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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable William H. Seals, Circuit Court Judge

CHRISTOPHER ALLEN BOLING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002157

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

RASHEEDA CLEVELAND
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON)

DOCKET NO. 2011-GS-10-2405

STATE OF SOUTH CAROLINA)

vs.)

CHRISTOPHER ALLEN BOLING)

Defendant)

TRANSCRIPT OF RECORD

July 28, 2014

Charleston, South Carolina

VOLUME 1 (OF 3)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

EMMANUEL FERGUSON, ESQ.

JENNIFER SHEALY, ESQ.

Attorneys for the State

WILLIAM RUNYON, ESQ.

Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

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1 PROCEEDINGS
2 THE COURT: I understand on Mr. Boling's case there
3 is only one indictment, correct?
4 MR. RUNYON: Yes, Your Honor.
5 THE COURT: And that's the only indictment y'all
6 are going forward on, correct?
7 MR. FERGUSON: That's correct, Your Honor. And the
8 State would like to have the opportunity to amend the
9 indictment slightly.
10 THE COURT: Have you talked to Mr. Runyon about it?
11 MR. FERGUSON: I have, Your Honor, and he does
12 impose that ---
13 MR. RUNYON: --- I respectfully ---
14 THE COURT: --- well, we'll deal with that in just
15 a moment. We're getting ahead of ourselves.
16 THE COURT: How long do you anticipate the Burglary
17 1st taking?
18 MR. FERGUSON: No more than a day and a half, Judge
19 MR. RUNYON: Yes, Your Honor. Your Honor, just to
20 make the court aware Judge Young gave me protection from
21 about 9:00 to 10:00 tomorrow to attend a federal
22 arraignment across the street only because the Justice
23 Department were bringing in lawyers from Washington for
24 the occasion. I double checked and I talked to Judge
25 Marchant's [phonetic] office and we will be able to do

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1 that arraignment. It's a superseding indictment so we'll
2 be able to do that arraignment at 9:00 probably and so it
3 shouldn't be any delay in this case.

4 THE COURT: The State is calling all 14 witnesses
5 listed?

6 MR. FERGUSON: No, Judge. We actually anticipate
7 maybe calling about ten. Let me double check.

8 [Whereupon, Mr. Ferguson reviews documents]

9 MR. RUNYON: We've stipulated to the change, Your
10 Honor.

11 MR. FERGUSON: We anticipate calling about ten of
12 those witnesses and many of them are just short maybe
13 five minute situations.

14 THE COURT: Does the defense plan on calling any
15 witnesses?

16 MR. RUNYON: It depends upon what the prosecution
17 witnesses say, Judge but as a practical matter we do not
18 anticipate that occurring.

19 THE COURT: Are you going to be requesting a formal
20 arraignment?

21 MR. RUNYON: No, Your Honor.

22 THE COURT: Are there any pretrial motions? There
23 weren't any filed and I'm asking in the event that there
24 is some ---

25 MR. FERGUSON: --- no, Judge. But we -- no, Judge

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1 there aren't any pretrial motions. But what we would
2 like to clarify the victim's prior record and which can
3 be mentioned during trial.

4 THE COURT: And what record does the victim have?

5 MR. FERGUSON: Well, the past ten years our records
6 indicate that Joseph Owens has a 2010 Breach of Trust
7 with Fraudulent Intent, a 2011 Failure to Yield Right of
8 Way, and a 2013 Receiving Stolen Goods, Driving Under
9 Suspension, Uninsured Motor Vehicle Operation, and Open
10 Container. It's the State's position that the only
11 admissible convictions would be the 2010 Breach of Trust
12 and the 2013 Receiving Stolen Goods.

13 THE COURT: I would assume that is all the defense
14 will be seeking to impeach his creditability?

15 MR. RUNYON: That's all we thought we would be
16 talking about.

17 THE COURT: Yes, those are the only crimes of
18 dishonesty.

19 MR. RUNYON: Right.

20 THE COURT: Then that is settled, correct?

21 MR. FERGUSON: Yes, Judge then there was a second
22 victim with a similar kind of situation. She in the last
23 ten years, her name is Vivian Jeanette Watkins ---

24 THE COURT: --- I only have one person in the
25 indictment, a Christopher Allen Boling.

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1 MR. RUNYON: Judge, this was ---

2 THE COURT: --- well, Joseph Owens. I'm sorry; I'm
3 reading the wrong name. The indictment only alleges
4 that on or about January 1st, 2011 the defendant,
5 Christopher Allen Boling did enter the dwelling of Joseph
6 Owens located at [REDACTED] Cane Slash Road, Johns Island
7 without consent and with intent to commit a crime
8 therein. That in addition entry occurred at night and
9 the defendant was armed with a weapon.

10 MR. FERGUSON: Right, Judge. She's also a witness
11 to this assault on Joseph Owens.

12 THE COURT: So she's a witness not a victim then?

13 MR. FERGUSON: Yes, Judge.

14 THE COURT: Okay. And what is her name then?

15 MR. FERGUSON: Vivian Watkins.

16 THE COURT: And what is her record?

17 MR. FERGUSON: In the last ten years, Judge she's
18 got a 2006 Forgery, 2009 Forgery, and a 2012 Speeding.
19 The State's position is that only the 2006 and 2009
20 Forgeries would be admissible ---

21 THE COURT: --- I would assume that's what you
22 would be seeking to introduce, correct?

23 MR. RUNYON: That's correct, Your Honor.

24 THE COURT: So then that's resolved. Her name is
25 Vivian Watkins?

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1 MR. FERGUSON: Yes, Judge. She goes by Vivian
2 Jeanette Watkins.

3 THE COURT: Okay.

4 MR. FERGUSON: In addition, Your Honor, she has a
5 pending Possession of Cocaine Base charge. The State's
6 position is that information would not be relevant.

7 THE COURT: I don't think Mr. Runyon indicated he
8 intended to introduce that.

9 MR. RUNYON: I don't intend to ask her about any
10 pending charges, Judge. But because of her situation I
11 would be intending to possibly ask her whether or not she
12 is under the influence of medications.

13 THE COURT: Medications? Because when you say her
14 current situation what are you referring to?

15 MR. RUNYON: Well, it depends on what her testimony
16 is under direct, Judge because what we have on discovery
17 is that she is claiming to be depressed and suffering
18 from P-T-S-D and all this other stuff.

19 THE COURT: Okay. We'd have to address that at
20 the appropriate time.

21 MR. RUNYON: That's correct, Your Honor.

22 THE COURT: Because I don't have enough information
23 to know whether that would be ---

24 MR. RUNYON: --- right. I mean it depends on what
25 the testimony is ---

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1 THE COURT: --- but that's not about her record so.

2 MR. RUNYON: No, that's not about her record.

3 THE COURT: Is there anything else about her record
4 that you all would be seeking to introduce that is not
5 resolved?

6 MR. FERGUSON: I don't believe so, Your Honor.

7 MR. RUNYON: No, Judge. She's just a mentally ill
8 forger.

9 THE COURT: And are there any other pretrial
10 matters we need to deal with before selecting the jury?

11 MR. FERGUSON: Just the remaining one about the
12 indictment, Judge and that will be all.

13 THE COURT: And what is the -- how are you seeking
14 to amend the indictment?

15 MR. FERGUSON: Well, Judge in reviewing the --
16 indictment I see that there is a Scribner's error on the
17 last sentence. It says that in addition entry occurred
18 at night and the defendant was armed with a weapon. The
19 State's position is that is a Scribner's error and it
20 should be and slash or.

21 THE COURT: I don't think that is of any real
22 significance.

23 MR. RUNYON: Judge, just out of an abundance of
24 caution I can't consent to that.

25 THE COURT: Well, I don't think it makes a

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1 difference whether they said and or and or; they cited
2 the statute and it's clearly a Scribner's error.
3 Indictment is a notice document and I don't think it
4 makes a difference one way or the other because I'm going
5 to charge whatever they prove. I'm going to charge the
6 elements of the statute.

7 MR. RUNYON: That's my position is they are going
8 to have to prove what they can prove, but the simple fact
9 Judge ---

10 THE COURT: --- well, they just have to prove the
11 elements of the statute. They don't have to prove the
12 entry occurred at night and he was armed. They just have
13 to prove whatever the statute says.

14 MR. RUNYON: Whatever the statute says, yes.

15 THE COURT: If he doesn't consent to the amendment
16 I'm not amending it. But I don't know that it really
17 makes a difference one way or the other.

18 MR. FERGUSON: We just don't want to -- we're not
19 sure if the indictment is going to go back to the jury
20 room ---

21 THE COURT: --- it goes back to the jury because
22 I'm going to charge them the law and that's what they are
23 bound by. I'm going to instruct them that an indictment
24 is simply a document by which the case is processed in
25 the court. It's not evidence of anything it contains.

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1 MR. FERGUSON: Right, Judge. And the reason I
2 brought that up is we just don't want the jury to look at
3 the indictment and say and there must be a weapon and it
4 must occur at night. And if it fails on any one of those
5 then they need to return a not guilty verdict; it's
6 either one not both ---

7 THE COURT: --- I'm going to instruct what the
8 statute says.

9 MR. FERGUSON: Thank you, Judge.

10 MR. RUNYON: I was going to say, Judge you're going
11 to instruct them what the law is and then ---

12 THE COURT: --- yes. An indictment is a notice
13 document. I mean I'm not -- if he's not going to consent
14 to it being amended I just don't -- I guess I'm just at a
15 loss as to why it needs to be amended. He's not going to
16 consent to it and I don't think it makes a difference one
17 way or the other.

18 MR. RUNYON: Well, to be quite blunt with you
19 Judge, frankly to be candid with the court, Judge I've
20 been in this case for two and half weeks and I've had to
21 play catch up and I've gotten to this point under the
22 order from Judge Young that this case be ready to be
23 tried this week and so out of an abundance of caution I'm
24 just not prepared to consent to that.

25 THE COURT: I just don't think it makes a

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1 difference. It's a notice document. He's on notice that
2 he is being charged pursuant to 16-11-311.

3 MR. FERGUSON: Thank you, Judge.

4 THE COURT: And I assume we only need one alternate
5 or do we need two?

6 MR. FERGUSON: How about two?

7 THE COURT: Any exception from the defense?

8 MR. RUNYON: No exception from the defense as to
9 two alternates, Judge. We just won't go without 12 so.

10 THE COURT: Better safe than sorry. I don't have
11 any problem with that. Have any offers been extended to
12 Mr. Runyon's client?

13 MR. FERGUSON: No, Judge.

14 THE COURT: He said no?

15 MR. RUNYON: That's correct, Your Honor. No
16 meaningful offers have been extended.

17 THE COURT: Well, you say no meaningful. Have any
18 offers been extended that your client rejected? I'm
19 asking for P-C-R purposes.

20 MR. RUNYON: We were offered to plead to the
21 indictment, Judge.

22 THE COURT: Oh, to plead straight up and he
23 rejected that?

24 MR. RUNYON: Yes, Your Honor, that's equivalent to
25 a no offer.

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1 THE COURT: Is that correct, Mr. Ferguson?

2 MR. FERGUSON: Yes, Judge he was not given an
3 offer. He was initially expected to cooperate with the
4 prosecution of the co-defendant and he did not uphold his
5 part of that deal so we have not made -- extended an
6 offer.

7 THE COURT: What happened to the co-defendant?

8 MR. FERGUSON: He is in Charleston County Detention
9 Center pending trial, Your Honor.

10 THE COURT: What were y'all going to offer him if
11 he did cooperate?

12 MR. FERGUSON: We had not made that decision,
13 Judge.

14 THE COURT: Have you explored with your client
15 whether he desires to cooperate or not, Mr. Runyon?

16 MR. RUNYON: Your Honor, he's prepared to cooperate
17 and testify truthfully to all the matters which he knows
18 about from that evening. Unfortunately, it's my
19 understanding that his recollection, his truthful
20 recollection would not comport or conform to what the
21 State would like his testimony to be.

22 THE COURT: Okay. So then he doesn't intend to
23 cooperate is what you're telling me.

24 MR. RUNYON: Well, he would cooperate but he can't
25 testify to some of the things -- see, he's been -- with

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1 other counsel he was interviewed at one time and his
2 position was not acceptable to the State. So that's
3 where we are now and why we're here Judge.

4 THE COURT: Does he have any record?

5 MR. FERGUSON: Yes, Judge. He's got a 2002
6 Criminal Domestic Violence 1st, 2003 Assault and Battery
7 of a High and Aggravated Nature, 2003 Malicious Injury to
8 Personal Property, and 2005 Simple Assault.

9 [Whereupon, the jury panel enters at 3:25 p.m.]

10 THE COURT: Good afternoon, ladies and gentlemen.
11 We appreciate your patience. We've had a very unusually
12 long day for jury selection this week and we appreciate
13 your patience. I am Deadra Jefferson. I am one of your
14 resident Judges for the Ninth Circuit, which is made up
15 of Charleston and Berkeley counties.

16 We're going to try to pick two criminal juries today
17 so that we can eliminate the need to bring you back and
18 forth to the courthouse the remainder of the week. So
19 again, I say in advance we appreciate your patience. We
20 know that your time is valuable to you.

21 The first jury that we will select is for the State
22 of South Carolina versus Christopher Allen Boling,
23 indictment 2011-GS-10-2405. It is an indictment for
24 Burglary in the 1st Degree. That indictment alleges as
25 follows: That in Charleston County South Carolina on or

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1 about January 1st, 2011 the defendant, Christopher Allen
2 Boling, did enter the dwelling of Joseph Owens, located
3 at [REDACTED] Cane Slash Road, Johns Island, South Carolina
4 without consent and with the intent to commit a crime
5 therein. That in addition entry occurred at night and
6 the defendant was armed with a weapon alleging a
7 violation of code section 16-11-311 Code of Laws as
8 amended and alleging his actions to be against the peace
9 and dignity of the state of South Carolina.

10 We're going to go through a process that is called
11 Voir Dire, which is simply a legal term meaning that I am
12 going to ask you some questions so that the attorneys can
13 more effectively exercise their preemptory challenges in
14 jury selection. If a question applies to you please
15 stand and in a loud and clear voice tell us your name,
16 your juror number, an answer to the question if
17 applicable and remain standing until the court has
18 completed questioning you.

19 Before we begin that process I'm going to have
20 counsel for the State to introduce themselves, anyone who
21 will be assisting them in the trial of the case, and also
22 tell us the names of the members of the lawyers in their
23 office. We'll then have counsel for the defense to stand
24 and introduce himself, provide us with the same
25 information and also have his client stand and face the

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1 panel. You may proceed, Mr. Ferguson.
2 MR. FERGUSON: Thank you, Your Honor.
3 THE COURT: You're welcome.
4 MR. FERGUSON: May it please the court?
5 THE COURT: Yes, sir.
6 MR. FERGUSON: Good afternoon, my name is Emmanuel
7 Ferguson. I am an assistant Solicitor for the Ninth
8 Judicial Circuit, currently under the direction of your
9 elected Solicitor, Scarlett Wilson. Alongside with me at
10 the table is Jennifer Shealy, another assistant
11 Solicitor, and Savanna Goud [phonetic], she's an intern
12 with our office.
13 I've got a long list of names to read but all these
14 are also assistant Solicitors with the Ninth Judicial
15 Circuit. Scarlett Wilson, Bruce DuRant, Marian Askins,
16 Jessica Baldwin, Shawn Barfield, Lindsey Byrd, Ted
17 Corley, Drew Evans, Spiro Ferderigos, Amy Finch -- or
18 Timmy Finch, Amy Harrell, Culver Kidd, Kelly LaPlante,
19 Nick Lewis, Chris Lietzow, Stephanie Linder, Benton
20 Matthews, Jennifer McCoy, Lauren Mulkey, Jenna Newman,
21 David Osborne, Nina Savas, Anne Seymour, Chad Simpson,
22 Randell Stoney, Greg Voigt, Richard Waring, Burns
23 Wetmore, Tyler Whitaker, Myra Whitener, Todd Williams,
24 Kelley Young, Alex Ziegler, Shannon Elliott, Debbie
25 Herring-Lash.

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1 MR. RUNYON: My name is William Runyon. I'm a
2 lawyer here in Charleston. I'm representing Christopher
3 Boling.

4 [Whereupon, the defendant stands]

5 MR. RUNYON: And we'll be appearing before you in
6 this case.

7 THE COURT: Again, ladies and gentlemen if a
8 question applies to you please stand and in a loud and
9 clear voice give us your name, your juror number, an
10 answer to the question if applicable, and remain standing
11 until I have completed questioning you.

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VOIR DIRE

THE COURT: Is there any member of the panel related by blood or marriage to Christopher Allen Boling or Joseph Owens? If so, please stand at this time.

Does any member of the panel have a close personal or social relationship with Christopher Allen Boling or Joseph Owens? If so, please stand at this time.

The following are a list of potential witnesses in this case. I would ask that you listen very carefully.

Joseph Owens, Vivian Jeanette Watkins, Darlene Koger, Deputy Michael Buenting B-U-E-N-T-I-N-G, Deputy Douglas (Doug) Delong, Keith Herriott, Deputy Matt Downing, Jennifer Clayton, Sergeant Mark Lipsey, Officer Kevin Sherbane, S-H-E-R-B-A-N-E, William Clement, Detective Derek Boyd, Deputy Jay Zealburg, and Samantha Keith.

Is there any member of the panel related by blood or marriage to any of the people that I've just listed or does anyone have a close personal or social relationship with any of these individuals? If so, please stand at this time.

Has any member of the panel ever been represented by any of the attorneys involved in this case or anyone -- any of the lawyers in their offices? If so, please stand at this time.

