE COURT:** We're getting it right now. If you
22 don't want to draw against Adam on the computer. He'll
23 outdraw you.

24 All right. Mr. Thompson, y'all come on up and let
25 me do this.

SENTENCE

1
2 **THE COURT:** All right. Mr. Finch, if you would
3 please refresh my memory on Mr. Pearson's current probation
4 status.

5 **OFFICER FINCH:** Yes, sir, Your Honor. Currently on
6 probation on Indictment 09-GS-02-976, it's a burglary,
7 violent, second degree.

8 **THE COURT:** Hold on a second. 0902976?

9 **OFFICER FINCH:** Yes, sir.

10 **THE COURT:** Burg second?

11 **OFFICER FINCH:** Yes, sir, violent.

12 **THE COURT:** And the sentence was?

13 **OFFICER FINCH:** Twelve years suspended upon four
14 years of service and four years of probation.

15 **THE COURT:** When was that handed down, please?

16 **OFFICER FINCH:** July 23rd, 2009.

17 **THE COURT:** Is that correct, Mr. Thompson? You
18 agree with that.

19 **MR. THOMPSON:** Your Honor, beg the Court's
20 indulgence.

21 **THE COURT:** So that's eight years on that?

22 **OFFICER FINCH:** Yes, sir, Your Honor.

23 **MR. THOMPSON:** I believe he's looking at eight
24 years, Your Honor. I don't remember exactly what year he
25 was sentenced --

1 **THE COURT:** Well, if it was twelve, four and four,
2 it's twelve less four then.

3 **MR. THOMPSON:** I do agree that he was sentenced to
4 twelve and that he did four active and eight suspended and
5 that he did all of his time on the four active, so he does
6 have eight.

7 **THE COURT:** Mr. Thompson, would you please sign the
8 sentence sheet. Ask your client to. He doesn't have to,
9 but ask him to.

10 (WHEREUPON the sentence sheet was being signed.)

11 **THE COURT:** All right. The case that you're
12 referring to is State versus Jerrick, J-e-r-r-i-c-k. I
13 guess that's how you say it. Jerrick, Manuel Thomas, Judge
14 Cothran. It's an unpublished opinion, but it says Court
15 abused its discretion when it failed to consider whether it
16 had the option to suspend the sentence for first-degree
17 burglary. It was dismissed under Anders.

18 **MR. MILLER:** There's another opinion, Your Honor.
19 I'll get it.

20 **THE COURT:** That's all right.

21 **MR. MILLER:** South Carolina Supreme Court, State
22 versus Jacobs, was not an Aiken case, but the Supreme Court
23 said that it's not.

24 **THE COURT:** That's why we couldn't find it.

25 **MR. MILLER:** Yes, sir. I only knew it because it

1 was my case. Jacobs wasn't.

2 THE COURT: All right. You've taken care of
3 everything you need to do on the probation violation?

4 OFFICER FINCH: Yes, sir, I served him the Court
5 citation.

6 THE COURT: Mr. Miller, anything else you need to
7 add?

8 MR. MILLER: No, Your Honor. I would point out
9 that until 2004 was the first -- 2002 was the first
10 conviction other than fraudulent checks that the defendant
11 had of any kind. It was a simple assault and battery. By
12 May of 2004, he was convicted of criminal domestic violence
13 and petit larceny and burglary second. That was his --
14 excuse me, September of 2005 was his burglary second --
15 first burg conviction.

16 He had a position of drug paraphernalia in '08 his
17 second burglary conviction was in '09. And that's the only
18 record that he has, Your Honor.

19 THE COURT: All right. So we're all on the same
20 page, the case you just gave me the site on, State versus
21 Abel, A-b-e-l, Jacobs, opinion 27015 filed July 2011. That
22 was Judge Child's case out of probably Richland County.
23 Richland County wherein Chief Justice Toal wrote an opinion
24 affirmed by all the active justices wherein it was Court
25 addressed whether or not the Courts had authority to

1 suspend sentences for crimes punishable by death or life
2 imprisonment, including burglary first and we find that a
3 conviction of first-degree may not be suspended. That
4 answers that question.

5 Mr. Miller, anything else?

6 MR. MILLER: Nothing from the State, Your Honor.

7 The victim did not wish to address the Court.

8 THE COURT: Thank you. Mr. Thompson?

9 MR. THOMPSON: Your Honor, may it please the Court,
10 Mr. Pearson is 56 years old. He went to the 7th grade to
11 Graniteville Trade School, right.

12 THE DEFENDANT: Yes.

13 MR. THOMPSON: He has six grown children and some
14 grandchildren.

15 THE DEFENDANT: I got eight grandchildren. I got
16 two on the way.

17 MR. THOMPSON: He tells me that he's disabled. He
18 has --

19 THE DEFENDANT: I just got my disability approved.

20 MR. THOMPSON: He's going to let you talk.

21 THE DEFENDANT: I'm sorry.

22 MR. THOMPSON: That's all right.

23 THE COURT: That's fine.

24 MR. THOMPSON: He's disabled due to problems with
25 his back and his nerves.

1 **THE DEFENDANT:** I've got mental disability.

2 **MR. THOMPSON:** He is supposed to be taking
3 Clonapam.

4 **THE DEFENDANT:** Yeah.

5 **MR. THOMPSON:** He -- Your Honor, you've heard the
6 facts of this case ad nauseam. I would just submit to the
7 Court that to take into account in your sentencing that
8 it's my understanding that this was something that
9 evidently was not even planned or --

10 **THE COURT:** I understand.

11 **MR. THOMPSON:** Well thought out, that this was --
12 that, Your Honor, there were no guns or any type of weapons
13 taken from the scene or used at the scene. Your Honor, I'd
14 like to ask that the Court consider a minimum sentence in
15 this matter and consider running the probation violation
16 concurrent with his sentence. It's our understanding that
17 he's not really in very good health and being 56 years old,
18 he -- even at the minimum, he will serve a significant
19 amount of time, the significant amount of the rest of his
20 life in prison and we'd like to ask the Court to entertain
21 the minimum.

22 **THE COURT:** Sure. Mr. Pearson, what do you want to
23 tell me?

24 **THE DEFENDANT:** Your Honor, there wasn't nothing
25 intentional done there. Your Honor, my hand, Lord I didn't

1 mean it, didn't have nothing to do with that. I didn't.

2 THE COURT: I believe you.

3 THE DEFENDANT: I just -- I got multiple problems.
4 I don't know what happened, honest. I didn't. I didn't go
5 in that house. And please be...

6 THE COURT: Well, you know, my hands are tied to
7 some extent.

8 THE DEFENDANT: Please have mercy on me.

9 THE COURT: I will. I will give you all the mercy
10 I can give you.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: But, you know, the law says the minimum
13 sentence is fifteen years.

14 THE DEFENDANT: Oh my God. My mama's about to die,
15 Your Honor.

16 THE COURT: I just tried to see in I could suspend
17 it. The law will not allow me.

18 THE DEFENDANT: Oh, Jesus.

19 THE COURT: All right. Revoke his probation in
20 full. Terminate it and convert any monetary obligations to
21 a civil judgment. It will run current with 12-GS-02-1558
22 and the sentence of the Court, Mr. Pearson, is you be
23 committed to the State Department of Corrections for a
24 minimum sentence of 15 years. Good luck.

25 MR. THOMPSON: Thank you, Your Honor.

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THE COURT: 85 percent.

OFFICER FINCH: Thank you, Your Honor.

MR. THOMPSON: I'll talk to you.

* * * * * END OF TRANSCRIPT * * * * *

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State of South Carolina)
County of Aiken) **Certificate of Reporter**

I, THE UNDERSIGNED, Brenda J. Sigwald, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the captioned case in the Court of General Sessions in and for the State of South Carolina on the 15th through the 16th day of October, 2012.

I FURTHER CERTIFY that the foregoing pages, numbered 1 through 163 constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 8th day of June, 2013.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

M035742

FORM 5

2015 CP-02-00218
 2013 CS-02-01518
 Filed 1-23-15
 Deputy Clerk
 Trial Judge
 Trial Asst.
 Court Reporter
 Sec. PCR Postmaster
 General Sessions
 Appointed Asst.

STATE OF SOUTH CAROLINA)
)
 County of AIKEN)
)
WILLIAM R. PEARSON /336210)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 LIEBER CORR. INST.
2. Name and location of Court which imposed sentence AIKEN COUNTY CIRCUIT COURT AIKEN COUNTY
3. Name(s) of co-defendant(s) (if any) WILLIAM JAMES PEARSON
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) BURGLARY FIRST DEGREE §16-11-0311
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) OCTOBER 16, 2012 15 YEARS (85 PERCENT)
 - (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. COURT OF APPEALS
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - 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) _____
 - (b) _____

10.(a) Ineffective assistance of Trial Counsel: Petitioner was denied his right to the effective assistance of trial counsel as guaranteed by the Sixth Amendment and a fair trial in violation of his Fourteenth Amendment Due Process right as well as Art. I, §§ 3 and 14 of the South Carolina Constitution, prior to and during his trial.

11.(a) Supporting Facts: Trial counsel's performance prior to and during trial was both deficient and prejudicial. Strickland v. Washington, 466 U.S. 668 (1984).

11.(a) (1) Trial counsel was ineffective for failing to investigate, interview, and call many obvious potential witnesses.

Specifically, trial counsel failed to interview and call the following witnesses at Petitioner's trial: Jimmy Sikes, David Rogier, Bobby Caemmen, Jr., Howard Cartright, Louise Pearson, Billy Ray Pearson, Kevin A. Clacys, and John Myers.

Most of the above named individuals were pretrial detainees in the Aiken County Detention Center and housed with both the Petitioner and his codefendant, William James Pearson, (James), Petitioner's son.

Basically, all witnesses heard James render numerous statements that he [James] was the person who broke into the house, that the Petitioner knew neither that he [James] was going to break into the house nor did the Petitioner enter the residence and assist him in removing any property from said residence.

These witness's testimony would have contradicted James' trial testimony that he stated before trial that his testimony would be materially different than it turned out to be, had suggested that his [James] testimony remained open to influence, coercion, and alteration by the assistant solicitors, David Miller and Samuel Grimes, and had made statements flatly contradicting his testimony.

In direct contradiction of James' later trial testimony, he expressly exonerated Petitioner to numerous witnesses.. though Petitioner provided affidavits to counsel, witness's testimony

would have corroborated Petitioner's assertions and testimony that he did not break into the residence – that he was checking out the fence in back of the house as he was concerned for his grandchildren's safety provided his son rented the house.

Not only would these witnesses' testimony corroborated the Petitioner's testimony but would have certainly roused suspicions of the jury concerning James' testimony and the consideration given by the State I exchange for James' testimony at trial. James had been sentenced to probation, was not required to go into drug rehabilitation and was already back in jail at the time of his testimony. Trial counsel's deficient performance reflects a persuasive case of case of Strickland prejudice, in that, trial counsel's failure to investigate and call numerous witnesses meant that testimony of witnesses which would have significantly altered evidence in Petitioner's trial was never heard, thus provided Petitioner with a significantly different trial than he would have received by competent counsel. And denied the Petitioner his Fourteenth Amendment Due Process right to a fair trial.

11(a)(2) Trial counsel was ineffective for failing to use the taped phone conversations of co-defendant with Petitioner and various other individuals.

Prior to Petitioner's trial, trial counsel obtained CDs of taped telephone conversations of co-defendant, "James Pearson". These CDs of "taped telephone conversations" of James discussing with various individuals would have (i) shown that James made numerous statements to various persons that the Petitioner had nothing to do with the burglary, that he [Petitioner] did not know that James was going to break into the house, and (ii) that James had a plea bargain with the assistant solicitor, David Miller, for probation.

I. Trial counsel provided ineffective assistance of counsel by unreasonably failing to preserve the issues for direct review and that this failure prejudiced the outcome of the trial. By not making a motion for a continuance for time to produce subpoenaed witnesses. Also by not subpoenaing other witnesses requested by Petitioner

(A). Counsel's request for a continuance would have been in complete agreement with SCRCP rule 7(b) which provides that when the witness' testimony is the material to the support of the action or defense of the moving party... made solely because he cannot go safely to trial without such testimony and has made use of due diligence to produce the testimony of the witness.

Trial counsel's error in not requesting a continuance, due to the court's comment that he would deny this motion was ineffective. Due to the fact that without said motion on the record and likewise the court's denial of any motion, now any denial nonexistent and moot and unavailable for review on appeal.

(B). Trial counsel was ineffective for failing to subpoena all the witnesses requested by Petitioner. Petitioner requested that (8) eight witnesses be subpoenaed, only (2) two were subpoenaed and only (1) was provided. This is a violation of Petitioner's (6) amendment to have witnesses in his favor called.

As provided in *Bannister v. State* 509 S.E. 2d 807 809 (S.C. 1998) PCR applicant must produce the testimony of favorable witness or otherwise offer the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness failure to testify. Petitioner provides (see attachment copy of sworn affidavit of Kevin Clays) a copy of affidavit from Kevin Clays to show if subpoenaed and called at trial would have corroborated Jimmy Sikes testimony. Both would have testified to the fact that the following facts: The state's key witness James Pearson told them both that his father (Petitioner) had nothing to do with this burglary he's convicted and sentenced under currently by the state. These testimony would have directly contradicted the the testimony of the state's key witness James Pearson, who's credibility was already under question.

Trial counsel's failure to subpoena requested witnesses failed to subject the state's case, which was already weak to meaning adverse testing.

SUPPORTING CASES:

Lounds v. State 670 S.E. 2d 646 (S.C. 2008), Cobbs v. State 408 S.E. 2d 223 (S.C. 1991), Martinez v. State, 403 S.E. 2d 113 (S.C. 1991), Nance v. Frederick, 358 SC 480, 596 S.E. 2d 62 (2004).

II. Trial counsel's failure to object to prosecutors improper remarks prejudiced Petitioner at trial

(A). The prosecutor stated in his closing argument that the state's key witness James Pearson gained absolutely nothing by testifying for the state at Petitioner's trial. (Tp. 138 L 20-24)

This statement is completely false, Mr. Pearson was given a plea agreement of (5) five years probation in exchange for his written statement and testimony at trial.

The state has already found in *Washington v. State*, 478 S.E. 2d 883 (S.C. 1996) that this type of conduct is prejudicial and warrants a new trial.

(B). The prosecutor stated that the law does not require someone to go into a convicted of burglary. Simple as that. There is no requirement that we prove he went into that house. (Tp. 132 L 15-17)

The prosecutor went on to refer to the requirement for the charge of accessory which the defendant was not charged, also the prosecutor went on to charge the jury with the accomplice liability theory. This charge is to be given by the court after proper evidence motions and rulings are made and ruled no by the court. Therefore this remark was prejudicial and burden shifting which is a violation of Petitioner's constitutional rights. see *U.S. v. Perlaza* 439 F.3d 1149, 1172-73 (9th cir 2006).

(C) The prosecutor stated "I submit to you that (90) ninety percent of what he said was true." (Tp. 137 L 19-20) in saying this the prosecutor stated that (10) percent of what the Petitioner testified was false.

On the other hand the prosecutor stated So here he is up here knowing he's got to tell the truth...(James Pearson) (Tp. 138 139 L 25-2).

The courts have been firm on this issue. Any remarks regarding the credibility of a witness is improper. Thereby counsel's failure to object to these comments were ineffective and prejudicial.

Supporting Cases:

Matthews v. State, 565 S.E. 2d 766 (S.C. 2002) and Gilchrist v. State 565 S.E. 2d 281 (S.C. 2002).

III. Trial counsel was ineffective for not objecting to the "hand of one hand of all".

Under SCRCP 20(b) counsel has the right to object to any charge given or not given before the jury retires. Failure to object in accordance with this rule shall constitute a waiver of objection.

Therefore, by not objecting trial counsel waived his right to object and in doing so in essence agreed to the charge, that was burden shifting.

In *State v. Wommer*, 276 S.C. 258, 277 S.E. 2d 696 (1981) to admit evidence under this theory, existence of the common design and the participation of the accused against whom the evidence is offered should first be shown.

Under accomplice liability theory "a person must personally commit the crime and intentionally or through a common design, aid, abet, or assist in the commission of that crime through some overt act.

Finally, by not meeting the burden of showing how the Petitioner intentionally aid or abet in this crime, no evidence or charge under this theory should have been allowed. The only evidence offered by the state was Petitioner's own testimony that he admittedly drove himself and his son along with stolen property home. However, he also stated that this was done in a moment panic when his fight or flight mechanism engaged. This was not some pre-designed plan or scheme or anyway intentional. So there was not any evidence to establish this theory. For this reason counsel should have objected to the courts charge of a "hand of one hand of all".

Supporting Cases:

State v. Jennings, 515 S.E. 2d 107 (SC App 1999) State v. Langley, 515 S.E. 2d 98,334 SC 643 (SC 1999), State v. Leonard, 292 S.C. 133 355 S.E. 2d 270 (1987).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

WILLIAM R. PEARSON,

Appellant.

Appellate Case No. 2013-000098

AFFIDAVIT OF KEVIN B. CLAEYS

PERSONALLY appeared before me the Affiant, Kevin B. Claeys, who being duly sworn, does depose and state as follows:

1. I am an inmate at Lieber Correctional Institution. I am serving a twenty-five year sentence and do not stand to gain anything for my admission in this affidavit.
2. While I was incarcerated in Aiken County, James Pearson, who is the son of William Pearson, confided to me that he committed the robbery that his father was accused of committing.
3. James Pearson and I had been friends for a long time. James explained that his father, William Pearson, was not aware of his intent to rob a house. James told his

father that he and his wife had been arguing, and he was going to look for a place to live, and that is what William Pearson believed his son was out doing. James stated that he did not want his father to be blamed for a crime that he, James, had committed.

- 4. After a court appearance one day, James returned and told me of an offer that was made to him. James would be given five years probation in exchange for testifying against his father. James again insisted he did not want his father to be blamed for something he did not do, and that James did.
- 5. After James' next court appearance, he returned with a sentence of probation. It is apparent James lied about his father to save himself.

FURTHER AFFIANT SAYETH NOT.

Kevin B. Claeys
Kevin B. Claeys

SWORN to before me on this

22nd day of August, 2013.

Judson Bryant

Notary Public for South Carolina

My Commission Expires: May 26, 2020

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ~~(SEE ATTACHMENT) INEFFECTIVE ASSISTANCE OF~~ _____
- (b) ~~COUNSEL~~ _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ~~(SEE ATTACHMENT)~~ 3A- _____
- (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? N/A _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A _____
- (d) any other petitions, motions or applications in this or any other Court? N/A _____
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. N/A _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

N/A

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

(a) which grounds have been presented:

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

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

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

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) PCR FIRST OPPURTUNITY
 (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. BARRY THOMPSON, ESQUIRE PUBLIC DEFENDER P.O. BOX
2247 AIKEN SC 29802
 - ii. ROBERT M. DUDER CHIEF APPELLATE DEFENDER P.O.
BOX 11589 COLUMBIA SC 28211-1589
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL AND SENTENCING
 - ii. DIRECT APPEAL
 - iii. _____

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

I, WILLIAM R. PEARSON, 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.

William Ralph Pearson
Applicant

SWORN or affirmed to and subscribed before me this
15th day of Jan, 2015.

Ludream Bryant
Notary Public

My Commission Expires: May 26, 2020

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

REVERSE AND REMAND OF SENTENCE

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

N/A

STATE OF SOUTH CAROLINA)
)
County of DORCHESTER)

VERIFICATION

I, WILLIAM R. PEARSON, 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.

William Ralph Pearson

SWORN to and subscribed before me this 15th
day of Jan, 2015.

Ludnean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS)
 FOR THE SECOND JUDICIAL CIRCUIT)

William R. Pearson, #336210,)

2015-CP-02-00218)

Applicant,)

v.)

RETURN)

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 23, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the October 2012 term of the Aiken County Grand Jury for burglary-first degree (2012-GS-02-01518). Barry Thompson, Esquire represented Applicant. Applicant proceeded to a jury trial and was found guilty on October 16, 2012. The Honorable Doyet A. Early, III sentenced Applicant to fifteen year term of imprisonment for burglary in the first degree.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Pearson, 2014-UP-404 (Ct. App. 2014). The Remittitur was issued on December 12, 2014.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failing to investigate, interview, and call witnesses.
 - b. Failing to use the taped phone conversations of co-defendant with Petitioner and various other individuals.
 - c. Trial Counsel was ineffective for failing to move for a continuance to allow additional times to subpoena various witnesses.
 - d. Failure to object to prosecutors improper remarks.
 - e. Failing to object to the “hand of one hand of all”

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent asserts the Applicant’s allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant’s attorney rendered effective assistance well within the standard of “reasonableness within professional norms” for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

February 19, 2015.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
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 WILLIAM R. PEARSON, #336210,)
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 Applicant.)
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 vs)
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 STATE OF SOUTH CAROLINA.)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS


2015-CP-02-00218

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:

Aimee Jendrzewski Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
PO Box 11961
Columbia, SC 29211

DATED this the 19th day of February, 2015.



 Caroline Collins, Legal Assistant
 For Respondent

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State of South Carolina)
County of Aiken) In the Court
Of General Sessions

Indictment No.: 2015CP0200218

William R. Pearson,)
Applicant.)
vs.) Transcript of Record
State of South Carolina,)
Respondent.)

September 18, 2017
Aiken, South Carolina

B E F O R E:

The Honorable J. Mark Hayes II, Judge.

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

Aimee J. Zmroczek, Esquire
Attorney for the Applicant

Julie P. Coleman, Assistant Attorney General
Attorney for the Respondent

Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

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I N D E X

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1 **POST CONVICTION RELIEF HEARING**

2 MS. COLEMAN: May it please the Court.

3 THE COURT: Yes.

4 MS. COLEMAN: This is William Ralph Pearson versus
5 the State of South Carolina, 2015CP02218. Applicant is
6 presently confined in the South Carolina Department of
7 Corrections pursuant to orders of commitment of the Aiken
8 County Clerk of Court.

9 Applicant was true-bill indicted at the October
10 2012 term of the Aiken County Grand Jury for first degree
11 burglary. Barry Thompson, esquire, represented the
12 applicant. Applicant proceeded to a jury trial and was
13 found guilty on October 16th, 2012.

14 The Honorable Doyet A. Early III sentenced
15 applicant to a 15-year term of imprisonment for first
16 degree burglary.