[Whereupon, an individual stands]

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1 THE COURT: Yes ma'am, tell us your name and your
2 juror number.
3 MS. BROWN: 46, Tracey Brown.
4 THE COURT: And who were you represented by?
5 MS. BROWN: By attorney Runyon.
6 THE COURT: I'm sorry; repeat that?
7 MS. BROWN: Attorney Runyon.
8 THE COURT: How long ago was that, ma'am?
9 MS. BROWN: Seven to ten years ago; somewhere around
10 there.
11 THE COURT: But his representation has ended
12 correct?
13 MS. BROWN: That is correct.
14 THE COURT: As a result of this experience do you
15 feel that you can remain fair and impartial and render a
16 fair and impartial decision in this case based solely on
17 the evidence as it will be presented and on the law as
18 the court will instruct?
19 MS. BROWN: [Unintelligible]
20 THE COURT: I can't hear you, ma'am. I need you to
21 speak up.
22 MS. BROWN: Oh, yes.
23 THE COURT: You may take your seat. Is there any
24 member of the panel related by blood or marriage to or
25 have a close personal or social relationship with any of

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1 the attorneys involved in this case or any of the lawyers
2 in their offices, or anyone who is employed in any manner
3 whatsoever in their offices? If so, please stand at this
4 time.

5 [Whereupon, an individual stands]

6 THE COURT: Yes ma'am, tell us your name and your
7 juror number.

8 MS. HUGHES: My name is Cheryl Hughes. I'm juror
9 166. I am personal friends with Randell Stoney and his
10 family.

11 THE COURT: When you say personal friends do you
12 see him frequently or infrequently?

13 MS. HUGHES: Frequently.

14 THE COURT: How often would you say?

15 MS. HUGHES: One to four days a week we're
16 neighbors and socially interactive.

17 THE COURT: As a result of this experience do you
18 feel that you can remain fair and impartial and render a
19 fair and impartial decision in this case based solely on
20 the evidence as it will be presented and on the law as
21 the court will instruct?

22 MS. HUGHES: Yes, I can.

23 THE COURT: And I apologize for y'all having to
24 scream. See these little vents [indicates]? They are
25 fans that are over our head and they are going constantly

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1 so it's very difficult for us -- when I say us me, the
2 Court Reporter, and the Clerk need hear so we have to
3 have you speak a little louder for us. And I appreciate
4 it. Thank you ma'am, you may take your seat.

5 Has any member of the panel formed or expressed an
6 opinion about any issue or matter involved in this case?
7 If so, please stand at this time.

8 Is there any member of the panel aware of any bias
9 or prejudice toward either the State or the defense in
10 this case? If so, please stand at this time.

11 Is there any member of the panel who was a member of
12 the Grand Jury which issued the indictment in this case?
13 If so, please stand at this time.

14 Is there any member of the panel who is a member of
15 or a contributor to any group which has as its primary
16 concern the promotion of law enforcement or victim's
17 rights?

18 These groups would include, but are not limited to,
19 Mothers Against Drunk Driving, Students Against Drunk
20 Driving, Citizens Against Violent Crime, People Against
21 Rape, Citizens Advocating a Return to Decency and Ethics,
22 Parents Empowered to Save Teens, or any other type
23 community watch group. If so, please stand at this time.

24 Is there any member of the panel who has been a
25 victim of a violent crime? If so, please stand at this

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1 time. Is there any member of the panel who lives in the
2 area of [REDACTED] Cane Slash Road, Johns Island? If so,
3 please stand at this time.

4 Is there any member of the panel who has any
5 personal knowledge of the facts and circumstances alleged
6 in this case? If so, please stand at this time.

7 Has any member of the panel watched, read, or
8 listened to any media accounts about this case? That
9 includes anything that could have been in the newspaper,
10 on the radio, television, or Internet? If so, please
11 stand at this time.

12 Is there any member of the panel who has any moral,
13 philosophical, or religious beliefs that preclude you
14 from sitting in judgment of a fellow human being? If so,
15 please stand at this time.

16 Is there any member of the panel who has had what
17 they would characterize as an unpleasant experience with
18 law enforcement such that it impairs your ability to be
19 fair and impartial? If so, please stand at this time.

20 Is there any member of the panel who has any moral,
21 philosophical, or religious beliefs dealing with drug
22 addiction that would impair your ability to be fair and
23 impartial in this case? If so, please stand at this
24 time.

25 Does any member of the panel know of any reason

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1 whatsoever why he or she should not serve as a juror in
2 this case with particular emphasis being placed on your
3 ability to be fair and impartial to both the State and
4 the defense? If so, please stand at this time.

5 [Whereupon, an individual stands]

6 THE COURT: Yes sir, if you would tell us your name
7 and your juror number?

8 MR. BARKOWITZ: Steven Barkowitz, number 16.

9 THE COURT: Yes, sir?

10 MR. BARKOWITZ: I wasn't sure if I fell in the
11 category earlier but I know Mr. Runyon and I recently met
12 Mr. Ferguson -- a local attorney.

13 THE COURT: How would you characterize each of
14 those relationships?

15 MR. BARKOWITZ: Just knowing him over the years and
16 just recently met Mr. Ferguson.

17 THE COURT: Okay. As a result of this experience
18 do you feel that you can remain fair and impartial and
19 render a fair and impartial decision in this case based
20 solely on the evidence as it will be presented and on the
21 law as the court will instruct?

22 MR. BARKOWITZ: Yes, Your Honor.

23 THE COURT: Thank you, sir. Any additional
24 questions from the State?

25 MR. FERGUSON: Court's indulgence.

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1 [Whereupon, Mr. Ferguson and Ms. Shealy confer]
2 MR. FERGUSON: Your Honor, if we could approach.
3 THE COURT: You just tell me the number.
4 MR. FERGUSON: Number 6 and 8.
5 THE COURT: That's -- interest of overly broad and
6 you should have -- the only thing that is germane is
7 whether it is known and you have that information
8 available to you.
9 And number 8 I think is also overly broad. And what
10 would be relevant is whether they were -- if it was them
11 and you would have that available as well as whether they
12 were or wasn't relative.
13 MR. FERGUSON: Thank you, Judge.
14 THE COURT: Anything further from the defense?
15 MR. RUNYON: No additions or exceptions, Judge.
16 THE COURT: Strikes are five and ten. Who is going
17 to demonstrate for me, Mr. Julius? Ladies and gentlemen,
18 if your name is called please come forward and stand as
19 Mr. Julius is standing and in the place where he is
20 standing and then turn back around and face the panel
21 until we either seat or excuse you as a juror. Again, we
22 appreciate your indulgence and we're going to try to get
23 this done as quickly as possible so that we can release
24 you for the remainder of the afternoon. Give us just a
25 few moments while the computer does what we need it to do

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1 and we'll proceed with jury selection.

2 THE COURT: Ladies and gentlemen, if you would give
3 the Clerk your attention and follow his instructions.

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State v Christopher Boling
Striking of the Jury
July 28, 2014

1 STRIKING OF THE JURY

2 CLERK OF COURT: Ladies and gentlemen, whenever

3 your name is called if you will please gather your

4 belongings make your way to the podium, turn and face the

5 back of the courtroom and I will instruct you from that

6 point on. Starting with juror number 95, Carol Ferrell.

7 [Whereupon, the juror comes forward]

8 CLERK OF COURT: Strikes are five and ten with the

9 State striking first. What say you for the State?

10 MR. FERGUSON: Please present the juror.

11 CLERK OF COURT: What say you for the defendant?

12 MR. RUNYON: Please swear the juror, Mr. Clerk.

13 CLERK OF COURT: Ma'am, if you would please make

14 your way to the jury box. You've been selected as a

15 juror in the trial of this case.

16 [Whereupon, the juror is seated in the jury box as a

17 juror]

18 CLERK OF COURT: Juror number 249, Deborah

19 Morinelli.

20 [Whereupon, the juror comes forward]

21 CLERK OF COURT: What say you for the State?

22 MR. FERGUSON: Court's indulgence.

23 [Whereupon, Mr. Ferguson confers with Ms. Shealy.

24 MR. FERGUSON: Please present the juror.

25 CLERK OF COURT: What say you for the defendant?

State v Christopher Boling
Striking of the Jury
July 28, 2014

1 MR. RUNYON: Please excuse the juror, Mr. Clerk.
2 CLERK OF COURT: Ma'am, if you would please return
3 to your seat. You've been excused from the trial of this
4 case.
5 [Whereupon, the juror returns to the audience]
6 CLERK OF COURT: Juror number 359, Erica Tracey
7 Akhter.
8 [Whereupon, the juror comes forward]
9 CLERK OF COURT: What say you for the State?
10 MR. FERGUSON: Please present the juror.
11 CLERK OF COURT: What say you for the defendant?
12 MR. RUNYON: Please excuse the juror, Mr. Clerk.
13 CLERK OF COURT: If you would please return to your
14 seat. You've been excused from the trial of this case.
15 [Whereupon, the juror returns to the audience]
16 CLERK OF COURT: Juror 46, Tracey Brown.
17 [Whereupon, the juror comes forward]
18 CLERK OF COURT: What say you for the State?
19 MR. FERGUSON: Please excuse the juror.
20 CLERK OF COURT: Ma'am, if you would please return
21 to your seat. You've been excused from the trial of this
22 case.
23 [Whereupon, the juror returns to the audience]
24 CLERK OF COURT: Juror number 34, Dean Brady.
25 [Whereupon, the juror comes forward]

State v Christopher Boling
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July 28, 2014

1 CLERK OF COURT: What say you for the State?
2 MR. FERGUSON: Please present the juror.
3 CLERK OF COURT: What say you for the defendant?
4 MR. RUNYON: Please swear the juror, Mr. Clerk.
5 CLERK OF COURT: Sir, if you would please make your
6 way to the jury box. You've been selected as a juror in
7 the trial of this case.
8 [Whereupon, the juror is seated in the jury box as a
9 juror]
10 CLERK OF COURT: Juror number 120, Justin Garraux.
11 [Whereupon, the juror comes forward]
12 CLERK OF COURT: What say you for the State?
13 MR. FERGUSON: Please present the juror.
14 CLERK OF COURT: What say you for the defendant?
15 MR. RUNYON: Please swear the juror, Mr. Clerk.
16 CLERK OF COURT: Sir, if you would please make your
17 way to the jury box. You've been selected as a juror in
18 the trial of this case.
19 [Whereupon, the juror is seated in the jury box as a
20 juror]
21 CLERK OF COURT: Juror number 28, Sybil Blanton.
22 [Whereupon, the juror comes forward]
23 CLERK OF COURT: What say you for the State?
24 MR. FERGUSON: Please excuse the juror.
25 CLERK OF COURT: Ma'am, if you would please return

State v Christopher Boling
Striking of the Jury
July 28, 2014

1 to your seat. You've been excused from the trial of this
2 case.
3 [Whereupon, the juror returns to the audience]
4 CLERK OF COURT: Juror number 245, Marlene
5 Molinoff.
6 [Whereupon, the juror comes forward]
7 CLERK OF COURT: What say you for the State?
8 MR. FERGUSON: Court's indulgence.
9 [Whereupon, Mr. Ferguson confers with Ms. Shealy]
10 MR. FERGUSON: Please present the juror.
11 CLERK OF COURT: What say you for the defendant?
12 MR. RUNYON: Please swear the juror, Mr. Clerk.
13 CLERK OF COURT: Ma'am, if you would please make
14 your way to the jury box. You've been selected as a
15 juror in the trial of this case.
16 [Whereupon, the juror is seated in the jury box as a
17 juror]
18 CLERK OF COURT: Juror number 119, Laura Garland.
19 [Whereupon, the juror comes forward]
20 CLERK OF COURT: What say you for the State?
21 [Whereupon, Mr. Ferguson and Ms. Shealy confer]
22 MR. FERGUSON: Please present the juror.
23 CLERK OF COURT: What say you for the defendant?
24 MR. RUNYON: Please swear the juror, Mr. Clerk.
25 CLERK OF COURT: Ma'am, if you would please make

State v Christopher Boling
Striking of the Jury
July 28, 2014

1 your way to the jury box. You've been selected as a
2 juror in the trial of this case.

3 [Whereupon, the juror is seated in the jury box as a
4 juror]

5 CLERK OF COURT: Juror 397, Kristen Woodward.

6 [Whereupon, the juror comes forward]

7 CLERK OF COURT: What say you for the State?

8 MR. FERGUSON: Please present the juror.

9 CLERK OF COURT: What say you for the defendant?

10 MR. RUNYON: Please swear the juror, Mr. Clerk.

11 CLERK OF COURT: Ma'am, if you would please make
12 your way to the jury box. You've been selected as a
13 juror in the trial of this case.

14 [Whereupon, the juror is seated in the jury box as a
15 juror]

16 CLERK OF COURT: Juror number 200, Christopher
17 Lamar.

18 [Whereupon, the juror comes forward]

19 CLERK OF COURT: What say you for the State?

20 MR. FERGUSON: Court's indulgence.

21 [Whereupon, Mr. Ferguson and Ms. Shealy confer]

22 MR. FERGUSON: Please present the juror.

23 CLERK OF COURT: What say you for the defendant?

24 MR. RUNYON: Please excuse the juror, Mr. Clerk.

25 CLERK OF COURT: Sir, if you would please return to

State v Christopher Boling
Striking of the Jury
July 28, 2014

1 your seat. You've been excused from the trial of this
2 case.

3 [Whereupon, the juror returns to the audience]

4 CLERK OF COURT: Juror number 169, Aisha
5 Hutchinson.

6 [Whereupon, the juror comes forward]

7 CLERK OF COURT: What say you for the State?

8 [Whereupon, Mr. Ferguson and Ms. Shealy confer]

9 MR. FERGUSON: Please present the juror.

10 CLERK OF COURT: What say you for the defendant?

11 MR. RUNYON: Please excuse the juror, Mr. Clerk.

12 CLERK OF COURT: Ma'am, if you would please return
13 to your seat. You've been excused from the trial of this
14 case.

15 [Whereupon, the juror returns to the audience]

16 CLERK OF COURT: Juror number 255, Catherine Myatt.

17 [Whereupon, the juror comes forward]

18 CLERK OF COURT: What say you for the State?

19 MR. FERGUSON: Please present the juror.

20 CLERK OF COURT: What say you for the defendant?

21 MR. RUNYON: Swear the juror please, Mr. Clerk.

22 CLERK OF COURT: Ma'am, if you would please make
23 your way to the jury box. You've been selected as a
24 juror in the trial of this case.

25 [Whereupon, the juror is seated in the jury box as a

State v Christopher Boling
Striking of the Jury
July 28, 2014

1 juror]

2 CLERK OF COURT: Juror number 197, George Klein.

3 [Whereupon, the juror comes forward]

4 CLERK OF COURT: What say you for the State?

5 MR. FERGUSON: Please present the juror.

6 CLERK OF COURT: What say you for the defendant?

7 MR. RUNYON: Please swear the juror, Mr. Clerk.

8 CLERK OF COURT: Sir, if you would please make your

9 way to the jury box. You've been selected as a juror in

10 the trial of this case.

11 [Whereupon, the juror is seated in the jury box as a

12 juror]

13 CLERK OF COURT: Juror number 199, Alison Kustra.

14 [Whereupon, the juror comes forward]

15 CLERK OF COURT: What say you for the State?

16 [Whereupon, Mr. Ferguson and Ms. Shealy confer]

17 MR. FERGUSON: Please present the juror.

18 CLERK OF COURT: What say you for the defendant?

19 MR. RUNYON: Please excuse this juror, Mr. Clerk.

20 CLERK OF COURT: Ma'am, if you would please return

21 to your seat. You've been excused from the trial of this

22 case.

23 [Whereupon, the juror returns to the audience]

24 CLERK OF COURT: The defendant has exhausted five

25 of his ten strikes. Juror number 9999, Alfred Waldrep.

State v Christopher Boling
Striking of the Jury
July 28, 2014

1 [Whereupon, the juror comes forward]
2 CLERK OF COURT: What say you for the State?
3 MR. FERGUSON: Please present the juror.
4 CLERK OF COURT: What say you for the defendant?
5 MR. RUNYON: Please swear the juror, Mr. Clerk.
6 CLERK OF COURT: Sir, if you would please make your
7 way to the jury box. You've been selected as a juror in
8 the trial of this case.
9 [Whereupon, the juror is seated in the jury box as a
10 juror]
11 CLERK OF COURT: Juror number 241, Tara Mims.
12 [Whereupon, the juror comes forward]
13 CLERK OF COURT: What say you for the State?
14 MR. FERGUSON: Please present the juror.
15 CLERK OF COURT: What say you for the defendant?
16 MR. RUNYON: Please excuse the juror, Mr. Clerk.
17 CLERK OF COURT: Ma'am, if you would please return
18 to your seat. You've been excused from the trial of this
19 case.
20 [Whereupon, the juror returns to the audience]
21 CLERK OF COURT: Juror number 133, Elizabeth Green.
22 [Whereupon, the juror comes forward]
23 CLERK OF COURT: What say you for the State?
24 MR. FERGUSON: Please present the juror.
25 CLERK OF COURT: What say you for the defendant?

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1 MR. RUNYON: Please swear the juror, Mr. Clerk.
2 CLERK OF COURT: Ma'am, if you would please make
3 your way to the jury box. You've been selected as a
4 juror in the trial of this case.
5 [Whereupon, the juror is seated in the jury box as a
6 juror]
7 CLERK OF COURT: Juror number 68, Hart Crouch.
8 [Whereupon, the juror comes forward]
9 CLERK OF COURT: What say you for the State?
10 MR. FERGUSON: Please excuse the juror.
11 CLERK OF COURT: Sir, if you would please return to
12 your seat. You've been excused from the trial of this
13 case.
14 [Whereupon, the juror returns to the audience]
15 CLERK OF COURT: That's three strikes for the
16 State; two remaining. Juror number 371, Kristara
17 Washington.
18 [Whereupon, the juror comes forward]
19 CLERK OF COURT: What say you for the State?
20 [Whereupon, Mr. Ferguson and Ms. Shealy confer]
21 MR. FERGUSON: Please excuse the juror.
22 CLERK OF COURT: Ma'am, if you would please return
23 to your seat. You've been excused from the trial of this
24 case.
25 [Whereupon, the juror returns to the audience]

State v Christopher Boling
Striking of the Jury
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1 CLERK OF COURT: The State has one strike
2 remaining. Juror number 7, Anthony Azzolino.
3 [Whereupon, the juror comes forward]
4 CLERK OF COURT: What say you for the State?
5 MR. FERGUSON: Please present the juror.
6 CLERK OF COURT: What say you for the defendant?
7 MR. RUNYON: Please swear the juror, Mr. Clerk.
8 CLERK OF COURT: Sir, if you would please make your
9 way to the jury box. You've been selected as a juror in
10 the trial of this case.
11 [Whereupon, the juror is seated in the jury box as a
12 juror]
13 CLERK OF COURT: Juror number 140, Shawn Hall.
14 [Whereupon, the juror comes forward]
15 CLERK OF COURT: What say you for the State?
16 MR. FERGUSON: Please present the juror.
17 CLERK OF COURT: What say you for the State?
18 MR. RUNYON: Swear the juror please, Mr. Clerk.
19 CLERK OF COURT: Sir, if you would please make your
20 way to the jury box. You've been selected as a juror in
21 the trial of this case.
22 [Whereupon, the juror is seated in the jury box as a
23 juror]
24 THE COURT: Two alternates. Strikes are one and
25 two.