17 A timely notice of appeal was filed on applicant's
18 behalf and an Ander's Brief was submitted. The South
19 Carolina Court of Appeals confirmed applicant's conviction
20 and sentence. Remittitur was issue December 12, 2014.

21 Applicant filed a timely application for post
22 conviction relief on January 23rd, 2015 alleging that he
23 was being held in custody unlawfully based on allegations
24 of ineffective assistance of counsel. The State filed its
25 return on February 19th, 2015 and he is present today and

William Pearson - Direct Examination by Ms. Zmroczek

1 represented by Ms. Amy Zmroczek.

2 And, Your Honor, if I may hand up copies of the
3 indictments and his application and the State's return in
4 this case. This is one, I believe, where we were missing a
5 Judge's packet, and I apologize again for that.

6 THE COURT: Yes, ma'am.

7 MS. ZMROCZEK: Thank you, Your Honor, we would call
8 William Pearson.

9 WILLIAM PEARSON was duly sworn

10 **DIRECT EXAMINATION**

11 BY MS. ZMROCZEK:

12 Q Thank you, Mr. Pearson. Will you state your name
13 for the Court.

14 A Yes, ma'am. William Ralph Pearson.

15 Q Mr. Pearson, how old are you?

16 A I'm 61.

17 Q And you're presently confined where?

18 A I'm in Allendale Correctional Institution.

19 Q And are you a junior or are you a senior or --

20 A I'm -- I've got a different middle name than my
21 son.

22 Q Okay. And the reason that that's important -- so
23 you're here because you were convicted of burglary charges;
24 is that correct?

25 A Yes, ma'am.

William Pearson - Direct Examination by Ms. Zmroczek

1 Q And did you have codefendants?

2 A Ma'am?

3 Q Did you have a codefendant?

4 A Yes, ma'am.

5 Q Tell the judge who that was.

6 A My son.

7 Q Okay. And what's his name?

8 A William James Pearson.

9 Q All right. And so you were arrested for a burglary
10 first charge. Do you recall what date that was?

11 A May 28th, 2012.

12 Q Of 2000 and?

13 A '12.

14 Q '12. And were you given a bond?

15 A No, ma'am.

16 Q So you were incarcerated from that date?

17 A Yes, ma'am.

18 Q Did you have an attorney?

19 A Yes, ma'am. They give my Mr. Thompson.

20 Q Mr. Thompson. How many times did you meet with
21 Mr. Thompson?

22 A Maybe, maybe twice.

23 Q Maybe two times?

24 What kind of things did you discuss with him?

25 A He just kept telling me to take the plea, take the

William Pearson - Direct Examination by Ms. Zmroczek

1 plea.

2 Q And what was he -- did he give you -- did he extend
3 to you a plea offer?

4 A Well, I didn't know it until I got in the
5 courtroom, really. I think he mentioned it at one time,
6 but before I really understood it was in the courtroom.

7 Q And what was that plea offer?

8 A I think they said 12 years, 85 percent.

9 Q Twelve years at 85 percent?

10 A And a second degree burglary, but...

11 Q And you learned that on the day that you were
12 prepared to go to trial?

13 A Pretty much, yes, ma'am.

14 Q What are some things that you asked Mr. Thompson to
15 do in your case?

16 A I just asked him to speak to my witnesses and, you
17 know, to defend me, you know.

18 Q All right. And tell -- what witnesses did you want
19 him to speak to?

20 A I had some guys that wrote statements for me about
21 what my son had told them in the jail. And I had like
22 seven people, and I give him the statements that they had
23 wrote. And I think it was like five statements and two
24 other people was willing to, willing to be a witness for
25 me, you know. But he said he wanted those two witnesses,

William Pearson - Direct Examination by Ms. Zmroczek

1 but only one of them showed.

2 Q Only one of the witnesses showed?

3 A Yes, ma'am.

4 Q Do you know where the other witness was?

5 A I don't know, the way I heard it, he had -- he had
6 got time served, I think, and he was -- he was out of the
7 department of corrections. He was home.

8 Q And there was no subpoena served on him, to your
9 knowledge?

10 A Mr. Thompson told me he subpoenaed him.

11 Q Okay. When you did meet with Mr. Thompson, did
12 y'all go over the evidence, the discovery in your case?

13 A No, ma'am.

14 Q What did you do when you met with him?

15 A All he pretty much told me was to take the plea,
16 take a plea. He's -- because I had a prior record, he said
17 I would be found guilty, but I didn't do it.

18 Q All right. And so you told him -- so what did you
19 tell him that occurred that day?

20 A Excuse me, say again?

21 Q What did you tell Mr. Thompson that had occurred
22 the day you were arrested?

23 A That my son was taking stuff out of the house and
24 then I drove the car, but when I got to my son's house, the
25 police come.

William Pearson - Direct Examination by Ms. Zmroczek

1 Can I go on? And then my son carried the police
2 all around the neighborhood acting like he bought the stuff
3 from people and --

4 Q I'm going to slow you down a little bit, okay?

5 A Yes, ma'am.

6 Q So you were charged with burglary. They said that
7 you and your son add burglarized a house; is that correct?

8 A Yes, ma'am.

9 Q Okay. What did you tell Mr. Thompson was the
10 reason you were at that house?

11 A I -- my boy wanted to rent -- the house was for
12 rent. My boy wanted to rent the house and I was going to
13 lend him the money to rent it.

14 Q Okay. And so he wanted to rent it?

15 A Yes, ma'am.

16 Q And so, is that why you drove the car there?

17 A Yes, ma'am.

18 Q And then what happened once you got there with the
19 car?

20 A My son, on the way down there, he was talking to
21 the lady that owned the house. He looked over and asked
22 me, he said, Daddy, she said she'd rent me the house and it
23 will be \$960 for me to move in.

24 He said, Will you lend me the money.

25 I said, yes, I would. Because he was have such

William Pearson - Direct Examination by Ms. Zmroczek

1 trouble with his neighbors.

2 Q Okay. And did you go look at the location?

3 A Yes, ma'am, I did.

4 Q What were you looking for?

5 A My concern was, this house, this particular house
6 had a road in the back of the house and it had a road in
7 the front of the house. At the time, I had a little grand
8 baby that -- I think she was around three, maybe
9 three-and-a-half. And she was bad about getting in the
10 road. So I was concerned -- my mind was on my grand baby.
11 I was checking that fence.

12 And I heard -- I heard a noise, but I was talking
13 to my mama on the phone and I heard a noise, so I went
14 around the house. In my mind, I thought it was the lady
15 come to show my son the house. Okay. I started to go up
16 to the porch. My son come out of the house with a
17 microwave in his hand. I got scared to death. I had no
18 idea that nobody lived in that house. They were in process
19 of moving is what I heard -- found out.

20 Q Okay. And so when he came out with the microwave,
21 what did you do?

22 A I -- I don't know. I went and I said, I'm going.
23 And, you know, so I -- I was going to get in my car. When
24 I did, he run around in front of me and jumped on the
25 console thing. I did see him put that microwave in the

William Pearson - Direct Examination by Ms. Zmroczek

1 car, but my state of mind at that time was not, I don't
2 know. And...

3 Q Did you -- what sort of problems was your son
4 experiencing?

5 A Problems my son was experiencing? He's got a
6 serious problem with drugs. And he was -- he was taking
7 drugs that day. Well, I don't know, like I said -- but
8 that's what I found out later.

9 Q Okay. Did you -- did you ever have any
10 conversations with your son -- did he testify?

11 A Yes, ma'am, he did.

12 Q Did you have any conversations with him?

13 A Yes, I did. When he got out of jail, I didn't know
14 what he had done, you know, and I had a conversation on the
15 phone and he was telling me his wife was leaving him, this
16 and that, and when I was talking to him he had went to her
17 and got my car and my debit card and he got my car locked
18 up too. They got him -- they stopped him for drugs.

19 Q And you said you were talking to him when he got
20 out of jail. Was he arrested for these charges as well?

21 A He was arrested for burglary second.

22 Q Okay. And so, was the reason that you were
23 arrested for burglary first --

24 A Because I had a prior record.

25 Q You had a prior enhancement?

William Pearson - Direct Examination by Ms. Zmroczek

1 A Yes, ma'am.

2 Q Okay. And so he was arrested for burglary second.
3 Did he receive sort of -- any sort of benefit for
4 testifying against you?

5 A Well, can I say what he told me?

6 Q Yeah.

7 A They said that they didn't want him, they wanted me
8 because I had a record. And they said if he testified
9 against me that they guaranteed to give him probation.

10 Q And do you know what he received for this?

11 A My understanding is he received 5 years suspended
12 to 3 years probation.

13 Q Okay. Did you ever watch the -- were you ever
14 shown any in-car dash-cam videos?

15 A No, ma'am.

16 Q Okay. Were you aware of what all the evidence that
17 they had against you?

18 A No, ma'am, I didn't know they had no evidence.

19 Q Okay.

20 A I mean, I never seen anything.

21 Q When was -- when was the first time that you saw
22 any evidence?

23 A Well, I didn't.

24 Q Did you --

25 A I mean, he told me that day before I come in here

William Pearson - Direct Examination by Ms. Zmroczek

1 to trial that he had something with my boy in a red suit
2 from the jail, but then when I asked to see it, he said he
3 left it at the office.

4 Q Okay. And did you feel like he was prepared to go
5 forward with your case?

6 A No, ma'am, I don't.

7 Q Did y'all discuss the elements of burglary that had
8 to be proven?

9 A No, ma'am.

10 Q And you told him that you were just merely there?

11 A Yes, ma'am.

12 Q Okay.

13 A I told him what I did. I can't write good, but I
14 got a boy at the jail that could write it out as I told him
15 exactly what happened. And I told him the only thing I did
16 was leave there with that stuff in my car. But when the
17 police come there, I carried them back where the stuff come
18 from.

19 Q And you -- you and I have had several conversations
20 about what a PCR is, right?

21 A Yes, ma'am. I think so. I think I know.

22 Q So you understand what you're asking the Court to
23 do is to grant your PCR and give you a new trial. You
24 understand that that's what you're asking for?

25 A Yes, ma'am.

William Pearson - Cross-Examination by Ms. Coleman

1 Q Okay. And we've discussed about not getting any
2 credit for any time that you've done, but as you and I have
3 discussed it, what you're asking the judge to do is to set
4 aside your conviction based on the errors of your attorney
5 and you're asking for a new trial?

6 A Yes, ma'am. And I also would like to plea to
7 something I did reasonable. I don't want to cost the State
8 no more money. I just want that what I did, I want to pay
9 for it. I don't really want to go through another trial.
10 I just want something reasonable, ma'am.

11 Q Please answer any questions the State may have for
12 you.

13 A Ma'am?

14 Q Please answer any questions Ms. Coleman may have.

15 A Okay.

16 MS. COLEMAN: Thank you.

17 **CROSS-EXAMINATION**

18 **BY MS. COLEMAN:**

19 Q Good morning, how are you?

20 A Morning, yes, ma'am.

21 Q You testified at the trial, didn't you?

22 A Ma'am?

23 Q You testified at the trial?

24 A Yes, ma'am.

25 Q So you told the jury your side of the story; is

William Pearson - Cross-Examination by Ms. Coleman

1 that right?