State v Christopher Boling
Striking of the Jury
July 28, 2014

1 CLERK OF COURT: Now striking for our first
2 alternate. Strikes are one and two. Juror number 329,
3 Carolyn Smith.
4 MR. FERGUSON: Your Honor?
5 THE COURT: Yes?
6 MR. FERGUSON: Your Honor, if I could approach
7 briefly.
8 THE COURT: Sure.
9 [Whereupon, an off the record bench conference is
10 held]
11 THE COURT: You may continue.
12 CLERK OF COURT: Juror number 329, Carolyn Smith.
13 [Whereupon, the juror comes forward]
14 CLERK OF COURT: What say you for the State?
15 MR. FERGUSON: Please present the juror.
16 CLERK OF COURT: What say you for the defendant?
17 MR. RUNYON: Excuse the juror please, Mr. Clerk.
18 CLERK OF COURT: Ma'am, if you would please return
19 to your seat. You've been excused from the trial of this
20 case.
21 [Whereupon, the juror returns to the audience]
22 CLERK OF COURT: Juror number 217, Charles Lucas.
23 [Whereupon, the juror comes forward]
24 CLERK OF COURT: What say you for the State?
25 MR. FERGUSON: Please present the juror.

State v Christopher Boling
Striking of the Jury
July 28, 2014

1 CLERK OF COURT: What say you for the defendant?
2 MR. RUNYON: Please swear the juror, Mr. Clerk.
3 CLERK OF COURT: Sir, if you would please make your
4 way to the jury box. You've been selected as the first
5 alternate in the trial of this case.
6 [Whereupon, the juror is seated in the jury box as
7 an alternate juror]
8 CLERK OF COURT: Juror number 358, Theresa Tooley.
9 [Whereupon, the juror comes forward]
10 CLERK OF COURT: What say you for the State?
11 MR. FERGUSON: Please present the juror.
12 CLERK OF COURT: What say you for the defendant?
13 MR. RUNYON: Excuse the juror please, Mr. Clerk.
14 CLERK OF COURT: Ma'am, if you would please return
15 to your seat. You've been excused from the trial of this
16 case.
17 [Whereupon, the juror returns to the audience]
18 CLERK OF COURT: Juror number 126, Sandra Gilliam.
19 [Whereupon, the juror comes forward]
20 CLERK OF COURT: What say you for the State?
21 MR. FERGUSON: Please present the juror.
22 CLERK OF COURT: What say you for the defendant?
23 MR. RUNYON: Please swear the juror, Mr. Clerk.
24 CLERK OF COURT: Ma'am, if you would please make
25 your way to the jury box. You've been selected as the

State v Christopher Boling
Striking of the Jury
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1 second alternate in the trial of this case.

2 [Whereupon, the juror is seated in the jury box as
3 an alternate juror]

4 THE COURT: Are there any motions regarding the
5 selection of the jury from the State?

6 MR. FERGUSON: No, Your Honor.

7 THE COURT: From the defense?

8 MR. RUNYON: Nothing from the defense, Your Honor.

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State v Christopher Boling
Jury Sworn
July 28, 2014

1 THE COURT: Ladies and gentlemen, please stand and
2 raise your right hand so the Clerk can swear you.

3 CLERK OF COURT: Do you swear or affirm that you
4 shall well and truly try, and a true deliverance make
5 between the State of South Carolina and the defendant at
6 the bar, whom you shall have in charge, and a true
7 verdict render according to the evidence and the laws so
8 help you God? If so, please say I do.

9 [Whereupon, all jurors say I do]

10 CLERK OF COURT: If there is any juror that cannot
11 adhere to this oath, if they would please remain
12 standing? But if not you may take your seat.

13 [Whereupon, all the jurors are seated]
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State v Christopher Boling
Proceedings
July 28, 2014

1 THE COURT: Thank you. Mr. Klein, if you could
2 stand for me please for a quick moment?

3 [Whereupon, Mr. Klein stands]

4 THE COURT: Are you employed -- you're employed
5 with Benefit Focus, is that correct?

6 MR. KLEIN: Correct.

7 THE COURT: Do you have any dealings or had any
8 dealings with Wachovia before it was Wells Fargo in 2008?

9 MR. KLEIN: Yes.

10 THE COURT: Do you have recollection of having done
11 any business with Mr. Ferguson when he was employed
12 there?

13 MR. KLEIN: Yes. Emmanuel and I worked together.
14 In the qualifications I didn't consider it was a close
15 personal relationship.

16 THE COURT: It was a business relationship?

17 MR. KLEIN: Right.

18 THE COURT: As a result of that relationship do you
19 feel that you can remain fair and impartial?

20 MR. KLEIN: Yes.

21 THE COURT: Do you feel you can render a fair and
22 impartial decision in this case based solely on the
23 evidence as it will be presented and on the law as the
24 court will instruct?

25 MR. KLEIN: Yes.

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July 28, 2014

1 THE COURT: Does that in any way alter the exercise
2 of the preemptory strikes, Mr. Runyon?

3 MR. RUNYON: Your Honor, may we approach?

4 THE COURT: Yes.

5 [Whereupon, an off the record bench conference is
6 held]

7 THE COURT: Mr. Klein, we're going to excuse you
8 from the trial of this case. I wish I could let you go
9 but I need you to take your seat back out there for me
10 because I got another jury to pick and I might need you.
11 Thank you so much. I appreciate it.

12 [Whereupon, juror number 197 returns to the
13 audience]

14 THE COURT: Number 133 is going to be the
15 Foreperson. Ladies and gentlemen, you've been selected
16 for the case of the State of South Carolina versus
17 Christopher Allen Boling. I need to pick another jury,
18 which is going to take me another 30 minutes at least,
19 which would leave us only basically 30 minutes to sort of
20 muddle through a few things this afternoon.

21 I understand that the weather forecast has changed
22 and that instead of it raining tonight or the storm
23 coming tonight they expect it to come on the coast a
24 little earlier. So I'm going to take advantage of that
25 and go ahead and excuse you for the remainder of the day.

State v Christopher Boling
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July 28, 2014

1 I have some other cases that I need to dispose of in the
2 morning so instead of having you wait we're going to
3 resume at 10 o'clock. You're going to come directly to
4 your jury room and the bailiffs are going to show you how
5 to do that as well as if you could provide them with your
6 cell phone numbers.

7 During this break please do not discuss the case in
8 any manner whatsoever. Please do not speculate about
9 what you think it may or could be about. Please do not
10 watch, read, or listen to any media accounts about this
11 case if there are any and please do not -- you are
12 strictly prohibited from doing any independent research
13 on the Internet regarding any issue or matter involved in
14 this case.

15 And I would also ask that you not make any comments
16 regarding your jury service on any social networking
17 sites. That includes Instagram, Facebook, Vine; there
18 are so many I've lost track. But apparently there are
19 people during the course of the day that have time to
20 peruse those sites and call our jury coordinators and let
21 us know about your comments.

22 So I would appreciate it if you would not make any.
23 It makes life a lot easier for all of us. I know it's
24 hard to imagine isn't it. I just think how could you be
25 at work doing that. But anyway, they find time and they

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1 call us, so that eliminates me having to have a
2 conversation with you about you potentially not liking
3 being on jury service, so if you could refrain from that
4 it would be very helpful to us and very much appreciated.

5 Your patience again, this has been an inordinately
6 long day. It's been an unusual day. Normally we're done
7 with jury selection by about noon, but because of just
8 Murphy's Law things being as they are sometimes within a
9 certain amount of variant we have Mondays like this.

10 And while we are used to this system you all are
11 not. So we kind of go with the flow because this is what
12 we do all day. But it's not what you all do and I know
13 it can be frustrating to you. So we appreciate your
14 patience, we appreciate your service and we'll see you in
15 the morning at 10:00. I'll put you in the hands of the
16 bailiffs.

17 [Whereupon, the jury exits at 4:09 p.m.]

18 [Whereupon, court adjourns at 4:10 p.m.]

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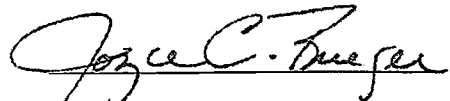
State v Christopher Boling
Certificate of the Court Reporter
July 28, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 28th day of July, 2014.

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

October 6, 2014



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	DOCKET NO. 2011-GS-10-2405
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	
	)	
CHRISTOPHER ALLEN BOLING	)	
Defendant	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD
	)	
	)	July 29, 2014
	)	Charleston, South Carolina

VOLUME 2 (OF 3)**B E F O R E:**

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

EMMANUEL FERGUSON, ESQ.
JENNIFER SHEALY, ESQ.
Attorneys for the State

WILLIAM RUNYON, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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1 PROCEEDINGS

2 THE COURT: Have you all had the exhibits pre-

3 marked?

4 MS. SHEALY: Your Honor, we have had them marked.

5 Mr. Runyon is ---

6 THE COURT: --- I just need to know the ones you

7 agree on; not the ones you disagree on.

8 MR. FERGUSON: We don't agree on any of them,

9 Judge.

10 THE COURT: Okay. Well, that resolves that issue.

11 MR. RUNYON: Judge, that's not accurate.

12 THE COURT: Okay.

13 MR. RUNYON: What I said was I don't disagree on

14 particular of the photographs but I'm not waiving laying

15 a foundation. Somebody has got to identify them ---

16 THE COURT: --- well, then you don't agree on them.

17 I need to know what you agree on that comes in without

18 objection. So if you haven't agreed on anything ---

19 MR. RUNYON: --- we've agreed to the number but

20 that's all we agree on.

21 THE COURT: Okay. Anything else before we begin

22 with opening instruction and opening arguments from the

23 State?

24 MR. FERGUSON: No, Judge. I did want to because

25 you asked about it earlier the State did make an offer to

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1 Mr. Boling just today. We didn't know if you wanted to
2 put that on the record or not.

3 THE COURT: What was the offer that was extended?

4 MR. FERGUSON: We extended an offer of Burglary 2nd
5 Violent for a negotiated 15 years.

6 THE COURT: Okay. And did you fully explain that
7 to your client, Mr. Runyon?

8 MR. RUNYON: I've just explained it to him.

9 THE COURT: Do you need more time to explain it to
10 him?

11 MR. RUNYON: I've explained it to him but I'm not
12 sure he's had enough time to digest it and consider that
13 offer.

14 THE COURT: Okay. Tell me what the offer is
15 again?

16 MR. FERGUSON: The offer is to plead to a Burglary
17 2nd Violent for a negotiated 15 years. And that would be
18 a 65 percent sentence and eligibility ---

19 THE COURT: --- you need non-violent with 65
20 percent.

21 MR. RUNYON: Yes, non-violent would be 65 percent.

22 THE COURT: Violent is 85 percent. Burglary 2nd
23 Violent is still classified as violent and served at 85
24 percent as I understand it. If it's classified as
25 violent it's 85 percent.

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1 MS. SHEALY: Judge, what I was thinking was that
2 the violent triggers when you would be eligible for
3 parole how much of your sentence it would be ---

4 THE COURT: --- both of them you have to serve --
5 well, the violent you have to serve the seven to be
6 eligible for parole but I think as long as it has a
7 violent classification it's still served at 85 percent.
8 But I prefer to stay in my lane because I don't know what
9 the Department of Corrections does. The only thing I
10 know is non-violent is 65 percent and any violent
11 classification is 85 percent.

12 MS. SHEALY: Beg the court's indulgence just a
13 moment.

14 [Whereupon, Ms. Shealy, Mr. Ferguson, and Mr. Runyon
15 confer]

16 MR. FERGUSON: Judge, I'm a little at a loss for
17 words now. We want to extend an offer but we want to
18 make sure that it is clear what the benefit is for the
19 plea.

20 MS. SHEALY: Your Honor, if you wouldn't mind I
21 think I might ask our law clerk -- I was just going to
22 ask her to step out and call someone from our office to
23 call the Department of Corrections because otherwise
24 there would be no distinction between the Burglary 2nd
25 Violent 15 and a Burglary 1st 15. And I believe that

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1 there is. If they both were 85 percent there would be no
2 distinction. I think with the Burglary 2nd Violent it
3 affects at what point you're eligible for parole.

4 THE COURT: There really is no distinction because
5 a Burglary 1st the minimum 15 at 85 percent is actually
6 less stringent than a Burglary 2nd Violent because at the
7 Burglary 1st at 85 percent there is no mandatory serving
8 the seven years before you're eligible for parole. It's
9 almost a day for day.

10 Our statutory framework doesn't necessarily make
11 sense. But the legislature doesn't design it that way.
12 When they're looking at it they don't look at whether
13 doing one one way is more beneficial than the other. At
14 least that has not been my experience the way they
15 structure things. They don't look at it the way we look
16 at it like there is some benefit between one or the other
17 but they just do what they think is appropriate in terms
18 of sentence structure.

19 On a Burglary 2nd Violent you'd have to serve seven
20 years basically day for day before you're eligible for
21 parole. On a Burglary 1st even though it's classified as
22 Violent and most serious it's served at 85 percent. I
23 think if you do the math it's about the same. It might
24 even be less actually. But I've never tried to guess
25 what the Department of Corrections does because they

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1 change every day how they calculate things. So I don't
2 ever try to make those kinds of assurances to people
3 because I have no idea.

4 MS. SHEALY: Well, I guess what I think Mr.
5 Runyon's preference was that we just go ahead and start
6 back and maybe in the interim I'll just see if we can get
7 a clear answer.

8 THE COURT: I think you need to get a clear answer
9 now because I believe in working smart and not wasting
10 time.

11 MS. SHEALY: Okay.

12 THE COURT: So if he's going to plead guilty that's
13 what he needs to do ---

14 MS. SHEALY: --- could we step out ---

15 THE COURT: --- and I need to get started on my
16 next trial. Yes.

17 MR. FERGUSON: Thank you, Judge.

18 MS. SHEALY: Thank you.

19 [Off the record while counsel discuss plea offer]

20 MR. FERGUSON: Your Honor, Ms. Shealy is calling
21 the Department of Probation and Parole right now.
22 However, after speaking with Mr. Runyon it seems as
23 though either way the chip would fall the defendant
24 respectfully rejects the offer.

25 THE COURT: Okay. We can go forward.

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1 MR. FERGUSON: I'll grab Ms. Shealy as soon as she
2 gets off the phone and we'll proceed.

3 THE COURT: And while we're waiting on him to do
4 that Mr. Runyon have you fully explained the nature of
5 the State's offer to your client?

6 MR. RUNYON: Yes, Your Honor.

7 THE COURT: And do you believe he understands the
8 explanation that you have provided him with?

9 MR. RUNYON: Yes, Your Honor.

10 THE COURT: And does he wish to accept or reject
11 the offer?

12 MR. RUNYON: He has indicated he respectfully
13 rejects the offer, Judge.

14 THE COURT: Is he doing that with or against your
15 advice?

16 MR. RUNYON: He is doing that with my advice but I
17 can't say I disagree with his position, Judge based upon
18 the evidence in the case.

19 THE COURT: I'm not trying to put you in a pickle
20 I'm just asking for P-C-R purposes because people's
21 memories often are different later than it is now so I'd
22 like to have a contemporaneous record of what actually
23 took place instead of having to recreate later.

24 MR. RUNYON: I have advised Mr. Boling of the
25 sentence, the maximum time he would have to serve, and

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1 his eligibility for parole confirmed by statute, which is
2 at one-third and the choice in the matter is his.

3 THE COURT: Absolutely. I just needed to make sure
4 he is making a fully informed decision, that you have
5 fully explained -- because often times later people will
6 say my lawyer never told me about the offer, never fully
7 explained it to me and had I known then what I know now I
8 would have taken the offer.

9 MR. RUNYON: Right, but we ---

10 THE COURT: --- so the whole purpose of these
11 questions is to make sure for P-C-R purposes that in fact
12 what the State's offer was that you fully articulated it
13 to him and that he freely and voluntarily ---

14 MR. RUNYON: --- it has been freely -- it has been
15 fully articulated to him, Your Honor, and he has freely
16 and voluntarily made the choice.

17 THE COURT: Okay. Sir if you would, stand for me
18 please and raise your right hand to be sworn?

19 [Whereupon, the defendant stands]

20 THE COURT: Do you swear or affirm the testimony
21 you give will be the truth?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Sir, state your full name for the
24 record.

25 THE DEFENDANT: Christopher Allen Boling, Sr.

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1 THE COURT: Okay, Sr. And Mr. Boling has your
2 lawyer -- you've been here present when the State placed
3 the offer on the record, correct?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And did your lawyer fully explain the
6 offer to you?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you fully understand the offer?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you wish to accept or reject the
11 offer?

12 [Whereupon, the defendant confers with Mr. Runyon]

13 THE COURT: Only you can answer that question.
14 Nobody can answer it for you.

15 THE DEFENDANT: I don't want the offer.

16 THE COURT: Okay. And are you doing that freely
17 and voluntarily and of your own will?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Has anybody placed you under any duress
20 to reject the offer? In other words has somebody forced
21 you to reject the offer?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Are you suffering from any mental
24 disabilities or under the influence of any drugs or
25 alcohol?