2 A Told what?

3 Q Here, I'll come closer, I'm sorry.

4 I said you told the jury your side of the story at
5 the trial; is that right?

6 A Yes, ma'am.

7 Q Okay. So they heard about how you were in the
8 backyard looking at the fence?

9 A Yeah.

10 Q Okay. Did your son break a window on that house?

11 A I don't know how that window got broken.

12 Q But it was broken at some point while you were
13 there?

14 A It was broken when I come around the house.

15 Q And your hand was cut that day, wasn't it?

16 A Yes, ma'am, it was. I seen him in that house and I
17 was hollering for him and some kind of way my hand got cut.

18 Q So you didn't go in the house?

19 A No, ma'am, I never entered that house.

20 Q Did you help him carry anything out of the house?

21 A No, ma'am, I did not.

22 Q Okay. But he loaded up the car with stolen goods
23 and you drove away; right?

24 A Yes, ma'am, I did.

25 Q And you told the jury all that at the trial?

William Pearson - Cross-Examination by Ms. Coleman

1 A Yes, ma'am.

2 Q Okay. Do you remember before your trial started
3 when you asked the judge -- you told the judge that your
4 attorney had not called any of the witnesses that you
5 wanted him to call? Does that sound familiar?

6 A Yes, ma'am.

7 Q Okay. And you told the judge that there were
8 several witnesses you wanted to call and he didn't have
9 them there, right?

10 A Yes, ma'am.

11 MS. COLEMAN: And for the Court, I can hand up the
12 transcript if you'd like. I'm on page 33. Just for the
13 Court's reference to see that.

14 BY MS. COLEMAN:

15 Q Do you remember your attorney stating that he
16 believed there were only two witnesses that were necessary
17 to call that day?

18 A I remember that, yes, ma'am.

19 Q But you disagreed with it?

20 A At that day, they said there was only one witness
21 there. The other one didn't show up.

22 Q Okay. Now, you testified about the plea deal that
23 was offered before the trial. Was it your decision to
24 reject that plea offer and go to trial?

25 A Yeah, I understood it to be a second degree

William Pearson - Cross-Examination by Ms. Coleman

1 burglary, 15 years violent. I'm 56 years old and I didn't
2 break in the house. There was no way I could plead to
3 that.

4 Q Thank you, no further questions.

5 THE COURT: Any redirect on what she went into?

6 MS. ZMROCZEK: Nothing further, Your Honor.

7 THE COURT: Let me ask, burglary first carries
8 potentially a life sentence?

9 MS. ZMROCZEK: It is, Your Honor, 15 to life.

10 THE COURT: So Mr. Pearson, just so that I
11 understand your position. You understand that what we're
12 doing here today, if I agree with you, I don't resentence
13 you, I send you back for another trial. And that trial, if
14 it occurs and you are found guilty, that a judge could
15 impose a life sentence on you.

16 THE DEFENDANT: Yeah, I heard that, yes, sir.

17 THE COURT: And you still wish to proceed with the
18 PCR.

19 THE DEFENDANT: Yeah, I do, yes, sir. I didn't, I
20 didn't do this.

21 THE COURT: Okay. Thank you much.

22 Thank you sir, you may step down.

23 Applicant ready to call their next witness?

24 MS. ZMROCZEK: Those are all the witnesses we have
25 at this time.

Barry Thompson - Direct Examination by Ms. Coleman

1 THE COURT: State ready to call?

2 MS. COLEMAN: Yes, Your Honor, State calls Barry
3 Thompson.

4 BARRY THOMPSON was duly sworn

5 THE WITNESS: Barry Thompson, T-H-O-M-P-S-O-N.

6 **DIRECT EXAMINATION**

7 BY MS. COLEMAN:

8 Q Good morning, Mr. Thompson.

9 A Good morning.

10 Q How long have you been practicing law?

11 A Since 2004.

12 Q All right. Were you appointed or retained in this
13 case?

14 A Appointed. I work for the public defender's office
15 here in Aiken County.

16 Q Okay. Do you recall approximately when you were
17 appointed on this case?

18 A I don't.

19 Q Or how long you represented him before the trial?

20 A I don't. I could probably find that information
21 out, but not off the top of my head. It was several months
22 at least.

23 Q Okay. How many times did you meet with the
24 applicant before the trial?

25 A I go to the jail on a regular basis, as part of my

Barry Thompson - Direct Examination by Ms. Coleman

1 job. It would have been at least once a month.

2 Q Okay. Did the applicant cooperate with you during
3 the course of your representation?

4 A Mr. Pearson and I had a fairly reasonable
5 relationship. I mean, he wasn't combative at all. We
6 didn't necessarily agree all the time about everything, but
7 we had a fairly decent relationship.

8 Q Did you file any Brady or Rule 5 motions?

9 A Yes, ma'am. That -- yes, ma'am, I did.

10 Q And did you review the discovery material with the
11 applicant?

12 A Yes, ma'am, I did.

13 Q Do you recall when you did that?

14 A I don't recall off to top of my head. It would
15 have been something -- normally there's a little bit of a
16 lag in between the time that you start a case and you file
17 for discovery and the time that you accumulate all of the
18 discovery. There would have been a little bit of a lag in
19 that, but it wouldn't have been more than a month or two
20 and as the discovery would have come in, I reviewed it with
21 Mr. Ralph.

22 Q Do you believe that he had seen and been explained
23 all the discovery material before the trial?

24 A Yes, sir -- yes, ma'am.

25 Q Okay. Prior to trial, did you discuss with the

Barry Thompson - Direct Examination by Ms. Coleman

1 applicant the elements of the charge and what the State was
2 required to prove?

3 A Yes, ma'am.

4 Q Did he seem to understand that discussion?

5 A He did. And he had -- I mean, he had already been
6 convicted of burglary a couple of different times. I mean,
7 this was not a charge that was a strange bizarre thing for
8 him.

9 Q Was the applicant eligible for a
10 life-without-parole sentence?

11 A For burglary, yes, ma'am. Burglary carries 15 to
12 life. That would have been a sentence he could have been
13 imposed with.

14 Q Did the State seek that?

15 A They did not seek life in prison, no.

16 Q Did you discuss the applicant's version of the
17 facts?

18 A Yes, ma'am.

19 Q And what were -- what was his version?

20 A He essentially -- the same -- the same thing he
21 told you on the stand just a minute ago. He's been very
22 consistent with what he said actually happened; that he was
23 there, he was looking at the backyard. He heard a noise
24 and came around and saw his son come out with a microwave
25 and he got in the car and they drove off.

Barry Thompson - Direct Examination by Ms. Coleman

1 Q Did the applicant testify at trial?

2 A He did.

3 Q And was his story at trial consistent with what he
4 testified to today?

5 A It was.

6 Q Okay. Did you discuss any possible defenses with
7 the applicant?

8 A I -- I did. The biggest -- kind of cut to the --
9 the biggest problem we had with this case is there's a
10 whole -- it's not just a microwave, this's a whole list of
11 things that are taken out of the house. The car is loaded
12 down with stolen merchandise from the house.

13 And at some point in time, Mr. Pearson, in order
14 not to have committed a crime would have had to have said,
15 no I'm not driving you away from here with this car loaded
16 full off all of this stuff.

17 I thought that the best we could do at trial was
18 accessory after the fact, which I have to look back
19 through, but I think is what I argued to the jury.

20 If you -- if you get accessory after the fact
21 though, you are admitting a willful violation of your
22 probation. He's looking at -- he's looking at being
23 sentenced on accessory after the fact and that was
24 essentially -- that was essentially the plea offer in this
25 case. The offer that was made to us was -- was what would

Barry Thompson - Direct Examination by Ms. Coleman

1 have happened if we had been successful in our defense.

2 We were probably never going to be going home with
3 no time at all. He would have -- he would have been
4 sentenced to accessory after the fact.

5 Q Did you advise him to take that plea?

6 A I did.

7 Q And was it his choice to proceed to trial?

8 A It was.

9 Q Okay. What kind of evidence did the State have
10 against the applicant?

11 A The -- I'd have to look back through to tell you
12 for -- completely, but essentially the police officer --
13 the police officer pulls into -- follows the car back to
14 the house. Mr. Pearson kind of drives back around the back
15 of the house and the police car pulls up right behind him
16 as they're getting home from the burglary and the
17 investigation starts at that point in time with
18 Mr. Pearson's in this car with the stolen stuff from the
19 house.

20 Q Was there an issue with the broken window on the
21 house?

22 A There was a window broken on the house.
23 Mr. Pearson did have a cut on his hand. There -- you know,
24 we tried to explain to the jury how it wasn't due to
25 Mr. Pearson breaking into the house, but that there was a

Barry Thompson - Direct Examination by Ms. Coleman

1 cut on Mr. Pearson's hand.

2 Q And the codefendant, his son in this case, did he
3 testify at trial?

4 A He did.

5 Q And did he implicate the applicant in this crime?

6 A He did.

7 Q Okay.

8 A I think we crossed him pretty well. I think his
9 son was the biggest liar I've ever seen on the witness
10 stand. We crossed him pretty well and we called a rebuttal
11 witness to show the jury that the guy was lying.

12 Mr. Pearson, the entire time, his story was consistent from
13 the very beginning. From the very beginning of the police
14 investigation, he said exactly the same thing. His son had
15 given multiple different versions of the story to the
16 police and I -- I did not find him credible at all, but,
17 you know, apparently the jury did.

18 Q What other witnesses did the applicant want you to
19 call on his behalf?

20 A There were several different -- there were several
21 different witnesses that Mr. Pearson claimed had told him
22 that his son had told them that he was lying. I sent my
23 investigator to go talk with several of these people.
24 Ultimately the two that had the best testimony for us were
25 -- beg the Court's indulgence. It's Mr. Jimmy Sykes and

Barry Thompson - Direct Examination by Ms. Coleman

1 Mr. David Rogier and I subpoenaed both of them and
2 Mr. Sykes appeared at trial and testified as a rebuttal
3 witness. Mr. Rogier, we did not find him and I didn't make
4 contact with him until later on when he was arrested for
5 murder, for murdering a drug dealer down in the Valley.

6 Q Why did you choose not to use the other witnesses?

7 A My investigator, after talking with multiple
8 people, told me that these -- that these two witnesses,
9 Mr. Rogier and Mr. Sykes, had the best testimony and that
10 he was a little bit nervous about the sketchiness of the
11 other people's testimony. He didn't really find them to be
12 as credible and -- some of this is a little bit, this is
13 trial strategy, so what you want to do, if you want to be
14 credible to the jury, you pick the best witnesses you can
15 and you kind of go with them. So we decided that would be
16 enough to rebut James's testimony.

17 Q And was that discussed on the record before the
18 trial too?

19 A I think a little bit, yes, ma'am.

20 Q Okay.

21 A I don't remember off the top of my head, but I
22 think a little bit. We had subpoenaed both of them and I
23 think this was a bench warrant during the trial for
24 Mr. Rogier but we never found him.

25 Q Did you have ample time to prepare for trial?

Barry Thompson - Direct Examination by Ms. Coleman

1 A Yes, ma'am.

2 Q Was there any reason to request a continuance in
3 this case?

4 A As a trial strategy matter, we probably could have
5 requested a continuance to allow us time to get Mr. Rogier
6 to court, but then you're stuck in the same position as you
7 would have had to let him go and subpoenaed him again and
8 then he may or may not show up the next time. So I, as a
9 matter of strategy, I did not request a continuance.

10 Q Okay. What was your trial strategy overall for the
11 defense in this case?

12 A To try to convince the jury that Mr. Pearson was an
13 accessory after the fact.

14 Q Okay.

15 A Which was consistent with the evidence in the case
16 and to ask that the Court be lenient in sentencing him
17 something for accessory after the fact.

18 Q Okay. Was there any reason to object to the hand
19 of one is the hand of all charge?

20 A My understanding is that's kind of well settled law
21 and I don't -- no, ma'am, I don't believe so.

22 Q Okay. And did you request a mere presence
23 instruction?

24 A I don't remember.

25 Q Okay.

Barry Thompson - Direct Examination by Ms. Coleman

1 MS. COLEMAN: And, Your Honor, I believe that's on
2 123.

3 BY MS. COLEMAN:

4 Q If I said it was in the transcript, would you
5 agree?

6 A I have no reason to disagree with you.

7 Q And did the judge charge the jury on mere presence?

8 A I don't know off the top of my head, but -- I don't
9 know off the top of my head.

10 Q And that would -- that's fine. If I said it was on
11 page 149 would you agree?

12 A I have no reason to dispute it.

13 Q Thank you. One last thing. You testified that you
14 cross examined James Pearson, the codefendant about his
15 history of lying; is that right?

16 A Yes, ma'am, you did.

17 Q Did you cross-examine him on the video tape
18 interview?

19 A I don't remember.

20 Q That's all right. Were there some jail phone
21 calls?

22 A There were jail phone calls.

23 Q And his confession to Jimmy Sykes and David Rogier,
24 you testified about those as well, did you cross-examine
25 him at trial on those confessions?

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 A I did. He denied them and we called Mr. Sykes as a
2 rebuttal witness.

3 Q Okay. Thank you. Nothing further.

4 **CROSS-EXAMINATION**

5 BY MS. ZMROCZEK:

6 Q Good morning Mr. Thompson?

7 A Good morning.

8 Q I want to -- I think the judge has a copy of your
9 transcript?

10 A I think so.

11 Q I want to talk to you about, you said you make it a
12 habit of going to the jail. Do you write down when you see
13 specific clients?

14 A Most of the time.

15 Q Did you write down in this case when you saw
16 Mr. Pearson?

17 A I don't remember off the top of my head. We were
18 in the process of -- hold on just a minute. No, ma'am, I
19 don't have that.

20 Q Okay. And I want to try and not skip around, but
21 -- so you said that you were ready and prepared for trial,
22 right?

23 A Yes, ma'am.

24 Q Okay. You made no pretrial motions; is that
25 correct?

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 A I don't believe so.

2 Q Okay. And I'm on page 27 of the transcript this
3 time.

4 So -- and you had testified that how the police
5 kind of got involved in the case is that they followed the
6 vehicle to Mr. Pearson's home; is that correct?

7 A My recollection is that the police car ended up at
8 the home about the same time that the defendant ended up at
9 home, yes, ma'am.

10 Q Did you -- why didn't you challenge the probable
11 cause for the stop?

12 A He wasn't stopped. He --

13 Q Okay. What was it then?

14 A He pulled over into his -- Mr. Pearson drove to his
15 own backyard.

16 Q Right. He drove to his own backyard.

17 A Yes, ma'am.

18 Q And the police just got out and started
19 investigating; that's what you testified too, right?

20 A Yes, ma'am, I believe this's correct.

21 Q Okay. And in fact, they didn't have a search
22 warrant?

23 A I don't believe so.

24 Q They were on his property?

25 A I believe so.

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 Q And they did not obtain consent?

2 A I don't believe so. I think what ends up
3 happening, if memory serves, Mr. Pearson gets out of the
4 car and walks inside.

5 Q Old or young? Sorry. The applicant?

6 A The applicant --

7 Q Okay.

8 A -- gets out of the car and kind of walks to the
9 side and doesn't want to talk to them. And I believe that
10 -- I want to say that the officer is Detroit Spires and I
11 think he starts speaking with Mr. Pearson's son.

12 Q Okay. And, in fact, you were given a video of that
13 conversation because he had his dash cam on, right?

14 A I believe that that's correct. I'm looking for the
15 video disk now, but I believe that that's correct.

16 Q I'm going to show you what's been marked as
17 Petitioner's Exhibit 1 and see if you recognize that.

18 A It's marked consistent with the way this would have
19 looked. I don't -- not being able to look at it right this
20 second, I don't know if it's actually the same thing, but
21 it's marked consistent with what it would have -- it's
22 marked consistently with the way I would have received it.

23 Q Okay. And by that you mean it has your initials on
24 it, right?

25 A It -- not by me. Those would have been -- that's

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 consistent with the way that the solicitor's office sends
2 out discovery material.

3 Q Okay. And it's dated 10/15/12, right?

4 A It appears to be, yes, ma'am.

5 Q And it says Rule 5?

6 A Yes, ma'am.

7 Q And it says Interview William James Pearson Jr.?

8 A Yes, ma'am.

9 Q Okay. So -- and you provided a copy of your file
10 to me, correct?

11 A I believe so, yes, ma'am.

12 Q Is that the original disk?

13 A That's what was provided to me.

14 Q Okay. So if it were marked that way, provided to
15 you, is there any reason to believe that this is other than
16 what it purports to be?

17 A I have no reason to believe that it's anything
18 other than the discovery. I can't testify to that, but I
19 have no reason to believe that it's not that.

20 MS. ZMROCZEK: Your Honor, at this time, we would
21 move Petitioner's Exhibit 1 in. If she -- if there's an
22 objection, we can maybe take a break and he can review it.
23 Obviously this is a original disk. I don't know how we
24 ended up with it, but we have it.

25 MS. COLEMAN: If that's the original disk, I have

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 no objection, Your Honor.

2 THE COURT: Without objection Petitioner's Exhibit
3 1 in.

4 (Applicant's Exhibit Number 1 was entered into
5 evidence.)

6 MS. ZMROCZEK: Okay.

7 BY MS. ZMROCZEK:

8 Q And so back to -- so you just didn't make any
9 pretrial motions to suppress any of those items, correct?

10 A No, ma'am.

11 Q Okay. But you did watch that interview, right?

12 A Yes, ma'am.

13 Q Okay. And in fact, on that disk, Junior, the
14 codefendant, repeatedly, and when I say repeatedly I'm
15 talking upwards of 25 times, says, My daddy didn't have
16 nothing to do with it. Would you agree with me?

17 A I would.

18 Q Okay. At least 25 times, My daddy didn't have
19 anything to do with it, right?

20 A Yes, ma'am.

21 Q Now, when you went to go cross-examine him, you
22 kept asking him about this, but you didn't impeach him with
23 that video, did you?

24 A I don't remember doing that, no, ma'am.

25 Q Okay. And you -- you testified previous that you

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 believed he was one of the most untruthful persons you've
2 ever seen on the witness stand?

3 A Yes, ma'am.

4 Q And you would agree that the State's case rests
5 heavily on what he had to say during trial, correct?

6 A I don't think their case rested heavily on --

7 Q Okay. I --

8 A -- his testimony. I think it was part of it.

9 Q Okay.

10 A But I don't think it rested -- I think you could
11 have convicted him without the son's testimony.

12 Q Okay. Based on what?

13 A Based on the car filled with stuff stolen from the
14 house; there's the broken window. Mr. Pearson has his hand
15 cut. The police get there right as the car is pulling up
16 with all of the stolen stuff into the backyard of the
17 house. You know, I think it would not have been as strong
18 of a case, but it's possible you could have convicted him
19 of it.

20 Q Okay.

21 A I would agree with you if you were to say their
22 case is much stronger with his testimony. I would agree
23 with that.

24 Q Okay. And there wasn't an overwhelming evidence
25 case against Mr. Pearson, Sr., correct?

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 A Correct the testimony of his son, no.

2 Q Okay. And y'all had some discussions -- and I'm on
3 page 32 of the transcript -- and there was I guess some
4 discussions about trying to make sure that all the
5 witnesses were subpoenaed, correct?

6 A Would you --

7 Q And you asked on page 32, at line 8, you asked the
8 Court to issue a bench warrant?

9 A Correct.

10 Q Okay. And then the defendant, that being Mr. --
11 the applicant now, Mr. Pearson says that he's only talked
12 to you but 30 minutes the whole time that he's seen you and
13 he's going on trial for his life?

14 A Yes, ma'am.

15 Q Okay. And --

16 A He says that a lot.

17 Q And that goes on -- that's at the beginning of page
18 33, right?

19 A Yes, ma'am.

20 Q And then later on, he says, the defendant says, he
21 told me I have no way of winning my case.

22 Is that something that you would have said to
23 Mr. Pearson?

24 A No, ma'am.

25 Q Okay.

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 A The thing he probably -- if we were to ask him
2 right now, the thing he probably would remember me saying,
3 because I say this to all my clients, is that I can't
4 predict the future. If I could predict the future with any
5 kind of clarity, I would not be doing this job, I would be
6 picking lottery numbers or betting on football games in Las
7 Vegas. That's what I almost always say to all my clients.

8 But I do give them some kind of idea of, Hey, if we
9 go to trial, this is what I think will happen.

10 And I want to be very clear. I at all times, I do
11 believe that the case of accessory after the fact was
12 really, really strong, even without James Pearson's
13 testimony. And I think the best we could have done at
14 trial would have been an accessory after the fact.

15 Q And you would agree that accessory after the fact
16 is not a lesser included of burglary first, right?

17 A I would -- I'd have to look -- I believe you're
18 correct.

19 Q Okay. And in your negotiations with, was it --

20 A David Miller.

21 Q David Miller, what kind of things -- how -- how did
22 those negotiations go and how often did you relay the
23 ongoing of those negotiations to Mr. Pearson?

24 A I honestly don't remember the answer to that
25 question. I know I spoke with Mr. Miller several times

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 about it. I know I spoke with Mr. Pearson several times,
2 but I don't remember exactly know -- I don't remember
3 exactly how many. Every offer in a case, I think it's my
4 ethical duty whether I agree with the offer or not. Every
5 offer in a case, I go and I present it to the client. But
6 I don't remember exactly how many times I did that with
7 him.

8 Q Okay.

9 A I don't think I had more than one offer in this
10 case.

11 Q And that would be on page 34. You have that in
12 front of you?

13 Beginning around line 11. Where it's got the plea
14 offer that's spelled out. The State has offered you at one
15 time a plea to burglary second violent, which is up to 15
16 years and you would to 85 percent of whatever that was?

17 A I -- that's Judge Early talking. I don't think
18 that 85 percent number is correct.

19 Q Okay.

20 A My understanding, and I hope this is not wrong
21 because this is what I tell all of my clients. My
22 understanding unless the sentence carries 20 years or more,
23 then it's not -- the possibility of 20 years or more that
24 it's not an 83 percent time sentence at SCDC; that if it
25 carries, for instance burg second violent carries up to 15,

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 but it's not -- and it's a violent crime, but it's not an
2 85 percent time crime.

3 Q And you would agree with me that you didn't correct
4 the judge about that. If you had, then it would be in the
5 record, correct?