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1 THE DEFENDANT: No, ma'am.
2 THE COURT: Okay. You may take your seat.
3 [Whereupon, the defendant complies]
4 THE COURT: Did he have a belt on yesterday?
5 MR. RUNYON: He did, Your Honor.
6 THE COURT: They took it at the jail?
7 MR. RUNYON: They took it so he wouldn't hang
8 himself.
9 THE COURT: Which is reasonable; that's a
10 reasonable security concern. But did y'all bring it
11 today so he could put it on?
12 THE DEPUTY: I can check, Judge but I don't think
13 they ---
14 THE COURT: --- did they check it in or whatever
15 once he...
16 THE DEPUTY: Yes, they check it.
17 THE DEFENDANT: They wouldn't give it to me but I
18 asked them for it.
19 THE COURT: Yes, it's a security concern.
20 THE DEPUTY: Judge, I think somebody has a belt if
21 you want to put that on him?
22 THE COURT: That's fine.
23 [Whereupon, Mr. Boling is provided with a belt]
24 THE COURT: Since we removed Mr. Klein by consent
25 on yesterday I'm going to have -- pursuant to the statute

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1 I've had the Clerk prepare the alternate's names and we
2 will draw that by lot. You may proceed when ready.

3 CLERK OF COURT: Number 217, Your Honor.

4 THE COURT: All right. Number 217 then will be
5 seated. Mr. Lucas will now be seated as the 12th member
6 of the jury. Is there any exception from the State?

7 MR. FERGUSON: None from the State, Your Honor.

8 THE COURT: From the defense?

9 MR. RUNYON: No exceptions, Judge.

10 THE COURT: Please have Mr. Lucas who is one of the
11 alternates sit in the regular panel. And I'm appointing
12 Ms. Green as the Foreperson, number 133, if you would
13 have her come in last and sit in the Foreperson seat.
14 You can go ahead and get the jury for me.

15 MS. SHEALY: Judge, may I put on the record what I
16 did find out from the Department of Corrections?

17 THE COURT: Sure. Mr. Runyon says irregardless his
18 client didn't want to accept the offer.

19 MS. SHEALY: I understand but so that we have it in
20 the record for P-C-R purposes. I spoke with Chris Lorian
21 [phonetic] from the general counsel office. With a
22 Burglary 1st you have to serve 85 percent. That is an
23 average of 12.9 months minimum. With a Burglary 2nd
24 Violent he would be eligible for parole after five years.
25 His max out date would be at a 55 to 60 percent, which

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1 averages eight years, three months.

2 THE COURT: Okay. Did you ask about Burglary 2nd
3 Non Violent?

4 MS. SHEALY: No.

5 THE COURT: That's just served at 65 percent? I
6 believe it is.

7 MS. SHEALY: Non Violent would be closer to the 55
8 as well.

9 THE COURT: Okay. Yes, I guess with time credit
10 and everything...

11 MS. SHEALY: But you would be eligible for parole
12 after one fourth of the time if it were non-violent.

13 THE COURT: Okay. Does any of that clarity affect
14 your client's position, Mr. Runyon?

15 MR. RUNYON: No, Your Honor, because none of the
16 offers are non-violent.

17 THE COURT: Okay. Well, I mean the clarity as to
18 what would be required to be served on the ---

19 MR. RUNYON: --- those were the figures we worked
20 with, Judge.

21 THE COURT: Okay. And Mr. Boling does any of that
22 information change your decision?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Okay.

25 [Whereupon, the jury enters at 11:19 a.m.]

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Opening Instructions to Jury
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1 OPENING INSTRUCTIONS TO JURY

2 THE COURT: Ladies and gentlemen, you have been
3 selected for the case of the State of South Carolina
4 versus Christopher Allen Boling, Sr., case number 2011-
5 GS-10-2405. It is an indictment for Burglary in the 1st
6 Degree.

7 We apologize for your wait this morning. As I
8 explained when I came to the jury room we do not take
9 your time for granted. Under our rules and under our
10 system there is a priority system with courts. In other
11 words for example this court has priority over the
12 Magistrate's court. Federal Court has priority over
13 everybody's court.

14 And Mr. Runyon had to attend a proceeding in the
15 Federal Court this morning, which took priority over our
16 court. It actually started at 9 o'clock but it took a
17 little longer than they anticipated. So we appreciate
18 your time and your patience this morning as we were
19 delayed in beginning the trial of this case.

20 I'm going to give you some preliminary instructions
21 so that you may better understand how we will be
22 proceeding in the trial of this case. But before we do
23 that the bailiffs are going to give you some notebooks.
24 You will be given the opportunity to take notes during
25 this trial. There is a white sticker that is on the

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1 front of every notepad. Please place your juror number
2 on that sticker so that you will be able to readily
3 identify which notebook belongs to you. During breaks
4 and recesses those notepads will be secured so it's
5 easier for you all to be able to identify which notebooks
6 belong to you when we have to give them back out during
7 breaks and recesses.

8 As I've already indicated what I am going to say to
9 you is intended to serve as an introduction to the trial
10 of this case. These remarks are not a charge on the law
11 in this case. I will instruct you on the law applicable
12 to this case at the end of the trial before you retire to
13 consider your verdict.

14 This is merely an explanation of the procedure that
15 we will follow in the trial so that you may better
16 understand what is happening. Just for a point of
17 reference when you hear me use the word charge, charge is
18 a legal term of ours that simply means instruction. So
19 when I use the term charge and instruction they are
20 interchangeable terms.

21 The defendant is charged by an indictment filed with
22 this court for the crime of Burglary in the 1st Degree,
23 the elements of which I will explain to you later at the
24 conclusion of the trial. The indictment, ladies and
25 gentlemen, is simply the charge by which the case is

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1 brought into court. And it is not in any sense evidence
2 of any of the allegations it may contain. The defendant
3 has pled not guilty to the indictment. The State
4 therefore has the burden of proving each of the elements
5 of the indictment beyond a reasonable doubt. And it
6 will be your duty ladies and gentlemen to decide whether
7 the State has met that burden or not.

8 Your purpose as jurors is to find and determine the
9 facts. You are the sole judges of the facts in this
10 case. If at any time I make any comment regarding the
11 facts you must disregard it. The Constitution of our
12 state does not allow me or any trial judge to have an
13 opinion about the facts in a case where there is a trial
14 jury. You are to determine the facts from the testimony
15 you hear and the other evidence introduced in court. It
16 is then for you to determine the inferences which you
17 feel may be properly drawn from that evidence.

18 It is especially important that you perform your
19 duty of determining the facts diligently and
20 conscientiously because ordinarily there is no way to
21 correct an erroneous determination of facts made by a
22 trial jury. On the other hand, and with equal emphasis,
23 the same law that makes you the judges of the facts makes
24 me the Judge of the law. The law as given by the court
25 is the only law you may consider. You must accept and

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1 follow it even though you may disagree with it. The
2 court cannot tell you what the facts are you cannot
3 disagree with the court about what the law is or what the
4 law should be.

5 Your responsibility, ladies and gentlemen, is to
6 take the law as I instruct it and apply it to the facts
7 as you find them from the testimony of the witnesses and
8 the other evidence that will be introduced during the
9 course of this trial. After doing that you will render
10 your verdict; a true and just verdict under the solemn
11 oath that you have taken as jurors in this case.

12 Until I advise you to begin your deliberations you
13 must not discuss this case with anyone, that includes
14 among your fellow jurors, your family members, or friends
15 or anyone else who may be involved in this case. After
16 the case is submitted to you, you must discuss it only in
17 your jury room among your fellow jurors.

18 The attorneys and the parties have been advised that
19 they should not speak with you at all. So if you should
20 see them during the course of the day in the elevator, in
21 the hallway, even the restrooms or in a local restaurant
22 and perhaps you may run into them in any of the garages
23 and they don't speak with you please don't think they are
24 being unfriendly or untoward. They are simply following
25 the court's instructions because we would not want an

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1 innocent conversation to be misinterpreted. During the
2 trial you are not to read, watch, or listen to any media
3 accounts about this case. This includes anything that
4 may be in the newspapers, radio, television, or Internet
5 and you are not to do to any independent research of any
6 type regarding any issue or matter involved in this case.

7 You must not consider anything that you may have
8 read or heard about this case outside the courtroom
9 whether before or during the trial. It is essential that
10 you maintain an open mind and not decide any issue in
11 this case until all of the evidence has been presented,
12 the parties have made their closing arguments, and I have
13 instructed you on the law applicable to this case.

14 It is your solemn responsibility to determine the
15 guilt or innocence of the defendant and your verdict must
16 be based solely on the evidence as it is presented to you
17 in this trial and on the law as I will instruct you
18 during and at the close of the trial.

19 In just a moment the Solicitor will make an opening
20 statement in which he will outline for you what he
21 believes the evidence will show in this case. The
22 attorney for the defendant may also make an opening
23 statement although he is not required to do so. Keep in
24 mind, ladies and gentlemen, that what the attorneys tell
25 you during opening statements is only their contention as

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1 to what they believe the evidence will show in this case.
2 It is not evidence in this case. Give them your
3 undivided attention but keep in mind that what they say
4 is not evidence.

5 The evidence in this case will be presented to you
6 by the testimony of sworn witnesses from the witness
7 stand and by exhibits that may be introduced into
8 evidence. From time to time you may hear one the
9 attorneys say Your Honor, I object. Just as in sports,
10 business, or any other structured activity there are
11 certain rules that the attorneys must obey in the
12 presentation of evidence.

13 These rules ensure that you receive the most
14 trustworthy and reliable evidence available. An
15 objection is the procedure that an attorney uses to call
16 a possible violation of these rules to my attention as
17 the Judge of this court. And for this reason you should
18 never hold an attorney's objection against them nor
19 should you conclude from the court overruling or
20 sustaining that objection that I favor one side or the
21 other.

22 Also from time to time you will hear the attorneys
23 say Your Honor, we have a matter of law to take up or a
24 question of law to take up. They may ask to approach the
25 bench, or I may ask them to approach the bench or it may

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1 even be necessary for us to excuse you from the courtroom
2 for a short while, while we discuss matters of law. The
3 reason we do this is because you are the finders of the
4 facts. And sometimes when I'm discussing matters of law
5 with the attorneys it may be necessary for me to make
6 some comment regarding the facts in connection with
7 ruling whether a statute applies or an evidentiary rule
8 or a procedural rule. And for this reason we exclude you
9 from the courtroom so that in no way will you be
10 influenced by anything that the court may say or do in
11 connection with the facts of this case.

12 In determining what the true facts are in this case,
13 ladies and gentlemen you must decide whether or not the
14 testimony of a witness or witnesses is believable. It is
15 my responsibility to rule as a matter of law as to
16 whether certain testimony is admissible at all or not.
17 But once it is admitted whether or not you believe it is
18 solely a matter for you to determine in your fact finding
19 province.

20 In deciding whether to believe a witness you have
21 the right to consider the interest of any witness, the
22 bias of any witness, the prejudice of any witness, the
23 opportunity for the witness to have seen the things and
24 matters about which the witness may testify, and the way
25 the witness acts on the witness stand; something we

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1 commonly refer to as demeanor. You have the right to
2 consider anything that is in the record that will help
3 you evaluate the testimony of the witnesses. That means
4 that it is your duty to pay close attention to the
5 witnesses, to observe them, to listen to them, and to pay
6 close attention to the attorneys and the court.

7 Although I know it is very difficult please do not
8 allow your thoughts to wander but give strict attention
9 to the testimony so that at the end of the testimony
10 after the arguments of the attorneys and the charge on
11 the law given by the court you will then be in a position
12 to determine what the true facts are and apply the law to
13 those facts and thus render a true and just verdict in
14 this case.

15 During the course of this trial you will be given
16 the opportunity to take notes. Note taking is a
17 privilege that you may choose to exercise or choose not
18 to exercise. Please don't feel you are required to take
19 notes. Note taking is not helpful to everyone and you
20 are certainly not required to do so.

21 If you should decide to take notes please don't try
22 to record everything that is said; it's physically
23 impossible. The average person, even a slow person
24 speaking speaks at about 200 words a minute so as you can
25 well imagine it physically impossible to take it down

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1 verbatim. And even if you were to try to do that it
2 would be very distracting so please do not allow note
3 taking to dilute your powers of observation of the
4 witnesses and the evidence. You may want to keep an
5 outline, the main points that are being made, so that
6 during deliberations you can allow your notes to refresh
7 your memory.

8 During breaks and recesses your notes will be left
9 in your seats and that is to make sure there is no
10 premature temptation to discuss anything that may have
11 been heard prior to a break or any of the testimony and
12 evidence which has been presented. I will remind you
13 that your notes should not be considered any more
14 reliable than someone else's memory. And again reinforce
15 that your notes are for your specific and your individual
16 purposes. They are only to be used to refresh your
17 memory.

18 It is your added duty, Madame Forelady to fill out
19 the verdict form but I will give you further instructions
20 regarding that at the conclusion of the case. Ladies and
21 gentlemen, the Foreperson is purely an administrative
22 function. That person does not have any greater vote or
23 voice than any other juror. It is simply that we must
24 have someone to fill out the verdict or write out
25 questions during jury deliberations. And again, I

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1 emphasize that that person does not have any greater vote
2 or voice than any other juror. It is purely a random
3 process that the court employs in selecting a Foreperson
4 so that a cross section of the community is represented
5 in that capacity.

6 In order to preserve everyone's rights I'm going to
7 give the attorneys the opportunity to take exception to
8 anything that the court has said by way of opening
9 instruction. Any exceptions from the State?

10 MR. FERGUSON: None from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. RUNYON: No exceptions or additions, Your
13 Honor.

14 THE COURT: Ladies and gentlemen, I would ask that
15 you give the attorneys your undivided attention. The
16 State may proceed.

17 MR. FERGUSON: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MR. FERGUSON: May it please the court?

20 THE COURT: Yes, sir.
21
22
23
24
25

State v Christopher Boling
Opening Statement by Mr. Ferguson
July 29, 2014

1 OPENING STATEMENT

2 BY MR. FERGUSON:

3 This is burglary. This isn't Reckless or CSI or Law
4 and Order. This is real life and this is burglary. No
5 actors, no supermodels, no catch them on Monday and try
6 them on Tuesday. This is our American process and as you
7 may have already realized it moves quite slowly.

8 I want to thank you for your time and your attention
9 to this case. My name is Emanuel Ferguson. And along
10 with Jennifer Shealy and Savannah Goud [phonetic] we
11 represent the state of South Carolina in the case against
12 Christopher Boling for Burglary in the 1st Degree.

13 You're going to hear from Joseph Owens. You're
14 going to see Joseph Owens and he's going to tell you what
15 happened to him just after New Year's on January 1st,
16 2011. The ball had already dropped, parties were ending,
17 people were going home. It was still night time. Joseph
18 Owens will tell you that he stayed home with his wife and
19 enjoyed the company of a friend or some friends.

20 [Indicates knocking] He will tell you that Tad
21 Dempsey knocked on his door and he let him in and Tad
22 Dempsey offered to sell him a cell phone. Joe understood
23 that a cell phone being offered to be sold at 2:00 in the
24 morning or 1:00 in the morning isn't something that he
25 wants to mess with so he rejects that offer to buy a cell

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1 phone. {Indicates slamming} The next thing you know a
2 door gets kicked in. Joseph Owens' trailer door gets
3 kicked in. By who? Christopher Boling and Kevin
4 Russell. They don't [indicates knocking] knock, they
5 break the door jamb, run in with no salutations, no
6 hellos, they go in and just start assaulting everyone.
7 This is Burglary.

8 You're going to hear from Joe and you're going to
9 see Joe and you're going to get to know a little about
10 him. And you're going to see that he's a hardworking
11 guy. He doesn't have much but what he has is his and he
12 is proud of it. That trailer was his home. You going to
13 tell that life hasn't been too great for him. He's done
14 work that is physically demanding, hard on the body on
15 his hands and knees putting in flooring for 30 years.
16 His wife worked at Waffle House doing double shifts as
17 much or as often as she could.

18 Now earlier the Judge when describing the charge for
19 which we're here she said that it was against the peace
20 and dignity of the state of South Carolina. Those aren't
21 just words because it reminds us that no matter who you
22 are or where you come from or what you've done or what
23 you've got or don't have you have a right to peace and
24 you have a right to dignity. And Christopher Boling and
25 Kevin Russell took that peace and dignity when they

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1 kicked in the door to that trailer and assaulted Joseph
2 Owens. But that's not all. Joseph Owens fought back and
3 got them out and got someone to call the police. But the
4 fighting wasn't over. When Christopher Boling and Kevin
5 Russell left they were coming back. And Joe went back in
6 his trailer to assess his damage while he was still in
7 shock [indicates bang] again. That same door that was
8 already broken flung open and who came through?
9 Christopher Boling and Kevin Russell; this time with a
10 gun.

11 Kevin Russell pointed that gun at Joe and said I
12 could kill you right now. You know what Chris said?
13 Show him you ain't playing. Show him you ain't playing
14 Joe, go ahead and shoot. The police were on the way.
15 Deputy Buenting with the Charleston County Sheriff's
16 Office was approaching the door as those two men fled.
17 He said he was law enforcement and he called for them to
18 stop, but they didn't. Instead they greeted Deputy
19 Buenting into the New Year with two shots out of that
20 gun.

21 MR. RUNYON: Objection, Your Honor.

22 THE COURT: Basis? Basis for the objection?

23 MR. RUNYON: There is no charge for that Judge.
24 It's not a charge.

25 THE COURT: I believe he is arguing what the

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1 evidence will show, which is res gestae, which is part of
2 the continuum of events. Overruled.

3 MR. RUNYON: Judge, I take exception.

4 THE COURT: Noted.

5 MR. FERGUSON: Thank you, Judge. Two shots at
6 Deputy Buenting. Luckily he was not hit but he saw the
7 muzzle flash, he heard the shot and he ducked, got up and
8 ran. The two men split up and Deputy Buenting made a
9 choice to go after Christopher Boling, and he caught him
10 that night. But you're already asking where is Kevin
11 Russell? He's not at that table. Kevin Russell was also
12 arrested that same night and he's at the Charleston
13 County Detention Center and his trial will come very
14 soon. We decided to try them separately.