6 A I think at the time he was talking to Mr. Pearson.

7 Q Right.

8 A But, no, I did not correct the judge on that, no,
9 ma'am.

10 Q Okay. And you said your kind of -- your trial
11 strategy was to ask the jury or tell the jury that he's
12 certainly guilty of accessory after the fact, but they
13 can't find him guilty of that so they can't find him guilty
14 of this crime, is that --

15 A I think there is no universe in which Mr. Pearson
16 doesn't end up being guilty of a crime at the point in time
17 when his son comes out of the house and he gets in the car
18 and drives him home. He has to stop and say, No, I'm
19 sorry, I'm not driving you away from here, I'm got getting
20 in the car with you, this is not happening, we're not doing
21 this; in order to not commit a crime.

22 Q Okay. And I know that these seem small, but I'm
23 just going to try to go through and ask you, typically when
24 you have a trial strategy, you have your list of objections
25 ready to go or do you anticipate them or how does that

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 work?

2 A Sometimes yes, and sometimes -- I write some of
3 them out, sometimes, but not all of the time.

4 Q Okay. And if you'll turn to page 54, you said that
5 Detroit Spires was the officer that was involved in this,
6 correct?

7 A I thought so, but I'll have to look back. I don't
8 remember exactly, but I think so.

9 Q Okay. And so on page 54, beginning around line 6,
10 Detroit Spires is testifying. She said she knew him but
11 she had not sold him anything nor had he taken anything
12 from her house that day. She had been home all day.

13 So this was Detroit Spires testifying as to what
14 somebody else said. Would you agree with me that that's
15 hearsay?

16 A I would.

17 Q Okay. Did you make that objection?

18 A I did not.

19 Q Okay. And a little bit further on, he relays
20 something that, She rushed and called him, and I'm looking
21 around lines 21 to 23. Again, testifying as to what
22 somebody else told him, correct?

23 A Correct.

24 Q Without an objection?

25 A Correct.

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 Q And then I want to turn to page 56. So -- and
2 beginning around lines 11, on page 56, it says that, the
3 sign that -- that there was a for rent sign in front of
4 this house, correct?

5 A Help me, I'm not following.

6 Q Page 56, line 11.

7 A Yes, ma'am.

8 Q And so that actually corroborated Mr. Pearson Sr.'s
9 story about the house being for rent, correct?

10 A Correct.

11 Q And then Officer Spires goes onto testify that he
12 had contacted the -- the current tenant and then relays to
13 the jury what the current tenant had told him. You agree
14 that's hearsay as well, correct?

15 A I'm not following exactly where, but I would agree
16 that what you just said is hearsay.

17 Q Page -- on line 17, regarding, I contacted
18 Mr. Hines and he told me that he had no idea who they were
19 and nobody should have been inside his residence?

20 A Yes, ma'am.

21 Q Okay. And then there were several photographs
22 introduced, correct?

23 A I believe that's correct.

24 Q And you mentioned that there's talk of a broken
25 window and there was some blood on the broken window,

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 right?

2 A I believe that's correct.

3 Q And that blood was never sent for testing, correct?

4 A That's correct.

5 Q And that none of that blood ever came back to

6 Mr. Pearson Sr., correct?

7 A Because it was not tested, it didn't come back or
8 not come back. It wasn't tested at all.

9 Q Okay. Was there a specific reason that you didn't
10 ask to have it tested?

11 A Other than I was afraid it might be his, no, ma'am.

12 Q Okay. But you don't know, do you?

13 A I do not.

14 Q Okay. And in fact, on page 58, beginning at lines
15 14 where they start talking about the broken window, the
16 very next photograph State's Exhibit, was a picture of the
17 broken window. State's Exhibit 3 was a cut on
18 Mr. Pearson's hand, a very thin laceration. And Spires
19 goes onto testify, and this is at line 24, What I observed
20 to be was from the glass of the residence.

21 A Yes, ma'am.

22 Q Okay. But you did not object to that speculation,
23 right?

24 A I did not.

25 Q Okay. Additionally there was a hammer that was

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 recovered?

2 A You're going to have to help me. I don't remember
3 a hammer.

4 Q You don't recall?

5 A I don't remember.

6 Q What -- tell me this: When you prepare a case for
7 trial, how do you go about looking at the actual physical
8 evidence? Do you go to look at the physical evidence?

9 A Sometimes yes, sometimes no. I don't know that
10 I've always looked at all of the physical evidence of a
11 case, but I don't believe I actually went down to the
12 evidence locker and looked at the evidence in this one,
13 but...

14 Q Okay. You would agree that that had some of that
15 tested and come back not to match Mr. Pearson Sr. That
16 would have been another bargaining tool for an accessory
17 after the fact plea?

18 A I think two things are true. First of all, it's --
19 in my experience, it's usually not wise to try to get the
20 State to try to develop more evidence against your client.
21 I was much more interested in them not testing everything
22 for DNA than I was in trying to have it tested in the hopes
23 it would come back negative.

24 The other problem is this: And I'm going to have
25 to apologize to you. I'm originally trained as a scientist

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 and not as a lawyer, but in science you don't prove
2 negatives, you prove positives. So just because it would
3 have come back not having his DNA on it, would not
4 necessarily prove that he didn't have it or touch it or
5 possess it. It would just prove that his DNA wasn't on it
6 at the time.

7 Q Okay.

8 A But I don't know that that would have -- the risk
9 that it's going to really blow up your case is so much
10 stronger than a possibility that you might get leverage to
11 negotiate it better, it's not worth doing.

12 Q And in a case where you have a client who is
13 asserting absolute innocence, was there -- was there a --
14 was that the basis just that you were afraid it was going
15 to come back?

16 A I think the risk is not worth -- is not worth the
17 possible advantage. No disrespect to Mr. Pearson at all,
18 but I have people lying to me all the time and I try really
19 hard to help them, but that doesn't necessarily believe --
20 that doesn't necessarily mean that I sit back and
21 completely believe everything that they say all the time.

22 Q Right. Because you want to test what they're
23 saying as well as what the State's saying, right?

24 A That's not the reason why, but I would agree that
25 what you just said is also true.

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 Q Okay. If you'll turn to page 77 -- I'm sorry. I'm
2 trying to go chronologically.

3 A Sure.

4 Q On page 77, I know that you had said that you'd
5 seen the video, in fact, on page 77 beginning around line
6 12, when you're cross-examining Mr. Pearson Jr., you, you
7 said, in fact, you told officer -- this is on 12 -- In
8 fact, you told Officer Spires that your father didn't have
9 anything to do with it. And his response was, I may have.
10 I may have, yes, sir.

11 But you would agree with me -- you're familiar with
12 how to impeach witnesses, correct?

13 A Yes, ma'am.

14 Q And that you could have asked him specifically on
15 this date at this time, didn't you say this.

16 A Yes, ma'am.

17 Q And had an opportunity -- and you could have done
18 that for at least the 25 to 30 times that he said it,
19 correct?

20 A Yes, ma'am.

21 Q Okay. So you did not do that, right?

22 A No, ma'am, I did not.

23 Q All right. I want to go to page 92. So that was
24 -- it looks like that's where the State's case ended; is
25 that correct?

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 A Yes, ma'am.

2 Q Was there -- was there a reason you didn't make a
3 directed verdict motion at that time?

4 A I don't remember. I want to say I made it later,
5 but I don't remember.

6 Q Okay. Did you and Mr. Pearson discuss him
7 testifying?

8 A Yes.

9 Q Did you prepare him for cross-examination?

10 A He and I spoke about him testifying and we did talk
11 about what he was going to say and, if that's what you're
12 asking me, yes, ma'am.

13 Q Okay. And you helped prepare him how to withstand
14 Mr. Miller's rigorous cross-examination?

15 A I spoke to him a little bit about that. We talked
16 a little bit about how to answer questions about his record
17 and stuff, but I'm going to say yes.

18 Q All right. I want to -- did you submit any
19 proposed jury charges?

20 A I don't believe so.

21 Q Okay. And this case was tried in 2012, right?

22 A I believe you're correct.

23 Q Okay. And I want -- I'm sorry. I want to go back.
24 You said that you filed no pretrial motions. Did you file
25 a motion or did you do a discovery request for Mr. Miller

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 to reveal the deal that would have been provided to the
2 testifying codefendant?

3 A No, ma'am, I did not.

4 Q Okay. Is that something that had it been revealed
5 to you that you could have also used as cross-examination?

6 A I don't -- if that would have been the case, I
7 could have. I don't really think that that's the normal
8 standard way that -- that's not normally the way that those
9 types of deals occur. And that they make a standard habit
10 of not really offering anything but just saying kind of,
11 hey --

12 Q It's a nod and wink kind of agreement, right?

13 A Yes, exactly. It's kind of a, Hey, you testify and
14 you know, we'll see what happens.

15 Q But you certainly at least used that as material
16 for cross-examination, correct?

17 A And I want to say I talked about that a little bit
18 in his, in his examination, yes, ma'am.

19 Q Okay.

20 A But I don't believe that there was any specific
21 deal that was on paper that would have been subject to --
22 if you would have asked for it, they would have told you no
23 deal had been offered.

24 Q But you as practicing in this courtroom and knowing
25 the solicitors, you know that that --

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 A Yes, ma'am, that's correct.

2 Q -- not necessarily true?

3 A Yes, ma'am, that's correct.

4 Q Okay.

5 A But this's nothing that you can really impeach him
6 on.

7 Q Okay. You -- you want to skip to -- so you filed a
8 motion for -- you did make some post trial motions; is that
9 correct?

10 A Yes, ma'am, I believe so.

11 Q Okay. In fact, you --

12 A I'll have to look, but I believe that's correct.

13 Q You filed a motion in support of a new trial, would
14 you agree with me?

15 A I think that's correct.

16 MS. ZMROCZEK: And, Your Honor, I believe it's part
17 of the record, but just since we have -- there's not a real
18 great judges packet, it's a three page memo and I'll mark
19 it and then --

20 (Applicant's Exhibit Number 2 was marked for
21 identification.)

22 BY MS. ZMROCZEK:

23 Q And I'll show you what's been marked as

24 Petitioner's Exhibit 2. Do you recognize that? Would that
25 be the memorandum --

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 A Yes, ma'am.

2 Q -- that you filed?

3 A Yes, ma'am. I did.

4 Q And it was filed with the clerk's office correct?

5 A Yes, ma'am.

6 Q In a timely fashion?

7 A Yes, ma'am.

8 MS. ZMROCZEK: Your Honor, at this time, we would
9 move Petitioner's 2 into evidence?

10 THE COURT: Without objection Petitioner's 2.

11 (Applicant's Exhibit Number 2 was entered into
12 evidence.)

13 BY MS. ZMROCZEK:

14 Q And in fact, in that memo, you argue about -- that
15 he was denied basic -- some basic rights of fairness. You
16 wrote that no reasonable juror should have been able to
17 find him guilty beyond a reasonable doubt. It was not
18 supported by competent evidence. Do you stand by this
19 motion today?

20 A Yes, ma'am.

21 Q Okay. Was this motion ever heard?

22 A Obviously, I don't remember. I don't think we
23 verbally ever argued this. I don't know -- I don't know if
24 it was -- if it was denied or if the appeal -- if the
25 appeal cut it off. I don't know the answer to that.