15 This is burglary. No supermodels, no scripts, real
16 life. What is Burglary? The Judge will tell you but I
17 want to give you just a little bit of background. You
18 don't have to read this I'll give you a quick run
19 through. Burglary is a little complicated.

20 A person is guilty of Burglary in the first Degree
21 if that person enters a dwelling without consent with the
22 intent to commit a crime in the dwelling and either does
23 one of these things -- not all -- one of these things:
24 either is armed with a deadly weapon or explosive or
25 causes physical injury to a person who is not part of the

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1 crime or uses or threatens the use of a dangerous
2 instrument, or displays what appears to be a knife, a
3 pistol, revolver, shotgun, rifle, machine gun or other
4 firearm or the entering or remaining occurs at nighttime.
5 So if someone goes into a home without consent with the
6 intent to commit a crime and it happens at night
7 regardless of whether there is a weapon or not that is
8 Burglary.

9 The evidence will show that Christopher Boling and
10 Kevin Russell entered Joseph Owens dwelling at nighttime
11 with the intent to commit a crime. When all the evidence
12 is in and all the testimony is given you will be firmly
13 convinced that this is Burglary and Kevin Russell and
14 Christopher Boling are burglars.

15 THE COURT: You may proceed, Mr. Runyon.
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BY MR. RUNYON:

Madame Forelady and ladies and gentlemen of the jury, it's not a fair fight, okay. Mr. Boling has me and all these people over here on the side of the State so it's not a fair fight to begin with. But we do have the law on our side.

Now my learned colleague over here said this is Burglary and this Mr. Owens over here who you are going to hear from this hard working individual on that evening in question was there and Mr. Dempsey was there to sell him a stolen cell phone. The only crime that was being committed that night was by the State's witness. You will hear the testimony. I'm not going to go through it all. We already heard Mr. Ferguson testify but he ain't under oath and neither am I.

The simple fact of the matter is that there was an entry and there was tussling and fighting and all that sort of stuff. The simple fact of the matter is the only crime that was being committed that night in that trailer was not being committed by him [indicates to the defendant] and Mr. Russell. Mr. Owens called the cops because all of a sudden he is charged -- or he is caught with his hand in the cookie jar. Mr. Dempsey is there with the stolen goods and they wanted it back. That's

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1 what they were there for. Not to commit a crime but to
2 get back something which didn't belong to Mr. Dempsey,
3 didn't belong to Mr. Owens. And we'll talk to Mr. Owens
4 about how hard he works in this community. And then I'm
5 going to come back and ask you to find Mr. Boling not
6 guilty. Thank you.

7 THE COURT: The State may proceed.

8 MR. FERGUSON: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MR. FERGUSON: The State calls Joseph Owens.

11 [Whereupon, Mr. Owens comes forward]

12 [Whereupon, the witness is duly sworn by the Clerk
13 of Court]

14 CLERK OF COURT: Once seated if you could please
15 state your first and last name and spell your last
16 clearly, loudly into the microphone.

17 THE WITNESS: Joseph Owens, my last is O-W-E-N-S.
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1 JOSEPH OWENS,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. FERGUSON:
6 Q. Good morning, Mr. Owens.
7 A. Good morning.
8 MR. FERGUSON: Your Honor, may I approach?
9 THE COURT: You may.
10 Q. [Mr. Ferguson] Have you testified before?
11 A. No, sir.
12 Q. Mr. Owens, where do you currently live?
13 A. I live in North Charleston right now, sir.
14 Q. In North Charleston you said?
15 A. Yes, sir.
16 Q. And how long have you lived there?
17 A. Approximately about a year and a half.
18 Q. Do you have any children?
19 A. I have step children, sir.
20 Q. Now let me ask you this. Were you convicted of a
21 Breach of Trust in 2010?
22 A. Yes, sir.
23 Q. And were you convicted of Receiving Stolen Goods
24 back in 2013?
25 A. Yes, sir.

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- 1 Q. You pled guilty to those charges?
- 2 A. Yes, sir.
- 3 Q. Now what do you -- where do you currently work?
- 4 A. I work for Double A Pawn Brokers. I'm the general
5 manager on Rivers Avenue.
- 6 THE COURT: Sir, I need you to speak up a little
7 bit for me please. The court reporter is having some
8 difficulty hearing you.
- 9 A. Okay.
- 10 Q. [Mr. Ferguson] If you could loud enough -- see this
11 is a big courtroom and we need everybody to hear. I want
12 you to talk to me like I'm speaking to you from way back
13 here. Now tell the jury again where you're working?
- 14 A. I work for A & A [phonetic] Pawn Brokers on Rivers
15 Avenue in North Charleston. I'm the general manager.
- 16 Q. Do you also live there as well?
- 17 A. Yes sir, I'm on property.
- 18 Q. Now where did you live back in December of 2010 and
19 January of 2011?
- 20 A. [REDACTED] Cane Slash Road.
- 21 Q. And who did you live with?
- 22 A. My girlfriend Vivian Watkins.
- 23 Q. And how long had you been living on Cane Slash Road?
- 24 A. All my life.
- 25 Q. Are you from Johns Island?

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- 1 A. I grew up on that same road.
- 2 Q. What kind of work have you been doing before? Tell
3 us about some of the jobs that you've done?
- 4 A. I drove a truck for H. W. Halsman [phonetic] and Son
5 on Folly Road for about six years. I done a few mechanic
6 jobs for Jennings Shell and then I went to work for
7 Carpet Wholesalers in Charleston for about 22 years
8 total.
- 9 Q. Really?
- 10 A. Yes.
- 11 Q. And where have you laid carpet?
- 12 A. All over. From here to New Orleans ---
- 13 Q. --- here in Charleston?
- 14 A. All over Charleston, Mount Pleasant, everywhere.
- 15 Q. Even out of state?
- 16 A. In New Orleans I went down after Katrina for seven
17 months.
- 18 Q. Oh, really?
- 19 A. When Katrina came through New Orleans I was living
20 in New Orleans for -- I didn't live there but I worked
21 there for seven months.
- 22 Q. You went down there to install carpet?
- 23 A. Yes, sir.
- 24 Q. Now you said you were from Johns Island? Do you
25 know Christopher Boling?

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1 A. Yes, sir. I've known him, his Mom, his grandmother,
2 grandfather.
3 Q. So you've known his family?
4 A. Yes. They were good people.
5 Q. What about Kevin Russell?
6 A. I knew him before he was born -- when he was born.
7 Q. You know his family as well?
8 A. Yes, sir.
9 Q. What about Tad Dempsey?
10 A. I knew him before he was born -- when he was born;
11 I'm sorry.
12 Q. So they were all from Johns Island and you're from
13 Johns Island ---
14 A. --- they're all from Johns Island, yes sir.
15 Q. Now I want to take you back to New Years Eve 2010.
16 What did you do?
17 A. In 2010?
18 Q. Yes, New Years Eve in 2010?
19 A. Sat around and drank some beer bringing in the New
20 Year.
21 Q. Who were you with?
22 A. My girlfriend and a guy and a girl come over; a
23 black couple come over for about an hour. They were
24 there about an hour. We were just bringing in the New
25 Year.

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- * 1 Q. All right. And who is your girlfriend?
2 A. Vivian Watkins.
3 Q. Now do you consider her your girlfriend or is she
4 really your wife?
5 A. Well she -- common law; she's my wife.
6 Q. How long have you known her?
7 A. Twenty three years.
8 Q. Now you said a black couple had visited you that
9 evening?
10 A. Yes, sir.
11 Q. One male and one female?
12 A. Yes, sir.
13 Q. Did you know -- how did you know the female?
14 A. Through my girlfriend. I didn't know her that well,
15 Vera and her boyfriend.
16 Q. And did Tad Dempsey come to visit you that evening?
17 A. Yes, sir.
18 Q. And what did he do?
19 A. He knocked on the door and I opened the door and he
20 come in. Right off the bat he said I've got this nice
21 cell phone I'd like to sell. Do you want it?
22 Q. Now, when he came in and you let him in about what
23 time was it?
24 A. I'm not really sure. It was after -- right around
25 midnight or after.

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- 1 Q. So it was after the ball had dropped?
- 2 A. Yes, sir.
- 3 Q. Now you said that Tad Dempsey wanted to sell you a
- 4 cell phone?
- 5 A. Yes, sir.
- 6 Q. Did you know whose phone it was?
- 7 A. No sir, not at the moment I didn't.
- 8 Q. Did you want to buy that cell phone?
- 9 A. No, sir.
- 10 Q. Did you buy that cell phone?
- 11 A. No, sir. It was one of those real fancy phones and
- 12 I'm just old school; I'm used to pushing buttons.
- 13 Q. So you had no interest in that cell phone?
- 14 A. No.
- 15 Q. Did Christopher Boling ever come to your house that
- 16 evening?
- 17 A. Not until the door was kicked in.
- 18 Q. All right. Was he with anyone?
- 19 A. Yes sir, Kevin Russell.
- 20 Q. Was Tad Dempsey still there?
- 21 A. Yes, sir.
- 22 Q. Tell us what happened.
- 23 A. Tad was standing at the front of my entertainment
- 24 system and all of a sudden the door flew open. And Kevin
- 25 seen Tad and at that moment it wasn't too much said; they

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1 pretty much jumped on him and started beating him up.
2 Q. Now who is they?
3 A. Christopher Boling and Russell.
4 Q. Is Christopher Boling in this courtroom today?
5 A. Yes, sir.
6 Q. Where is he?
7 A. Sitting right there [indicates].
8 Q. He's the defendant?
9 A. Yes, sir.
10 Q. Did you allow Mr. Boling or Mr. Russell inside your
11 home?
12 A. No, sir.
13 Q. I'm going to show you what has been marked for
14 identification purposes as State's exhibits 2, 3, 4, 5,
15 6, 7, 8, 9, 10, and 11.
16 [Whereupon, the witness is shown photographs]
17 Q. Just take a second and look through those pictures
18 and tell me yes or no whether you recognize them?
19 A. Yes, sir. That's my house.
20 Q. What are those pictures of?
21 A. Well, the destruction of my trailer and my doors and
22 the proximity of my house.
23 Q. Can you say that a little bit louder?
24 A. The destruction of my house, the front door that was
25 kicked in and the vicinity of my house where my house is

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1 at; my trailer.

2 MR. FERGUSON: Your Honor, at this time the State
3 would like to admit exhibits 2 through 11 into evidence.

4 MR. RUNYON: No objection, Judge.

5 THE COURT: Marked and admitted without objection 2
6 through 11.

7 [Whereupon, State's exhibit numbers 2, 3, 4, 5, 6,
8 7, 8, 9, 10, and 11 are entered into evidence by the
9 court]

10 Q. [Mr. Ferguson] I want to show you what has been
11 marked as State's exhibit 2.

12 [Whereupon, the photograph is shown]

13 Q. Now what is that Joe?

14 A. That is my road I grew up on.

15 Q. All right. Is that Cane Slash Road?

16 A. Yes, sir.

17 Q. Now are you able to identify where your trailer was?

18 A. Yes, sir.

19 Q. Go ahead and put your finger on it on that screen.

20 A. Right there [indicates].

21 Q. Right there [indicates]? Go ahead and circle it
22 with your finger.

23 [Whereupon, the witness complies]

24 Q. And what address is that?

25 A. [REDACTED] Cane Slash Road.

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1 Q. I want to show you what has been marked as State's
2 exhibit 3 -- it has been admitted into evidence as
3 State's exhibit 3.
4 [Whereupon, the photograph is shown]
5 Q. And what is that?
6 A. That's my trailer.
7 Q. And is that the front door right there [indicates]?
8 A. Yes, sir.
9 Q. I'm going to show you what has been marked as
10 State's -- marked and put into evidence as State's 4.
11 [Whereupon, the photograph is shown]
12 Q. Do you recognize that?
13 A. Yes sir, that's my front door.
14 Q. Now is there anything on the front door that you
15 notice?
16 A. Yes, sir. There are two foot prints.
17 Q. Did you put those foot prints there?
18 A. No, sir.
19 Q. Were those footprints there before Kevin Russell ---
20 A. --- no sir ---
21 Q. --- and Christopher Boling came to your home?
22 A. No, sir.
23 Q. Whose foot prints are those?
24 A. Kevin Russell and Chris Boling.
25 Q. I'm going to show you State's exhibit 5.

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- 1 [Whereupon, the photograph is shown]
2 Q. Is that a picture of the foot prints as well?
3 A. Yes, sir.
4 Q. And State's exhibit 6 is that also a picture of the
5 foot print?
6 [Whereupon, the photograph is shown]
7 A. Yes, sir.
8 Q. I want to show you what has been entered into
9 evidence as State's 7.
10 [Whereupon, the photograph is shown]
11 Q. Do you recognize that?
12 A. That's my doorjamb.
13 Q. Now what condition is that doorjamb in?
14 A. It was busted. The door wouldn't even shut back.
15 Q. Was it busted before Christopher Boling and Kevin
16 Russell entered your home?
17 A. No, sir.
18 Q. I'm going to show you State's exhibit 8.
19 [Whereupon, the photograph is shown]
20 Q. I want to direct your attention to the left side of
21 the picture this area right here [indicates]. Do you see
22 that?
23 A. Yes, sir.
24 Q. What is that?
25 A. That's the outside doorjamb or the doorjamb itself.

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- 1 Q. And what condition is that in?
- 2 A. That's where it was kicked open. The doorjamb was
- 3 busted right here [indicates], the frame.
- 4 Q. You can circle it when you say right here.
- 5 A. Right here [indicates] and right here [indicates].
- 6 Q. Did that come off?
- 7 A. Yes sir, it did come off and I stuck it back up.
- 8 Q. You stuck it back up there?
- 9 A. Yes sir, trying to secure the door.
- 10 Q. It didn't work did it?
- 11 A. No, sir.
- 12 Q. I want to show you State's exhibit 9.
- 13 [Whereupon, the photograph is shown]
- 14 Q. Is that a picture of the doorjamb as well?
- 15 A. Yes, sir.
- 16 Q. And can you also see the footprints in that picture?
- 17 A. Yes, sir.
- 18 Q. Now I want to show you State's exhibit 10.
- 19 [Whereupon, the photograph is shown]
- 20 Q. Do you recognize that?
- 21 A. That's the inside of my living room.
- 22 Q. Now earlier you testified that your entertainment
- 23 center was busted.
- 24 A. Yes, sir. Right here [indicates] they come in the
- 25 door and when they kicked the door open he was standing

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- 1 about this area right here [indicates]. And the first
2 place they went was right in this section right here
3 [indicates] in the entertainment system where they both
4 jumped on him.
- 5 Q. So that entertainment system was broken because of
6 the fight ---
- 7 A. --- yes, sir ---
- 8 Q. --- with Kevin, Chris, and Tad. I'm going to show
9 you State's 11.
- 10 [Whereupon, the photograph is shown]
- 11 Q. Do you recognize that photo?
- 12 A. Yes, sir.
- 13 Q. What is that?
- 14 A. That's where I tussled with both of them and got
15 both of them to the back door. They went from the front
16 door where Tad was at and then proceeded down the hallway
17 through the kitchen and that's where I ended up getting
18 them out the house.
- 19 Q. Were you hit during the tussle?
- 20 A. Yes, sir. And I protected myself too.
- 21 Q. Were you hit by Christopher Boling?
- 22 A. Yes, sir.
- 23 Q. Were you hit by Kevin Russell?
- 24 A. Yes, sir.
- 25 Q. And again were either of those two men invited into

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1 your home?

2 A. No, sir.

3 Q. Now tell us what happened after the tussle.

4 A. I got them to the back door and I got both of them
5 out the back door. And Kevin turned around and tried to
6 come back in and I hit him dead in the nose.

7 And during this process I had a baseball bat in my
8 hand, my Louisville slugger and I was defending myself
9 and it got lost somewhere in the tussle. I never found
10 it.

11 But I got them both out the back door. And we were
12 just fighting and then I just lost track of everything
13 for a minute when I got them out the back door.

14 Q. Did Christopher Boling ever take that bat from you?

15 A. I believe he was the one that grabbed the bat.

16 Q. Now after you got them out of the back door did they
17 ever leave?

18 A. Yes sir, they left for a short time.

19 Q. And what did you do?

20 A. I came back in the house back in the living room and
21 I was telling my wife -- my girlfriend to go call the
22 police right now; call the police.

23 Q. When did she leave to go call the police?

24 A. Right after this happened. No, I'm sorry; she --
25 yes right after this happened right when we were

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1 fighting.

2 Q. When y'all were fighting she called the police?

3 A. Yes, sir.

4 Q. All right. And where did she go to call the
5 police?

6 A. She went over across the driveway to a lady's house
7 that lives in a double wide trailer, Ms. Koger.

8 Q. Your next door neighbor?

9 A. Yes.

10 Q. And I may have missed it -- you said you went back
11 inside the trailer after they had left?

12 A. After I got them out the back door.

13 Q. And what did you do inside the trailer?

14 A. I started accessing damage and I told her to go call
15 the police and just was trying to get my door shut and...

16 Q. All right. What happened next?

17 A. Then a few minutes later Tad Dempsey came back. My
18 girlfriend had done come back and he said did you call
19 the police and she said yes I did. He said I want to use
20 your truck. I got to get out of here. And I said you're
21 not taking my truck.