Barry Thompson - Cross-Examination by Ms. Zmroczek

1 Q Okay. Because additionally, you filed for an
2 appeal right?

3 A Yes, ma'am.

4 Q Okay. Those are all the questions that I have.

5 MS. ZMROCZEK: Your Honor, and I'm not trying to
6 throw a monkey wrench in these proceedings, but I have
7 tried to find a Form 4 order and I thought that maybe there
8 might be one, so we may need to leave the record open just
9 to explore -- I'm sure that this motion was ruled upon
10 because appellate defense obviously continued with the
11 case, but, Your Honor, I would ask that we leave the record
12 open to resolve that issue.

13 I couldn't find anything anywhere and it may be
14 something that we need to consult with the solicitor's file
15 or maybe the judge.

16 THE COURT: Well, I typically don't favor keeping
17 records open of proceedings. What we can do is if I make a
18 ruling prior to the location of that, I think a better way
19 to approach it would be that if, in fact, I've already
20 ruled in favor of the State and against the petitioner,
21 then file a motion for reconsideration based on the fact
22 that you found that.

23 MS. ZMROCZEK: Thank you, I just wanted to make
24 sure.

25 MS. COLEMAN: And we can try the get that resolved

Barry Thompson - Redirect Examination by Ms. Coleman

1 today or tomorrow, and check with the clerk on that.

2 Thank you Your Honor.

3 MS. ZMROCZEK: Thank you, that's all the questions
4 I have. Thank you.

5 THE COURT: Any redirect on what she went into?

6 MS. COLEMAN: Yes, Your Honor, thank you.

7 **REDIRECT EXAMINATION**

8 **BY MS. COLEMAN:**

9 Q The directed verdict motion, do you recall Judge --
10 was there some discussion on the record of Judge Early --
11 off the record of Judge Early wanting to postpone that
12 directed verdict motion so the jury could stay in the
13 courtroom? Does that sound --

14 A Honestly, I don't remember.

15 Q Okay.

16 A I don't remember that.

17 Q Would you agree with me if the transcript shows
18 that you did make your directed verdict motion after your
19 -- later on in the case, not at the conclusion of the
20 State's case, but later, have you done that before with
21 Judge Early?

22 A Yes, ma'am.

23 Q Okay. So that's something he does in his practice
24 occasionally?

25 A Yes, ma'am.

Barry Thompson - Redirect Examination by Ms. Coleman

1 Q Okay. You testified about some hearsay evidence
2 that you did not object to. Is it -- in your opinion do
3 you believe that any of that hearsay testimony changed the
4 outcome of the trial?

5 A No, ma'am.

6 Q Okay. The speculation, the testimony about the
7 speculation on the broken glass from the residence, do you
8 believe that that changed the outcome of the trial?

9 A No, ma'am.

10 Q Okay. In your opinion the evidence that the State
11 had against the applicant, including the codefendant's
12 testimony against the applicant, do you believe that that
13 was overwhelming evidence?

14 A I think if the jury believed the codefendant, which
15 they obviously did, then together that would have been
16 overwhelming evidence of guilt.

17 Q Thank you.

18 MS. COLEMAN: Nothing further.

19 THE COURT: Thank you, sir, you may step down.

20 Applicant ready to call the next witness?

21 MS. COLEMAN: No further witnesses, Your Honor.

22 THE COURT: Applicant.

23 MS. COLEMAN: Oh, I'm sorry.

24 MS. ZMROCZEK: We do not have any other witnesses.

25 THE COURT: Any reply from the State?

Barry Thompson - Redirect Examination by Ms. Coleman

1 MS. COLEMAN: Nothing further.

2 THE COURT: Thank you very much. We'll take it
3 under advisement. Let me know if you find -- get the
4 determination was there or was there not...

5 Counsel, did y'all intend for me to review the
6 video? Did y'all intend for me to review the disk?

7 MS. ZMROCZEK: Yes, Your Honor.

8 THE COURT: Okay.

9 MS. ZMROCZEK: And there's -- there may -- I guess
10 you have to take it with you or --

11 THE COURT: Okay.

12 * * * * * END OF TRANSCRIPT * * * * *

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Barry Thompson - Redirect Examination by Ms. Coleman

1 State of South Carolina)
 2 County of Aiken) **Certificate of Reporter**

3
 4
 5
 6 I, Brenda J. Sigwald, Official Court Reporter for
 7 the Second Judicial Circuit of the State of South Carolina,
 8 do hereby certify that the foregoing is a true, accurate,
 9 and complete Transcript of Record of the proceedings had
 10 and evidence introduced in the trial of the captioned case,
 11 relative to appeal, in the Court of General Sessions in and
 12 for the State of South Carolina on the 18th day of
 13 September 2017.

14 I FURTHER CERTIFY that I am neither kin, counsel,
 15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
 17 seal at Aiken County, this 5th day of February 2019.

18
 19
 20
 21
 22
 23
 24
 25

Brenda J. Sigwald

 Brenda J. Sigwald,
 Court Reporter and Notary Public
 For the State of South Carolina
 My commission expires
 January 4, 2020


accessory before the fact. The Defendant testified he was only involved as an accessory after the fact. Defendant's testimony did not support a verdict of guilty. Even if the jury did not find the Defendant credible, his testimony alone would not have supported a verdict against him unless the jury merely speculated as to what they believed actually had happened. Consequently, the jury could have only convicted the Defendant if they believed the testimony of his son.

The Defendant's son, James Pearson did offer testimony of his father's guilt. However, the veracity of James' testimony was so doubtful as to be unreasonable for any jury to rely upon it. James' testimony was proven biased and at several points completely untruthful. He was so unreliable that no reasonable juror should have been able to convict the Defendant beyond a reasonable doubt on the basis of James' testimony.

The Defendant had a right to be innocent unless proven guilty beyond a reasonable doubt. The jury's use of James Pearson's testimony to convict the Defendant was unreasonable. This denial of Defendant's right to innocence beyond a reasonable doubt was unfair, shifts the burden of proof to the Defendant, and supports this Court granting a new trial in this matter.

Thus, Defendant, by and through his undersigned counsel hereby renews his Motion For New Trial.

Respectfully submitted,


Barry Thompson II
Attorney for Defendant
2nd Circuit Public Defender's Office
P. O. Drawer 2247
Aiken, SC 29802
Telephone: (803) 642-1732
Facsimile: (803) 642-1739

October 25, 2012
Aiken, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 STATE OF SOUTH CAROLINA,)
)
 v.)
)
 WILLIAM R. PEARSON,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 SECOND JUDICIAL CIRCUIT

Warrant: 2012-GS-02-01518

CERTIFICATE OF SERVICE

I, LORETTA WALKER, hereby certify that a true and correct copy of the Motion for New Trial was forwarded to all counsel of record listed below, by delivering to the 2nd Circuit Solicitor's Office by hand delivery, this 25th day of October 2012.

David Miller,
 2nd Circuit Solicitor's Office
 P.O. Drawer 3368
 Aiken, SC 29802

Loretta Walker
 Loretta Walker
 Post Office Drawer 2247
 Aiken, SC 29802
 (803) 642-1732

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, [Name], Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that a true and correct copy of the [document] was delivered to the [recipient] on [date].

OCT 25 2012

[Signature]
 [Name]
 [Title]

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS)
SECOND JUDICIAL CIRCUIT)

William R. Pearson, #336210,)
)
Applicant,)

2015-CP-02-00218

RECEIVED

NOV 01 2018

S.C. SUPREME COURT

ORDER OF DISMISSAL

v.)

State of South Carolina,)
)
Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 23, 2015. Respondent submitted its return on February 19, 2015. An evidentiary hearing into the matter was convened on September 18, 2017, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Barry Thompson, Esquire ("Trial Counsel"). This Court had before it the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records for the Department of Corrections, appellate records, the trial transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the October 2012 term of the Aiken County Grand Jury for first degree burglary (2012-GS-02-01518). Barry Thompson, Esquire represented

Applicant. Applicant proceeded to a jury trial and was found guilty on October 16, 2012. The Honorable Doyet A. Early, III sentenced Applicant to a fifteen year term of imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders v. California, 386 U.S. 738 (1967) brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Pearson, 2014-UP-404 (Ct. App. 2014). The Remittitur was issued on December 12, 2014.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failing to investigate, interview, and call witnesses.
 - b. Failing to use the taped phone conversations of co-defendant with Petitioner and various other individuals.
 - c. Trial Counsel was ineffective for failing to move for a continuance to allow additional times to subpoena various witnesses.
 - d. Failure to object to prosecutors improper remarks.
 - e. Failing to object to the "hand of one hand of all"

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

Applicant testified that he was arrested for this charge on May 28, 2012. He stated he met with Trial Counsel only twice before the trial. He stated that, right before the trial, Trial Counsel told him of a plea offer from the State to serve 85 percent of a twelve year sentence, and Trial Counsel advised him to take the plea. Applicant stated he rejected the plea offer, and he wanted Trial Counsel to put up witnesses on his behalf. He stated he had seven people who would testify for him, and five of them had written statements. Applicant stated his co-defendant, his son William James Pearson, wanted to rent the house where the crime occurred, so he drove the car there to look at it with him. He stated he told Trial Counsel that his son took the stuff out of the

house while Applicant was checking out the back yard. He stated he heard a noise while he was in the yard, and his son came out of the house with a microwave. Applicant testified that he did not go in the house, but after his son loaded up the car with stolen goods, he drove the car away with his son and the stolen goods inside.

Applicant testified his son testified against him at trial and was given a deal on his sentence for cooperating. Applicant testified he never saw any discovery materials in his case. He stated his defense at trial was that he was merely present at the scene of the crime and did not participate in it. Applicant stated that he testified at trial and told the jury his side of the story. He stated he does not want a new trial, but he only wants to accept the original plea deal.

Trial Counsel's testimony

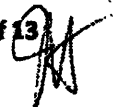
Trial Counsel testified that he was appointed to represent Applicant in this case, and he met with him regularly—at least once a month—before his trial. He stated he had a reasonable relationship with Applicant, and Applicant understood the charges against him and had been convicted before, so he was familiar with the process. He testified that Applicant was eligible for LWOP, but he received a fifteen year sentence after he was convicted.

Trial Counsel stated the evidence against Applicant consisted of his son and co-defendant's testimony, and if the jury believed the son, he believed the evidence against Applicant was overwhelming. He stated the police officer who testified at trial actually saw the broken window on the house, as well as Applicant's car full of stolen items while Applicant and his son were in the car. He stated he did not believe the State's case rested heavily on the son's testimony, but it mostly relied on the broken window of the house combined with the cut on Applicant's hand, Applicant's vehicle full of stuff, and the police officer who got there as Applicant pulled up in the car full of stolen stuff.

Trial Counsel testified his trial strategy was to convince the jury that Applicant did not commit the crime but was only an accessory after the fact, but Applicant's biggest problem is that, even if the son worked alone in taking the goods from the house and loading them into the car, Applicant got into the car and drove away, which made him guilty of the crime as an accomplice. He stated the best they could do at trial was a conviction for accessory after the fact, which would have been a violation of Applicant's probation. He stated the State's plea offer before the trial was for a sentence that Applicant would have gotten if he were convicted of accessory after the fact.