22 So he went out the back door and the next thing I
23 heard I was still accessing the damage in my house I had
24 a five in one pickup truck -- a Ford four wheel drive
25 truck and he proceeded to beat all the windows and tail

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1 lights out of it with a two by four.
2 Q. Who did that?
3 A. Tad Dempsey did that.
4 Q. Do you know whether or not he was charged with that?
5 A. He was charged ---
6 Q. --- with the injury to your truck?
7 A. Yes sir, he was arrested for it.
8 Q. Was he convicted of ---
9 A. --- yes, sir ---
10 Q. --- of injuring -- damaging your truck?
11 A. Yes, sir.
12 Q. I want to show you what has been marked as State's
13 exhibit 12. Do you recognize that?
14 [Whereupon, the witness is shown photograph]
15 A. Yes sir that was my truck.
16 Q. Is it a fair and accurate depiction of the state of
17 your truck that night?
18 A. Yes, sir. That's exactly how he left it.
19 MR. FERGUSON: Your Honor, at this time I would
20 like to admit State's 12 into evidence.
21 MR. RUNYON: No objection, Judge.
22 THE COURT: Marked and admitted without objection.
23 [Whereupon, State's exhibit number 12 is entered
24 into evidence by the court]
25 Q. [Mr. Ferguson] Can you describe to the jury what

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1 that is a picture of?
2 [Whereupon, the photograph is shown]
3 A. That's my Ford four wheel drive truck with all the
4 back windows, the driver windows, the passenger windows
5 and all the headlights and tail lights busted out of it.
6 Q. And who did that damage to your truck?
7 A. Tad Dempsey.
8 Q. Did anyone else come back that night?
9 A. Yes, sir.
10 Q. Who did?
11 A. Kevin Russell and Chris Boling.
12 Q. I'm showing you State's 4.
13 [Whereupon, the photograph is shown]
14 Q. Which door did they come back in?
15 A. They came back through the front door again.
16 Q. That door [indicates]?
17 A. That same door, yes sir.
18 Q. And what happened?
19 A. The door flew open and my wife was getting up off
20 the floor because she was hit -- my girlfriend was hit
21 several times.
22 And they came in and Kevin Russell walked straight
23 up to me with a chrome revolver and put it right here
24 [indicates] to my head and said I'm going to fuck you up.
25 Excuse my French; I'm sorry.

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- 1 Q. That's what Kevin Russell said to you?
- 2 A. Yes, sir.
- 3 Q. Was Christopher Boling with him at that time ---
- 4 A. --- he was right behind him.
- 5 Q. Where was he?
- 6 A. He was right directly behind him.
- 7 Q. Did Christopher Boling say anything?
- 8 A. He said go ahead and do him; fuck him up.
- 9 Q. Go ahead and do him and what?
- 10 A. Fuck him up.
- 11 Q. What happened next?
- 12 A. Kevin Russell kind of went to the left real quick
- 13 with the gun and I proceeded to clothes line both of them
- 14 back out of the front door.
- 15 Q. So this was very close to the inside of the door ---
- 16 A. --- it was right inside the doorway right on this
- 17 porch [indicates]. I got them both on the porch and got
- 18 them both off the porch and onto the ground.
- 19 Q. Now let me ask you about Christopher Boling and
- 20 Kevin Russell. How did they appear that night?
- 21 A. I've known both of these boys since they was
- 22 young'uns and they were raised good. I've never seen
- 23 them in that state of mind.
- 24 Q. What do you mean by that?
- 25 A. They were high on something pretty strong.

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- 1 Q. So they appeared as though they were on drugs?
- 2 A. Yes sir, I believe so because they were pretty good
3 boys growing up.
- 4 Q. What's the next thing or -- did the police ever
5 arrive at your house?
- 6 A. Yes, sir.
- 7 Q. What happened?
- 8 A. I was in so much turmoil. I was on the porch; they
9 were out actually at the foot of the porch. And I heard
10 a policeman hollering and I just seen them both take off
11 kind of around the front of my trailer to the left and I
12 heard a couple of gunshots.
- 13 Q. You heard a couple of gunshots?
- 14 A. Yes, sir. I actually I think I seen the policeman.
15 He had just pulled up in the front right on the side of
16 Cane Slash --
- 17 Q. Did you see any muzzle flash?
- 18 A. No sir. I didn't see no muzzle flash.
- 19 Q. But you did hear a gunshot?
- 20 A. I heard a gunshot.
- 21 Q. Was it dark outside?
- 22 A. It was very dark.
- 23 Q. Was it nighttime?
- 24 A. Nighttime.
- 25 Q. Had Kevin or Chris ever been in your home before?

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- 1 A. I've known them since they were young'uns. They
2 were good boys. I've never had a skirmish with them.
3 They had never ever been in my house before. I've been
4 to his father's house, his deceased mother's house, his
5 grandmother's house. They were good boys. But they had
6 never been to my house.
- 7 Q. Did you say anything to your girlfriend, your wife
8 Jeanette [sic] about having a gun -- about Kevin having a
9 gun?
- 10 A. Yes, I hollered I said they got a gun, go call --
11 get out, get out the house.
- 12 Q. Now you said that Chris -- during the fight Chris
13 had taken that Louisville slugger bat from you?
- 14 A. Yes, sir.
- 15 Q. Did he do anything with the bat?
- 16 A. I'm not sure what he done with it.
- 17 Q. Did he ever swing it or anything?
- 18 A. Yes sir, he swung it a couple of times.
- 19 Q. At you?
- 20 A. Yes, sir.
- 21 Q. I want to show you State's 11. Do you recognize
22 that picture?
- 23 A. Yes, sir.
- 24 Q. What is that?
- 25 A. That's the -- hanging down that's where the bat was

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1 hit up against the door and I pushed them up against that
2 door. That's where a lot of the bat swinging was going
3 on in that little area right there [indicates].

4 Q. Now during this fight was there damage to your
5 house?

6 A. Yes, sir.

7 Q. So this was more than just a tussle. This was an
8 actual fight.

9 A. It was -- actually at one time it was four of them;
10 Kevin, Chris, Tad, and me all inside my house. That was
11 the first time.

12 Q. Did you or Jeanette [sic] suffer any injuries as a
13 result of this fight?

14 A. She was -- my girlfriend suffered some gashes and
15 stuff where she was pushed down in the living room by
16 Chris Boling. He pushed her down across the coffee table
17 and she fell across the couch and hit her head on the end
18 table.

19 And then when they were outside tussling Chris hit
20 her a few times outside in the backyard. He had a
21 weapon. He had a yellow axe handle.

22 Q. You said he had a yellow axe handle?

23 A. Yes, sir.

24 Q. You saw Chris with a yellow axe handle?

25 A. Yes. I saw Chris at first I thought it was a piece

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1 of wood but after I got a better look at it it was an axe
2 handle.

3 Q. I want to show you what has been marked as State's
4 exhibit 14 for identification purposes. Do you recognize
5 that?

6 [Whereupon, the witness is shown item]

7 A. Yes, sir.

8 Q. What is that?

9 A. That's the weapon he had.

10 Q. Is it in about the same condition as when it was in
11 2011?

12 A. Yes, sir.

13 MR. FERGUSON: Your Honor, at this time I'd like to
14 move State's exhibit 14 into evidence?

15 THE COURT: Any objection?

16 MR. RUNYON: No objection, Judge.

17 THE COURT: Marked and admitted without objection.

18 [Whereupon, State's exhibit number 14 is entered
19 into evidence by the court]

20 Q. [Mr. Ferguson] Did you see Christopher Boling with
21 this axe handle?

22 A. Yes, sir.

23 Q. And what was he doing with it?

24 A. He was outside in the back tussling with my wife at
25 that time.

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1 Q. Tussling with the axe handle ---
2 A. --- fighting with my wife, yes. He hit her a couple
3 of times, not with the handle but with his physical
4 hands.
5 Q. Okay. Now do you live on Johns Island anymore?
6 A. No, sir.
7 Q. Why not?
8 A. I just -- my neighborhood went to Hell.
9 Q. And is Johns Island what you would call home?
10 A. Yes, sir.
11 Q. And did you give a statement to the police that
12 night describing what happened?
13 A. I couldn't hear you, sir.
14 Q. Did you give a statement to the police that night?
15 A. Yes sir, I did.
16 Q. And did you describe what happened?
17 A. Yes, sir.
18 Q. Thank you. Please answer any questions the defense
19 might have.
20 THE COURT: You may proceed.
21
22
23
24
25

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1 CROSS-EXAMINATION

2 BY MR. RUNYON:

3 Q. I know it was New Year's Eve but do people come to
4 your house at 2 o'clock in the morning to offer to sell
5 you a cell phone?

6 A. Well, it's a pretty close knit neighborhood sir and
7 we were out there celebrating New Years and everything.

8 Q. Well, yes and if I got something I want to sell on
9 Johns Island and I live around Cane Slash Road I know to
10 bring it to Joe Owens don't I?

11 MR. FERGUSON: Objection, Your Honor, relevance ---

12 THE COURT: --- basis. Well you need to lay the
13 appropriate foundation for that question Mr. Runyon. But
14 I'll give you latitude in the line of questioning with
15 the proper foundation.

16 Q. [Mr. Runyon] Strike that -- I'll withdraw that
17 question. Mr. Owens?

18 A. Yes, sir?

19 Q. Mr. Dempsey came to you at 2 o'clock in the morning
20 right?

21 A. Yes, sir. No, I think it was before 2 o'clock.

22 Q. Okay, before 2 o'clock.

23 A. Yes, sir.

24 Q. He came to you sometime after this was a brand new,
25 New Year in 2011 okay.

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- 1 A. Yes, sir.
- 2 Q. And nobody was looking at their watches.
- 3 A. No, sir.
- 4 Q. Okay. Mr. Dempsey came to your house and knocked
5 on the door correct?
- 6 A. Yes, sir.
- 7 Q. And he asked you if you would buy a cell phone from
8 him.
- 9 A. After I answered the door and realized who it was,
10 sir because I raised that little boy just about -- I've
11 known all the kids all my life.
- 12 And when he said it was Tad of course I knew his
13 mother and his father so I opened the door and let him
14 in. I had no idea he was bringing a cell phone. He was
15 coming from a party down the street.
- 16 Q. So there was a party down the street?
- 17 A. Yes, sir.
- 18 Q. Mr. Snelson's [phonetic]?
- 19 A. I'm not sure.
- 20 Q. Well, it was a party down the street. Was it the
21 direction where the yard with the goat in it or is it the
22 other direction?
- 23 A. It's back towards River Road.
- 24 Q. It's back towards River Road. Not towards the goat.
- 25 A. Not towards my -- the opposite way of coming to my

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1 house.
2 Q. You know about that brown goat down the road don't
3 you?
4 A. Sir?
5 Q. The brown goat down the road?
6 A. I didn't understand you.
7 Q. The brown goat?
8 A. Oh, yes that's the Koger's house.
9 Q. Right. That goat has been there for years hasn't
10 it?
11 A. Yes, sir.
12 Q. Now this axe handle -- where did this axe hammer
13 come from?
14 A. I have not a clue, sir.
15 Q. Okay. So it -- you didn't see Mr...
16 A. I seen Christopher Bolinger with that in his hand at
17 one time.
18 Q. You saw it in his hand at some time but you didn't
19 see him bring it into your house?
20 A. No, sir. He did not bring that into my house.
21 Q. Okay. Now let's get back to the commercial
22 transaction or the purported commercial transaction or
23 the attempted commercial transaction sometime between 12
24 and 2 in the morning from Mr. Dempsey.
25 A. Right.

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1 MR. FERGUSON: Your Honor, I'd object again to
2 relevance.

3 THE COURT: I really didn't hear the full question.
4 Could you repeat it?

5 MR. RUNYON: The question is let's get back to the
6 purported attempted commercial transaction between he and
7 Mr. Dempsey which he's already testified to.

8 THE COURT: Overruled. You can answer the question
9 sir.

10 Q. [Mr. Runyon] Now Mr. Dempsey came to your house to
11 sell you a cell phone.

12 A. I didn't know that until he got there. I didn't
13 invite him down..

14 Q. Obviously you didn't call him and say bring me a
15 cell phone or anything like that right?

16 A. Yes, sir that's right.

17 Q. But he just knew to bring it to you to offer to you?

18 A. No, sir. I didn't have many associations with him
19 other than hey, how are you doing. I mean he grew up on
20 the road I grew up on.

21 Q. Okay.

22 A. He has come down there before when I was out cutting
23 grass and stuff like that and we'd socialize but that's
24 about it.

25 Q. Okay. Now he offered the cell phone and then up

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- 1 pops Mr. Russell and Mr. Boling.
- 2 A. Yes sir, after I told him I don't want to buy no
- 3 cell phone. I said I don't need no cell phone.
- 4 Q. You didn't need the cell phone.
- 5 A. I didn't need the cell phone.
- 6 Q. Okay. Had you needed the cell phone you probably
- 7 would have considered buying it.
- 8 A. No sir, I wouldn't have because I had one.
- 9 Q. I beg your pardon?
- 10 A. I already had a cell phone.
- 11 Q. You already had a cell phone.
- 12 A. Right.
- 13 Q. In the trailer.
- 14 A. Right.
- 15 Q. That night?
- 16 A. That night.
- 17 Q. And it was operating?
- 18 A. No sir it wasn't. I was out of time.
- 19 Q. You were out of time?
- 20 A. Yes, sir.
- 21 Q. Okay. Now when Mr. Dempsey -- when Mr. Boling and
- 22 Mr. Russell came in they were upset with Mr. Dempsey
- 23 weren't they?
- 24 A. Yes, sir.
- 25 Q. They wanted the cell phone back didn't they?

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- 1 A. Well, they didn't even really say nothing about a
2 cell phone. They went straight to him --
3 Q. They went straight to him?
4 A. Straight to him.
5 Q. All right. And during this whole melee and mayhem
6 and what have you what happened to the cell phone?
7 A. I have not a clue.
8 Q. Okay. So during that tussle and that fight over
9 them trying to get the cell phone back ---
10 A. --- yes, sir.
11 Q. Was that Mr. Dempsey's cell phone?
12 A. I don't -- I didn't know until after the fact that
13 it wasn't.
14 Q. Right.
15 A. When he approached me about it he said I want to
16 sell you my cell phone. That's all he said.
17 Q. I want to see you my cell phone?
18 A. Right.
19 Q. Now you run a pawn shop don't you?
20 A. Yes, sir.
21 Q. And you know about the value of things.
22 A. Yes, sir.
23 Q. And so this was a -- you could assess the value of
24 this couldn't you?
25 A. Well, I wasn't working at the pawn -- I can now.

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1 Like I said I'm old school. I don't mess with high
2 dollar gadgets; never have, never will.
3 Q. Okay. And so ---
4 A. --- I know the price of them now that I'm working at
5 the pawn shop, yes sir they are very expensive.
6 Q. You don't just work in the pawn shop you run the
7 pawn shop don't you?
8 A. Yes, sir.
9 Q. You're the general manager.
10 A. Yes, sir.
11 Q. You live in the back.
12 A. Yes, sir.
13 Q. Okay. So when they came to your house that day that
14 evening or that morning and came rushing in there they
15 were there to get the cell phone back from Mr. Dempsey.
16 A. Well, they should have knocked on my door instead of
17 busting it down.
18 Q. I agree with you ---
19 A. --- I understand they were looking for the cell
20 phone.
21 Q. I agree with you whole heartedly there is no
22 question they should have knocked on the door but they
23 didn't.
24 A. Right.
25 Q. But when they came in there they were coming to get

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1 the cell phone right?
2 A. Well, at first I didn't know that. They went
3 straight to Tad Dempsey -- and started ganging up on him.
4 Q. Right.
5 A. Right as soon as the door opened they were on him.
6 Q. All right. And then you got them out.
7 A. Yes, sir.
8 Q. And they came around and they came back in.
9 A. Yes, sir.
10 Q. In the meantime you told your wife to go across the
11 street ---
12 A. --- right ---
13 Q. --- to phone the police.
14 A. Right. Well, no that's -- yes the first time I told
15 her -- the first time they come in I said go call the
16 police.
17 Q. Right.
18 A. And she had went next door for a second and all this
19 is transpiring with the fighting and they left and come
20 back. Then I told -- that's when Tad come back and
21 busted the windows out of my truck.
22 Q. Okay.
23 A. And he asked me if I would let him use my truck.
24 And I said no and he busted out the windows. Then when
25 they come back in the gun -- I mean back in the house

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1 with the gun I told her go call the police again. And I
2 really don't...
3 Q. And they are still looking for Tad?
4 A. Yes.
5 Q. Trying to get the cell phone back.
6 A. Well I don't know if they were looking for Tad but
7 they came straight to me this time.
8 Q. Okay. And all this was a result of you -- of Mr.
9 Dempsey showing up on your door step trying to sell you a
10 cell phone?
11 A. Exactly.
12 Q. Okay. Now let me ask you about -- because I get
13 confused okay; I'm old now and I get confused a lot so
14 you're going to have to help me get things straight okay?
15 A. Yes, sir.
16 Q. Now when was your wife on the floor?
17 A. The first time they come in.
18 Q. The first time they came in.
19 A. The first they came in and all the commotion was
20 going on and that's when she got knocked to the floor.
21 Q. She got knocked to the floor because they were
22 tussling with Tad?
23 A. No sir because Chris Boling pushed her and hit her
24 and knocked her down on the floor.
25 Q. Okay. He pushed her trying to get to Mr. Dempsey

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1 and ---
2 A. --- no sir. Mr. Dempsey was over here [indicates]
3 and my girlfriend was over here [indicates].
4 Q. Okay. Now -- and then she just laid there?
5 A. No, she got back up kind of shocked a little bit I
6 guess in awe.
7 Q. And is that when she went to call the police?
8 A. That's the first time I sent her to call the police.
9 Q. Did she call the police then?
10 A. Then I don't know. As far as I know it took
11 probably a whole matter of about four minutes for this
12 whole thing to transpire from the front door to the back.
13 And I finally got them out the back door and I told her
14 to call the police and she had run out the house.
15 And I told her to call them and that's when Tad
16 returned and I said I called the police and that's when
17 he busted the windows and -- I mean this is three and
18 half years ago so its...
19 Q. Well, it may be three and half years ago but this is
20 real important isn't it?
21 A. Yes, sir.
22 Q. I mean it's important to you.
23 A. Yes, sir.
24 Q. It's important to Mr. Boling. It's important isn't
25 it?