Trial Counsel testified that he hired an investigator who met with all the potential witnesses, including Jimmy Sikes and David Rogier, who both had the best testimony. He stated Sikes testified at trial as a rebuttal witness to show the jury that Applicant's co-defendant son was lying. Trial Counsel testified Rogier did not come to the trial, even though they had subpoenaed him. He stated he had ample time to prepare for trial, and there was no reason to request a continuance before the trial. He stated he could have requested a continuance in order to get Rogier as a witness, but he did not choose to do so because Applicant would have been in the same situation even with Rogier's testimony. Trial Counsel stated there was no reason to object to the "hand of one is the hand of all" jury charge. He stated he requested a mere presence jury instruction, and the trial judge charged the jury on mere presence.

Trial Counsel testified that he did not challenge the probable cause for the police officer's stop of Applicant because Applicant was not stopped; Applicant drove into his own backyard and got out of the car in front of the police officer. Trial Counsel testified that he choose not to ask to have the blood on the broken window of the robbed house tested for DNA because he was afraid the results would show the blood belonged to Applicant, which would hurt his case. He



further stated he did not want to have them test the DNA because the risk was stronger than the possibility of proving his guilty, and it would have taken away any leverage he had for negotiations with the State.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must

show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. 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 further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony and judging their credibility on the witness stand and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Applicant raises some probing issues, including but not limited to the manner of cross-examination, failure to challenge the search, the failure to properly address the broken glass and Applicant's injury, and counsel's failure to object to certain arguments. Trial counsel's position is that his decisions were attributable to trial strategy. Even if his decisions were not reasonable, the burden of establishing prejudice has not been satisfied given the evidence that is uncontested.



Additionally, Applicant does not necessarily desire a new trial, he desires a new sentence given his age. Accordingly, post-conviction relief is denied. Each individual allegation is addressed below.

Failure to investigate, interview, and call witnesses

Applicant's allegation that Trial Counsel was ineffective for failing to investigate is meritless. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). 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)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Trial Counsel credibly testified that he fully investigated Applicant's case and hired an investigator to meet with all potential witnesses. Trial Counsel clearly made strategic choices in choosing which witnesses to call, and had Jimmy Sikes testify as a rebuttal witness to impeach the credibility of the co-defendant's testimony. Trial Counsel credibly testified that he subpoenaed David Rogier to testify at trial, but he did not show up to the trial, and even if he had asked to continue the case to get Rogier's testimony, he would have been in the same position with the same evidence against him. This Court finds Trial Counsel's strategic decisions were reasonable in this situation and presented testimony of one of the best witnesses he had available.

Applicant has not presented any specific evidence that Trial Counsel failed to investigate that would have affected the outcome of his trial. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to use the taped phone conversations of co-defendant

Applicant alleges Trial Counsel was ineffective for failing to use the taped jail phone call conversations of his co-defendant son to impeach his credibility. This allegation is meritless. First, it was not unreasonable of Trial Counsel not to use any recordings of phone calls that impeached the co-defendant's credibility because Trial Counsel used other strategic methods to do so. Trial Counsel thoroughly cross-examined James Pearson on his criminal record and his history of lying. ROA 74 – 79. Furthermore, Trial Counsel did directly ask James Pearson on cross-examination about his phone conversation with his father about how he was going to tell law enforcement the truth about how it was his fault and not Applicant's, and the witness agreed that he had that conversation. ROA 77, line 19 – ROA 78, line 17. Trial Counsel further put up a rebuttal witness, Jimmy Sikes, to show the jury that James Pearson was lying. Based on these factors in the record, this Court finds Trial Counsel was not deficient for failing to play the actual phone call conversation tape.

Secondly, Applicant failed to present actual, specific recordings that Trial Counsel should have used to change the outcome of the trial. Accordingly, this Court cannot speculate as to the contents of those recorded conversations and the effect they would have had on the trial. The South Carolina Supreme Court has repeatedly held a PCR applicant must produce the favorable evidence in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from failure to produce this evidence at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant's mere speculation of what the evidence would have shown

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). Because Applicant did not introduce the actual recordings to show how Trial Counsel should have properly used the evidence at trial, he has not proven prejudice. Accordingly, because Applicant has failed to prove deficiency or prejudice, this allegation is denied and dismissed with prejudice.

Failure to move for a continuance to allow additional times to subpoena various witnesses

Applicant alleges Trial Counsel was ineffective for failing to move for a continuance to allow time to get David Rogier to testify as a witness at trial. This allegation is meritless. Trial Counsel credibly testified there was no reason to request a continuance and he had ample time to prepare for trial.

As the trial transcript and the testimony at the evidentiary hearing show, Trial Counsel subpoenaed an additional rebuttal witness to testify at trial, David Rogier. On the day of trial, Rogier did not appear, and the trial court issued a bench warrant. ROA 31 – 32. Rogier never testified at trial. Applicant now asserts Trial Counsel should have moved for a continuance to get him there to testify. The Court notes Rogier was subpoenaed to appear at the trial, and he did not appear on his own accord. It is likely that Rogier would not have appeared on another date even if Trial Counsel had gotten a continuance.

This Court finds Trial Counsel was not deficient for failing to continue the case for this witness. As Trial Counsel testified, even if Rogier had testified, the evidence against Applicant would be the same, and it would not change the fact that Applicant admitted to being at the scene of the crime and participating in the robbery by driving the car away full of stolen goods. This Court finds Trial Counsel articulated a valid trial strategy in choosing not to request a continuance. Where counsel articulates a valid strategic reason for his action or inaction,

counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Notably, Applicant did not present the testimony of Rogier or any other favorable witnesses at the evidentiary hearing, so this Court cannot speculate as to the contents of his testimony or the effect it would have had on the jury. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998); Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (finding a PCR applicant must produce witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence in order to prove prejudice to support a claim that trial counsel was ineffective for failing to interview or call potential witnesses).

The record shows Trial Counsel called Jimmy Sikes as a rebuttal witness at trial to testify for the same reasons he planned to call Rogier—to impeach the co-defendant's credibility and show the jury he was lying. Because Trial Counsel did call a rebuttal witness for this purpose and impeached the co-defendant with history of lying and his confessions to Jimmy Sikes and David Rogier, this Court finds no prejudice from any failure to call Rogier as a witness. Accordingly, because Applicant has failed to prove deficiency or prejudice, this allegation is denied and dismissed with prejudice.

Failure to object to prosecutor's improper remarks

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to improper remarks by the prosecutor is meritless. Applicant has failed to meet his burden of proving that Trial Counsel was deficient for failing to object to any specific remark by the prosecutor. Furthermore, even if his decisions were not reasonable, the burden of establishing prejudice has not been satisfied given the evidence that is uncontested. Accordingly, since

Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Failing to object to the "hand of one hand of all" |

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the "hand of one, hand of all" jury charge is meritless. Under the "hand of one is the hand of all" theory of accomplice liability, one who joins with another to accomplish an illegal purpose is criminally liable for everything done by the principal actor to the execution of the common design and purpose. State v. Thompson, 374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct.App.2007). However, mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. Id. "Under an accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.'" State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) (citing State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct.App.2002); State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999)). "In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties." Id.

In this case, both at trial and at the evidentiary hearing, Applicant testified and admitted to being at the scene of the crime and to driving the car away when his son finished loading it up with stolen goods. Although Applicant insisted that his son stole everything out of the house, he did not contest the evidence that he drove away from the scene of the crime. The evidence also showed that Applicant helped unload the stolen goods when they got back to his house. Trial

Counsel credibly testified that there was no reason to object to the jury charge or the State's use of this accomplice liability theory. The record clearly shows evidence to support the allegation that Applicant participated in the crime, and even if he did not actually enter the house and remove stolen goods. Trial Counsel requested a mere presence charge, and the charge was given. This Court finds the "hand of one is the hand of all" theory was appropriate under the facts of the case and according to the evidence presented, even in Applicant's own testimony.

This Court finds Trial Counsel was not deficient for failing to object to the theory of accomplice liability, and there is no prejudice because any objection to the jury charges would have been overruled. Accordingly, Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

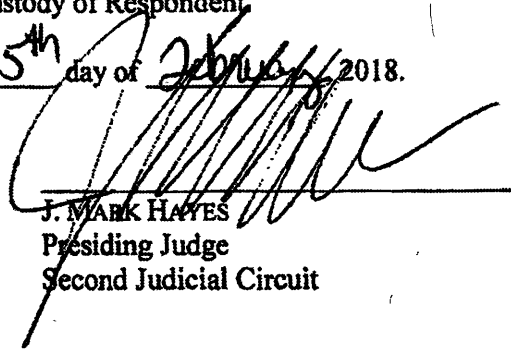
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 5th day of February, 2018.



J. MARK HAYES
Presiding Judge
Second Judicial Circuit

Aiken, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL DISTRICT
COUNTY OF AIKEN)	
William R. Pearson, #336210)	2015-CP-02-00218
Applicant,)	
)	
v.)	MOTION TO RECONSIDER
)	
State of South Carolina,)	
<u>Respondent.</u>)	

NOW COMES, Applicant, William R. Pearson, by and through his undersigned counsel, and moves pursuant to Rule 59(e) SCRCF for an order altering or amending the court's prior order filed on February 13, 2018, denying Applicant's claim and dismissing with prejudice.

While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000).

Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Failing to investigate, interview and call witnesses;
2. Failing to use the taped phone conversation of co-defendant with Petitioner and various other individuals;
3. Trial Counsel was ineffective for failing to move for a continuance to allow additional times to subpoena various witnesses;
4. Failure to object to prosecutors improper remarks; and
5. Failing to object to the "hand of one hand of all."

THEREFORE, counsel requests that Order be reconsidered for the above listed specific

reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



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Counsel for Applicant

Columbia, South Carolina
Dated: February 21, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	
William R. Pearson, #336210)	2015-CP-02-00218
Applicant,)	
)	
-vs-)	CERTIFICATE OF SERVICE
)	
State of South Carolina,)	
<u>Respondent.</u>)	

I certify that, on this date, I served a copy of the Motion to Reconsider dated February 21, 2018 by depositing it in the U.S. Mail in an envelope with sufficient postage affixed, addressed as follows:

Julie Coleman
Assistant Attorney General
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549


Christina A. Metze

Columbia, South Carolina

Dated: 2/21/18

Respectfully submitted,

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By:


Attorneys for the Respondent

Columbia, South Carolina
5/16, 2018

WITNESSES

New Ellenton Police Department

Patrick Spires

Law Enforcement Case #: 12-000972-05

DWM

ARREST WARRANT NUMBER

M035742

FILED: Oct 4 2012

Liz Godard
C.C.R.&G.S.
Shawn Langley 28
Deputy Clerk

ACTION OF GRAND JURY

Tom Bill

Walter Edwards

Foreperson of Grand Jury
Date: October 4, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0201518

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

THE STATE
vs.

WILLIAM R. PEARSON

CDR #: 0079

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

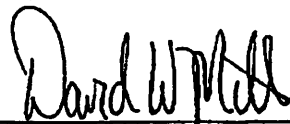
INDICTMENT FOR
BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on October 8, 2012, the Grand Jurors of Aiken County present upon their oath:

That **WILLIAM R. PEARSON**, along with William J. Pearson, did in Aiken County on or about May 28, 2012, wilfully and unlawfully enter the dwelling of John Hines located at [REDACTED] Avenue, New Ellenton, South Carolina, without consent and with the intent to commit a crime therein and the defendant has two or more prior convictions for burglary, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as amended.

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



J. STROM THURMOND, SOLICITOR