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- 1 A. Yes, sir.
- 2 Q. And you had some hesitation about even coming to the
3 courthouse didn't you?
- 4 A. No, sir.
- 5 Q. You had no hesitation?
- 6 A. Nope.
- 7 Q. Even though you knew these kids from the time to
8 grown up.
- 9 A. Yes sir, but it's the law.
- 10 Q. I beg your pardon?
- 11 A. It's the law and I came to court.
- 12 Q. Right. It's the law. And it's also the law that
13 you're not supposed to buy other people's stuff right?
- 14 A. I didn't buy it.
- 15 Q. But it was offered to you ---
- 16 A. --- I had no intention. I didn't even know he was
17 bringing a cell phone then. The only reason I opened
18 that door sir is because I knew the boy since he was a
19 little boy.
- 20 Q. Okay.
- 21 A. I knew his Momma and his Daddy. I wouldn't open my
22 door to anybody unless I knew who they were.
- 23 Q. Well and the simple fact of the matter was there was
24 a lot -- ordinarily and particularly in the country on
25 Johns Island after dark things quiet down real fast.

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- 1 A. Yes, sir.
- 2 Q. And even the goat down the road goes to sleep right.
- 3 A. Yes.
- 4 Q. All right. And -- but this is New Year's Eve.
- 5 People were -- there were fireworks going off.
- 6 A. No, it was pretty quiet at this time.
- 7 Q. At this time it was pretty quiet?
- 8 A. Yes, sir.
- 9 Q. But there was a party just down the road.
- 10 A. It was probably I would say a quarter mile down the
- 11 street.
- 12 Q. Well a quarter mile is still pretty close in the
- 13 country isn't it? It's walking distance.
- 14 A. Well, you've got a lot of shade trees that cover
- 15 everything and it's not like being out in an open field.
- 16 Q. Oh, that's right okay. Now when Mr. Boling came
- 17 into the door what crime did he and Mr. Russell intend to
- 18 do?
- 19 A. They went straight to Mr. Dempsey -- beating him up.
- 20 Q. To get the cell phone?
- 21 A. I don't -- I didn't know that. I mean -- I did not
- 22 know that.
- 23 Q. So you don't even know if they came in there to do
- 24 anything wrong. They just came in without your
- 25 permission.

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- 1 A. They came in and busted my door down, sir.
- 2 Q. Right. They busted your door down ---
- 3 A. --- they kicked my door in.
- 4 Q. There is no question about the fact they damaged
- 5 your property.
- 6 A. Yes, sir.
- 7 Q. And there is no question about the fact that they
- 8 shouldn't have done that.
- 9 A. Yes, sir. I didn't put two and two together about
- 10 the phone and the phone being somebody else's phone at
- 11 that time. I had no -- not a clue.
- 12 Q. Okay. Now and in this whole situation with Mr.
- 13 Dempsey and the -- how long did this whole thing take?
- 14 A. It -- when they first come in kicked the door in the
- 15 first time it probably -- it seemed like forever but it
- 16 was probably four to five minutes maybe, six minutes
- 17 tussling from the front door to the back door.
- 18 Q. And then Mr. Dempsey busted up your truck and the
- 19 police came.
- 20 A. No, sir. He went out the back door and took off.
- 21 Tad Dempsey had took off.
- 22 Q. All right. And they ran after him.
- 23 A. No, sir. They come back -- they were back at the
- 24 back door trying to come back in that first time and Tad
- 25 left. And then they turned around and chased after Tad.

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- 1 Q. Okay. And so then the police came.
- 2 A. The police come the second time. They finally
- 3 showed up the second time when he busted my door down
- 4 again and came back through the front door and pointed
- 5 the gun at me. That's when the police arrived.
- 6 Q. And where was Mr. Dempsey when he was...
- 7 A. He was gone.
- 8 Q. He was gone. He had already busted up your truck.
- 9 A. He had already busted up my truck and he was gone.
- 10 Q. Why did he bust up your truck do you know?
- 11 A. Because he wanted to use my truck to get away
- 12 because my wife -- my girlfriend told him she had already
- 13 called the police. And he said I need to use your truck
- 14 and I said you're not -- the police are on the way.
- 15 Q. Now is this your axe handle?
- 16 A. No, sir. I've never owned one.
- 17 Q. Did you see Mr. Boling bring that into your house?
- 18 A. No, sir. He didn't bring it he had it in the back
- 19 yard, sir.
- 20 Q. That was in the back yard?
- 21 A. He had it in his hand in the backyard.
- 22 Q. He had it in his hand in the backyard but then ---
- 23 A. --- I didn't see him bring it in the yard. I just
- 24 seen him with it in his hand.
- 25 Q. You didn't see him bring it into the backyard. It

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1 was there somehow?

2 A. He was there with the axe handle in his hand.

3 Q. Okay. So we don't know whose axe handle ---

4 A. --- where it come from -- I don't know who it

5 belongs to.

6 Q. You don't know who it belongs to, okay.

7 MR. RUNYON: Court's indulgence, Your Honor.

8 [Whereupon, Mr. Runyon reviews documents]

9 Q. [Mr. Runyon] As a practical matter other than

10 damage and their dispute with Mr. Dempsey and what have

11 you did they take anything from your house?

12 A. I was missing about 300 dollars. But I'm not sure;

13 I'm not putting the finger on nobody.

14 Q. Did you tell the police they took 300 dollars?

15 A. I think I may have mentioned it to them or my

16 girlfriend did; one of the two.

17 Q. When did you first remember the 300 dollars was

18 taken?

19 A. At about -- after I started cleaning up.

20 Q. After you started cleaning up ---

21 A. --- and my girlfriend mentioned it to me.

22 Q. Where was that 300 dollars that was taken?

23 A. It was on a coffee table like a little desk with a

24 little flip down lid.

25 Q. Yes.

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- 1 A. And that's where I kept my wallet and my keys and
2 stuff like that in it. A little lid you could shut down
3 on it.
- 4 Q. So who took that?
- 5 A. I have no -- not a clue.
- 6 Q. You're not testifying under oath today that Mr.
7 Boling and Mr. Russell took that?
- 8 A. No, sir.
- 9 Q. You're not testifying today that they had any
10 intention of taking that when they came in?
- 11 A. They didn't -- I don't know. The money come up
12 missing and I don't want to point no fingers unless I was
13 absolutely sure.
- 14 Q. And everything you've said is the absolute God's
15 honest truth?
- 16 A. Yes, sir.
- 17 Q. Okay.
- 18 A. To the best of my recollection, yes sir.
- 19 Q. To the best of your recollection because it's been
20 three years hasn't it?
- 21 A. Yes, sir.
- 22 Q. About three years. Now do y'all have a dog?
- 23 A. No sir, I don't.
- 24 Q. You've never had a dog?
- 25 A. I got a dog now, yes sir.

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1 Q. You've got a dog now?
2 A. Yes, sir.
3 Q. But you didn't have a dog back then?
4 A. No, sir.
5 Q. And it was New Year's Eve and you were spending a
6 quiet New Year's Eve at home.
7 A. Yes, sir.
8 Q. And you had something to drink.
9 A. Yes, sir.
10 Q. Some adult beverages.
11 A. Yes, sir.
12 Q. All right. And that kind of affected the situation
13 too didn't it?
14 A. Not really. I was very sober. I don't have a
15 driver's license so I couldn't drive to go nowhere so we
16 just decided to have a quiet evening at home.
17 Q. Wait a minute you -- there's no problem spending New
18 Year's Eve at home but you don't have a driver's license?
19 A. Yes, sir.
20 Q. Okay. And so for example your wife has to drive
21 you to the store or something?
22 A. Yes, sir. I have people transport me around.
23 Q. You have people to transport you to buy your beer
24 and what have you in that situation. And so y'all just
25 decided to spend New Year's Eve at home.

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- 1 A. Yes, sir.
- 2 Q. And everything was nice and quiet and you had some
3 friends come over.
- 4 A. Yes, sir.
- 5 Q. And they after they visited they left. And then in
6 popped Mr. Dempsey and the rest of what we've been
7 talking about?
- 8 A. No, sir. My company left once Tad -- once Tad got
9 there and then they left when all the fighting started.
- 10 Q. Okay. The company left when the fight started?
- 11 A. Yes, sir.
- 12 Q. Okay. And who was the company?
- 13 A. Vera and Willie.
- 14 Q. Vera and Willie?
- 15 A. Right.
- 16 Q. And you know their last names ---
- 17 A. --- I know Vera. I don't know their last names.
18 They are just people I've seen walking up and down Cane
19 Slash.
- 20 [Whereupon, Mr. Runyon confers with his client]
- 21 Q. Would that be Willie Clement?
- 22 A. Yes, sir.
- 23 Q. That was who ---
- 24 A. --- that's his last name, yes. Now I remember it
25 was Clement.

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1 Q. Okay.

2 MR. RUNYON: I have no further questions for this
3 witness at this time Your Honor.

4 THE COURT: Madame Forelady and ladies and
5 gentlemen we're going to take advantage of this break in
6 testimony to take a very brief restroom break. During
7 the break please do not discuss the case and please leave
8 your notepads in your seats. If you would, go with the
9 bailiff.

10 [Whereupon, the jury exits at 12:22]

11 THE COURT: Mr. Owens you may go to the restroom as
12 well. Please do not discuss your testimony with anyone.
13 We'll be at ease for about five minutes.

14 [Whereupon, court is in recess from 12:22 p.m. until
15 12:30 p.m.]

16 THE COURT: I need you to retake the stand, sir.

17 [Whereupon, Mr. Owens returns to the witness stand]

18 THE COURT: Is the panel ready?

19 THE BAILIFF: Yes. Bring them in.

20 THE COURT: Yes, ma'am.

21 [Whereupon, the jury enters at 12:35 p.m.]

22 THE COURT: Thank you. Ladies and gentlemen, we
23 will now resume testimony. Is there any redirect?

24 MR. FERGUSON: Yes, Your Honor.

25 THE COURT: You may proceed.

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1 REDIRECT EXAMINATION

2 BY MR. FERGUSON:

3 Q. Mr. Owens, is your testimony that Mr. Boling was not

4 invited to your home, right?

5 A. Yes, sir.

6 Q. And tell the jury again how he got inside your home.

7 A. My front door was kicked open.

8 Q. Was he invited?

9 A. No, sir.

10 Q. I'm sorry, I asked that twice. Now what was the

11 first thing that Christopher Boling did when he entered

12 your home?

13 A. Attacked Tad Dempsey.

14 Q. Was he punching him?

15 A. Punching him.

16 Q. Was he kicking him?

17 A. Kicking.

18 Q. Was he assaulting you as well?

19 A. Well, yes sir because I tried to split them up.

20 Q. Were you defending yourself?

21 A. Yes, sir.

22 Q. Now I want to ask you about the party. There was a

23 party going on that night but it wasn't at your house?

24 A. No, sir.

25 Q. Do you know whose house it was at?

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- 1 A. It was a guy named Scooter [phonetic].
- 2 Q. Now did you hear like loud music or engines revving
- 3 or anything like that?
- 4 A. No, sir.
- 5 Q. So how did you know there was a party?
- 6 A. I found out afterwards.
- 7 Q. So it wasn't like a loud ---
- 8 A. --- no sir ---
- 9 Q. --- annoying obnoxious party?
- 10 A. No, sir.
- 11 Q. Let me show you State's 2 again.
- 12 [Whereupon, the photograph is shown]
- 13 Q. Could you circle your trailer again?
- 14 A. Yes sir, its right here [indicates].
- 15 Q. Is -- what is his name Scooter?
- 16 A. Right.
- 17 Q. House somewhere on that map?
- 18 A. It way back this away [indicates].
- 19 Q. Its way back that away [indicates].
- 20 A. Yes, sir.
- 21 Q. You said you grew up -- or you know Kevin Russell.
- 22 A. Yes, sir.
- 23 Q. Do you see his trailer on that map?
- 24 A. His trailer is right -- its kind of hard to see --
- 25 right here [indicates].

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- 1 Q. Okay.
- 2 A. That's his mother's trailer.
- 3 Q. That's Kevin Russell's mother's trailer and
4 Scooter's trailer is off of this map?
- 5 A. Right.
- 6 Q. And finally -- well actually I may have a couple
7 more questions. When you were cleaning up after all this
8 had happened tell the jury some of the things that were
9 damaged in your home?
- 10 A. My truck, my -- a bunch of holes in the hallway
11 sheetrock, my entertainment system, a bunch of potted
12 plants knocked over, table knocked over, lamps broke.
- 13 Q. Now of all the things -- excluding the truck -- all
14 those things inside your home was that a result of
15 Christopher Boling fighting?
- 16 A. Christopher Boling and Kevin Russell.
- 17 Q. Both of them?
- 18 A. Both of them.
- 19 Q. When they kicked in that door and went inside did
20 they say anything at all about a cell phone?
- 21 A. I'm going to beat your ass.
- 22 Q. That's what they said? They didn't say ---
- 23 A. --- not to me, to Tad Dempsey.
- 24 Q. Did they say anything like I'm coming for your cell
25 phone?

State v Christopher Boling
Joseph Owens-Redirect Examination by Mr. Ferguson
July 29, 2014

1 A. No, sir.
2 Q. Did they say let me talk to you for a minute?
3 A. No, sir.
4 Q. What did they do?
5 A. They kicked the door down and directly went to
6 beating him up in my living room.
7 MR. FERGUSON: No further questions.
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State v Christopher Boling
Joseph Owens-Recross-Examination by Mr. Runyon
July 29, 2014

1 RE CROSS-EXAMINATION

2 BY MR. RUNYON:

3 Q. And you intervened.

4 A. Yes, sir.

5 Q. To kind of quiet things down?

6 A. Yes, sir.

7 Q. And you had no knowledge of whether or not they were

8 just trying to recover ---

9 A. --- no, sir ---

10 Q. --- a stolen cell phone ---

11 A. --- no sir not at first.

12 Q. Not at first?

13 A. Not at first.

14 Q. You later on this phone ---

15 A. --- I found out later on it was over a stolen cell

16 phone.

17 Q. And that was what was offered to sell to you ---

18 A. --- that's what he tried to sell me.

19 MR. RUNYON: No further question, Judge.

20 THE COURT: Any further questions from the State?

21 MR. FERGUSON: No, Your Honor.

22 THE COURT: Sir, you may step down.

23 THE WITNESS: Thank you. May I say something?

24 THE COURT: No sir, not without a question being

25 asked.

State v Christopher Boling
Joseph Owens-Recross-Examination by Mr. Runyon
July 29, 2014

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: You may call your next witness.

4 MR. FERGUSON: The State calls Darlene Koger.

5 [Whereupon, Ms. Koger comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: Once seated if you could please
9 state your first and last name and spell your last
10 clearly, loudly in the microphone please ma'am.

11 THE WITNESS: My name is Darlene Koger. Last name
12 is K-O-G-E-R.

13 THE COURT: You may proceed.
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State v Christopher Boling
Darlene Koger-Direct Examination by Mr. Ferguson
July 29, 2014

1 DARLENE KOGER,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. FERGUSON:
6 Q. Good afternoon Ms. Koger. Let me ask you a few
7 questions. Where do you live?
8 A. [REDACTED] Cane Slash Road, Johns Island.
9 Q. And how long have you lived there?
10 A. About ten years.
11 Q. Do you work?
12 A. No, I do not.
13 Q. Are you retired?
14 A. Yes.
15 Q. What are you retired from?
16 A. Just different jobs in the medical field.
17 Q. In the medical field. Do you have any children?
18 A. I do.
19 Q. Now I want to ask you about the reason you're here
20 actually the night of New Year's 2011. Do you remember
21 that night?
22 A. I do.
23 Q. Why do you remember that night?
24 A. Well, there was a lot going on.
25 Q. Do you remember calling the police?

State v Christopher Boling
Darlene Koger-Direct Examination by Mr. Ferguson
July 29, 2014

1 A. I do.
2 Q. Why did you call the police?
3 A. Well, there was a lot of noise and I knew something
4 was going on next door. And then my neighbor ran up on
5 the porch and asked if she could use my phone to call the
6 police. And I told her you know I wasn't going to let
7 her in and she asked me to call.
8 Q. Was it nighttime?
9 A. It was. Very late.
10 Q. Were you a little nervous about opening the door?
11 A. Yes.
12 Q. But did you call the police?
13 A. I did. I called 911.
14 Q. Did the police eventually come to your door?
15 A. Yes, they did.
16 Q. And what happened when the police came to your door?
17 A. They asked you know us to stay inside and not to
18 come out.
19 Q. Okay. Did you point him in the direction of the
20 reason you were calling?
21 A. I don't believe I did because I think there were
22 others that had already kind of surrounded you know
23 around my house and the other house ---
24 Q. --- so it was already noticeable on where he needed
25 to go.

State v Christopher Boling
Darlene Koger-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 A. Yes.
- 2 Q. After the police officer left do you remember
3 hearing any gunshots?
- 4 A. Yes, I did.
- 5 Q. Do you remember about how many did you hear?
- 6 A. I don't remember, but it was at least two.
- 7 Q. Now, did they seem like distant gunshots or rather
8 close?
- 9 A. They were across the street from me in the woods.
10 It was coming from that direction.
- 11 Q. Okay. Did you leave your house at any time that
12 night?
- 13 A. No, I did not.
- 14 Q. Do you know Christopher Boling?
- 15 A. I don't know him.
- 16 Q. Do you know Kevin Russell?
- 17 A. I do not.
- 18 Q. They never had been in your house before?
- 19 A. No.
- 20 Q. Let me show you what's been marked as State's
21 exhibit number 2. It's on that little computer screen in
22 front of you.
- 23 [Whereupon, the photograph is shown]
- 24 Q. Can you orient yourself with that?
- 25 A. I know where it is now. I do recognize it.

State v Christopher Boling
Darlene Koger-Direct Examination by Mr. Ferguson
July 29, 2014

1 Q. You recognize that?
2 A. Yes.
3 Q. What is that?
4 A. Well, I see my house and I see next door.
5 Q. Okay. That little screen you can use your finger to
6 trace a little circle. Can you circle your house?
7 [Whereupon, the witness complies]
8 Q. And can you circle the little area where next door
9 is?
10 A. Right there [indicates].
11 Q. Right there? Okay. So you live rather close?
12 A. Yes, I do.
13 Q. Okay. When you said earlier that you heard the
14 shots across the street did you mean across Cane Slash or
15 did you mean across that little kind of dirt road you see
16 there?
17 A. No, across Cane Slash. I mean I heard something
18 going on beside me but I don't recall hearing gunshots at
19 that time.
20 Q. Okay. Thank you for your time. Please answer any
21 questions Mr. Runyon may have.
22 THE COURT: You may proceed.
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State v Christopher Boling
Darlene Koger-Cross-Examination by Mr. Runyon
July 29, 2014

CROSS-EXAMINATION

- 1
2 BY MR. RUNYON:
3 Q. Ms. Koger, are you originally from Johns Island?
4 A. My father was in the Navy but my husband is
5 originally from Johns Island.
6 Q. Okay. Are you the Koger family that had the big
7 general store on River Road years ago?
8 A. Yes.
9 Q. I just wanted to make sure I know which Koger I'm
10 talking to.
11 A. Okay.
12 Q. And so basically on that evening it was New Year's
13 Eve. You heard noise from your neighbor, noisy, and so
14 you decided to call the police?
15 A. No. It -- I knew something was going on next door
16 but I did not call the police until she ran over,
17 Jeanette and came to my door.
18 And she wanted to come in and use the phone and I
19 told her you know that I wasn't going to let her in, but
20 I would call.
21 Q. But you would call the police?
22 A. Yes.
23 Q. And that's what you did?
24 A. Yes, I did.
25 Q. And later on your testimony is you heard something

State v Christopher Boling
Darlene Koger-Cross-Examination by Mr. Runyon
July 29, 2014

1 coming from across Cane Slash Road.
2 A. Yes.
3 Q. And basically other than that you really don't know
4 anything that happened that night other than you
5 responded to a neighbor's request to call the police?
6 A. Right. I only know what I heard afterwards.
7 Q. Okay.
8 MR. RUNYON: No further questions, Your Honor.
9 THE COURT: Any redirect?
10 MR. FERGUSON: No, Your Honor.
11 THE COURT: Any objection to the witness being
12 excused from the State?
13 MR. FERGUSON: No, Your Honor.
14 THE COURT: From the defense?
15 MR. RUNYON: Not from the defense, Your Honor.
16 THE COURT: Ma'am, you're excused.
17 [Whereupon, the witness is excused and exits the
18 witness stand]
19 THE COURT: You may call your next witness.
20 MR. FERGUSON: The State calls Deputy Michael
21 Buenting.
22 [Whereupon, Deputy Buenting comes forward]
23 [Whereupon, the witness is duly sworn by the Clerk
24 of Court]
25 CLERK OF COURT: When seated please state your

State v Christopher Boling
Darlene Koger-Cross-Examination by Mr. Runyon
July 29, 2014

1 first and last name and spell your last clearly and
2 loudly into the microphone, sir.

3 THE WITNESS: My name is Michael Buenting,
4 B-U-E-N-T-I-N-G.

5 THE COURT: You may proceed.

6 MR. FERGUSON: Thank you, Your Honor.

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State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

1 MICHAEL BUENTING,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. FERGUSON:
6 Q. Michael, how old are you?
7 A. 30.
8 Q. And where are you from?
9 A. I grew up on Johns Island and in Mount Pleasant.
10 Q. So what high school did you go to?
11 A. To Wando.
12 Q. You went to Wando?
13 A. Yes, sir.
14 Q. Where do you currently work?
15 A. For the Charleston County Sheriff's Office K-9 unit.
16 Q. And how long have you been there?
17 A. I've been with Charleston County approximately seven
18 years.
19 Q. Now what are your duties with the Charleston County
20 Sheriff's K-9 unit?
21 A. To assist patrol answering calls, track criminals
22 with our K-9's, and a multitude of different things with
23 the dog.
24 Q. Do you have a K-9 assigned to you?
25 A. Yes sir, I do.

State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 Q. Which one?
- 2 A. K-9 Niko [phonetic].
- 3 Q. Niko?
- 4 A. Yes, sir.
- 5 Q. Now those were your duties back in January of 2011?
- 6 A. No sir, I was on patrol.
- 7 Q. And what does a patrol deputy do?
- 8 A. Answer calls for service, 911 calls, investigate
- 9 crimes; overall just protect the citizens of Charleston
- 10 County.
- 11 Q. So it's usually a patrol deputy who responds first
- 12 to a 911 call?
- 13 A. Yes, sir.
- 14 Q. Do you remember answering a call for service on
- 15 January 1st, 2011?
- 16 A. Yes, sir.
- 17 Q. Where?
- 18 A. On Cane Slash Road.
- 19 Q. Is that in Charleston County?
- 20 A. Yes sir, it is.
- 21 Q. And were you the first officer to arrive at the
- 22 location?
- 23 A. I was.
- 24 Q. All right. I'm going to show you what has been
- 25 marked as State's exhibit 1 for identification purposes?

State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

1 [Whereupon, the witness is shown photograph]
2 Q. Do you recognize that?
3 A. Yes sir, I do.
4 Q. And what is that?
5 A. That's a picture of Cane Slash Road and the incident
6 location.
7 MR. FERGUSON: Your Honor, at this time the State
8 would like to admit State's exhibit 1 into evidence.
9 THE COURT: Any objection?
10 MR. RUNYON: No objection, Judge.
11 THE COURT: Marked and admitted without objection.
12 [Whereupon, State's exhibit number 1 is entered into
13 evidence by the court]
14 Q. [Mr. Ferguson] Deputy Buenting, did you arrive in
15 your patrol car?
16 A. Yes sir, I did.
17 Q. And were the lights on when you were going there?
18 A. The blue lights I shut off prior to getting there.
19 Q. Did you turn them on at any time?
20 A. I do believe so probably to respond to the general
21 area.
22 Q. Okay. Now Deputy Buenting did you make contact
23 with Ms. Koger the woman that called 911?
24 A. Yes sir, I did.
25 MR. FERGUSON: Judge, if he can step off.

State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

1 THE COURT: Sir, you may step down.

2 [Whereupon, the witness steps down from the witness
3 stand]

4 Q. [Mr. Ferguson] I want to hand you this sticky note
5 and if you could show us where on this board you
6 responded to -- whose house -- where the house was?

7 A. At first I responded to Ms. Koger's house ---

8 THE COURT: --- I need you to speak up for me sir
9 and y'all might need to switch places so he is speaking
10 toward the court reporter.

11 MR. FERGUSON: Thank you, Judge.

12 THE COURT: And sir if you could repeat your
13 answer.

14 A. At first I responded to Ms. Koger's.

15 Q. [Mr. Ferguson] Say that again?

16 A. I responded to Ms. Koger's house where the 911 call
17 originally came from.

18 Q. Okay. And did she direct you any direction?

19 A. Yes, sir.

20 Q. Where did she direct you?

21 A. She directed me right here [indicates] to the
22 incident location.

23 Q. Now you put that over some trees. Is there anything
24 underneath those trees that we are unable to see from
25 this view?

State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 A. Yes sir, that's Mr. Owens' residence.
- 2 Q. Okay. Now how did you get from Ms. Koger's
3 residence over to the incident location?
- 4 A. I walked.
- 5 Q. All right. Now how did you walk? Did you -- well,
6 how did you walk?
- 7 A. Well, let me just move these up a little bit and I
8 can show you. At first I came to the front of the house
9 and after being directed I just crossed this dirt road
10 right here [indicates] and this is where -- Mr. Owens
11 house is right under these trees here [indicates].
- 12 Q. Are you familiar with where [REDACTED] Cane Slash is?
- 13 A. Yes sir, I am.
- 14 Q. Could you put a sticker on where [REDACTED] Cane Slash
15 Road is?
- 16 [Whereupon, the witness complies]
- 17 Q. Now go ahead back to your chair -- thank you for
18 that.
- 19 A. Yes, sir.
- 20 [Whereupon, the witness returns to the witness
21 stand]
- 22 Q. Now what happened when you -- after you made contact
23 with Ms. Koger?
- 24 A. That's when I went to the actual incident location.
- 25 Q. Okay. And what happened next?

State v Christopher Boling
Michael Buening-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 A. As I was walking across the dirt road nearing the
2 incident location I came into contact with the suspects
3 fleeing out the house.
- 4 Q. All right. I want to show you what has been marked
5 as State's exhibit 3.
- 6 [Whereupon, the witness is shown photograph]
- 7 Q. What is this a picture of?
- 8 A. That is the incident location.
- 9 Q. All right. Now tell us where you were when you saw
10 the suspects fleeing?
- 11 A. I was crossing this way [indicates]. This is
12 [indicates] where I was walking right near this barbed
13 wire fence here.
- 14 Q. Towards that direction?
- 15 A. Yes, sir.
- 16 Q. Now the prospective shot of this picture if I was
17 standing with a camera and taking a picture and I made
18 that picture where would I be standing?
- 19 A. You would be standing -- Ms. Koger's house is in
20 this direction [indicates].
- 21 Q. Now that is a picture of the daytime. Was it
22 daytime when you responded to this?
- 23 A. No sir, it was night. It was dark outside.
- 24 Q. And you're familiar with Johns Island right?
- 25 A. Yes sir, I am.

State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 Q. Would this be considered an urban or a rural area?
- 2 A. Probably a rural area.
- 3 Q. There are lots of trees?
- 4 A. Yes, sir.
- 5 Q. Not very many lights?
- 6 A. No lights at all I don't believe.
- 7 Q. So it was dark outside?
- 8 A. Yes sir, very dark.
- 9 Q. Now what did you see after you came into -- what
- 10 happened when you came into contact with the suspects?
- 11 A. I announced myself as the Sheriff's office at which
- 12 time they started shooting at me and fleeing the scene.
- 13 Q. Now they started shooting at you?
- 14 A. Yes, sir.
- 15 Q. Let me ask you a question. You are a Sheriff's
- 16 deputy is that correct?
- 17 A. Yes sir, I am.
- 18 Q. And do you have any training in firearms?
- 19 A. Yes, I do.
- 20 Q. Do you have any training to identify the sound and
- 21 or appearance of a firearm?
- 22 A. Yes, sir. We have multiple hours of training at the
- 23 Police Academy and we constantly train at the Sheriff's
- 24 office.
- 25 Q. Okay. Can you tell us do you do any nighttime

State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 training?
- 2 A. Yes, sir. We do nighttime training at the Police
3 Academy with firearms.
- 4 Q. And how does that work?
- 5 A. We shoot multiple rounds at nighttime engaging
6 targets.
- 7 Q. Okay. And are you -- as a result of your training
8 and experience as a law enforcement officer in that
9 regard are you able to distinguish the difference between
10 a gunshot and a firework?
- 11 A. Yes, sir.
- 12 Q. Are you able to distinguish the difference in sight
13 between a gunshot and a firework?
- 14 A. Yes, sir. The muzzle flash out of a firearm at
15 night is very noticeable.
- 16 Q. And are you trained to distinguish the difference
17 between a gunshot and a firework by sound as well?
- 18 A. Yes, sir.
- 19 Q. Let me ask you again -- well let me ask you. Are
20 you certain that what you heard and what you saw were
21 gunshots?
- 22 A. I'm positive.
- 23 Q. And how far away were you when you noticed these
24 gunshots?
- 25 A. Approximately fifteen to twenty feet.

State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

1 Q. I'll tell you what. I'm going to walk backwards.
2 You tell me when to stop walking backwards.
3 A. Okay.
4 [Whereupon, Mr. Ferguson demonstrates]
5 A. Yes, sir. That's probably about twenty feet.
6 Q. So it was from this distance where you saw and heard
7 a gunshot and a muzzle flash.
8 A. Yes, sir.
9 Q. And which direction did that gun, did that muzzle
10 flash point?
11 A. In my direction.
12 Q. And was this before or after you identified yourself
13 as law enforcement?
14 A. It was after I identified myself.
15 Q. And how many shots do you remember hearing and
16 seeing?
17 A. Two shots.
18 Q. Okay. What happened next?
19 A. The suspects fled the scene and I gave chase
20 ultimately catching Christopher Boling.
21 Q. Now which direction did they run?
22 A. They ran this way [indicates] towards the house over
23 here [indicates].
24 Q. Okay. Now I want to show you what has been marked
25 as State's exhibit 2.

State v Christopher Boling
Michael Buening-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 [Whereupon, the witness is shown photograph]
2 Q. Can you circle the trailer that was the incident
3 location?
4 [Whereupon, the witness indicates]
5 Q. And tell the jury or show the jury in which
6 direction you saw the two suspects running?
7 A. They ran across the front of this residence right
8 here [indicates].
9 Q. Did they ever split up?
10 A. Yes sir, they did.
11 Q. How?
12 A. Right here [indicates] at the wood line Kevin
13 Russell went directly into the woods and Christopher
14 Boling came out this direction [indicates] and down Cane
15 Slash Road.
16 Q. Okay. At the point they split up is that [REDACTED] Cane
17 Slash?
18 A. Yes sir, [REDACTED] is right here [indicates].
19 Q. And who did you decide to go after after they split
20 up?
21 A. Well at the time I went after Christopher Boling
22 because he was heading towards Cane Slash Road.
23 Q. Now why did you make that decision?
24 A. Just because it was dark and I didn't want to get
25 caught in the woods with an armed gunman and not have any

State v Christopher Boling
Michael Buenting-Direct Examination by Mr. Ferguson
July 29, 2014

1 backup.

2 Q. And what is the benefit of chasing somebody that is
3 going down the road?

4 A. Backup units were coming. I was close to the scene
5 so I knew eventually they would make their way there.

6 Q. It's basically a safety procedure?

7 A. Yes, sir.

8 Q. Did you know you were chasing Christopher Boling at
9 the time?

10 A. No sir, I did not.

11 Q. Did you ever lose sight of the people who ran out of
12 the trailer between the time they ran out and the time
13 you caught them?

14 A. I lost sight of Russell not of Boling.

15 Q. So Boling you stayed in contact with from the moment
16 he left the trailer to the moment he was apprehended?

17 A. Yes sir, I did.

18 Q. After you detained him what did you do next?

19 A. A patrol unit a backup unit came and we put him in
20 the patrol car and then I returned to the scene of the
21 crime to gather some more information.

22 Q. Did you make contact with Mr. Owens?

23 A. Yes sir, I did.

24 Q. As a result of your investigation did you understand
25 more of the reason you were called to the scene?

State v Christopher Boling
Michael Buening-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 A. Yes, sir.
- 2 Q. Did you notice the damage to Mr. Owens' trailer?
- 3 A. Yes, sir. The front door was kicked in.
- 4 Q. I want to show you State's 5.
- 5 [Whereupon, the witness is shown photograph]
- 6 Q. Did you notice that footprint?
- 7 A. Yes sir, I did.
- 8 Q. I want to show you State's 7.
- 9 [Whereupon, the witness is shown photograph]
- 10 Q. Did you notice that damage to the doorjamb there?
- 11 A. Yes sir, the door frame was torn apart.
- 12 Q. Did you ever go inside the trailer?
- 13 A. Briefly I did, yes sir.
- 14 Q. I'm going to show you State's 10.
- 15 [Whereupon, the witness is shown photograph]
- 16 Q. Did you notice the damage to that entertainment
- 17 system?
- 18 A. Yes sir, the house was a wreck.
- 19 Q. Was Mr. Russell ever apprehended that night?
- 20 A. Yes sir, he was.
- 21 Q. Do you know where?
- 22 A. Yes, sir. He was apprehended at his house hiding
- 23 naked in a closet.
- 24 Q. Now you briefly mentioned that you work with the K-9
- 25 unit right?

State v Christopher Boling
Michael Buening-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 A. Yes, sir.
- 2 Q. And you've been trained in the proper handling of
3 K-9's?
- 4 A. Yes, sir.
- 5 Q. And you've trained in the proper use of K-9's?
- 6 A. Yes, sir.
- 7 Q. Now in your training and experience as a law
8 enforcement officer why would someone want to discard
9 their clothing?
- 10 A. It could be a number of reasons. It could have been
11 having shot a firearm. He could be trying to flee the
12 scene and put on something different so we couldn't find
13 them by what they were wearing.
- 14 Q. So to avoid detection?
- 15 A. Yes, sir.
- 16 Q. By officers and K-9's?
- 17 A. Yes, sir.
- 18 Q. Were K-9's brought on the scene?
- 19 A. Yes, sir.
- 20 Q. Did K-9's assist in apprehending Mr. Russell?
- 21 A. Yes sir, they did.
- 22 Q. And he was arrested that night?
- 23 A. Yes, sir.
- 24 Q. Is [REDACTED] Cane Slash in Charleston County?
- 25 A. Yes sir, it is.

State v Christopher Boling
Michael Buening-Direct Examination by Mr. Ferguson
July 29, 2014

1 Q. Is all of Cane Slash Road in Charleston County?

2 A. Yes sir, it is.

3 Q. Thank you. No further questions.

4 THE COURT: Any questions of the witness?

5 MR. RUNYON: Yes, Your Honor.

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State v Christopher Boling
Michael Buenting-Cross-Examination by Mr. Runyon
July 29, 2014

1 CROSS-EXAMINATION

2 BY MR. RUNYON:

3 Q. Mr. Buenting, as a practical manner you don't know
4 what started this whole thing do you, sir?

5 A. Not until after ---

6 Q. --- I mean you weren't there?

7 A. No sir, I was not there.

8 Q. And so you don't know about the famous cell phone or
9 anything like that because you weren't there at that
10 time?

11 A. That is correct.

12 Q. And you didn't come into contact with Mr. Dempsey?

13 A. No sir, I did not.

14 Q. You in fact arrested Mr. Boling and you put him in
15 back of the car, a cruiser?

16 A. Yes, sir.

17 Q. As you should -- I mean put him in handcuffs and
18 what have you because of all the surrounding
19 circumstances.

20 A. Correct.

21 Q. And you did your reports and you handed over to the
22 detectives.

23 A. Correct. I did my report later on.

24 Q. Well, later on. That's one thing they never show
25 you in the movies is all the paperwork you police

State v Christopher Boling
Michael Buening-Cross-Examination by Mr. Runyon
July 29, 2014

1 officers have right?

2 A. Yes, sir.

3 Q. Now as a practical matter did you search around the
4 home for anything?

5 A. No, sir.

6 Q. Okay. Did you -- are you the one who recovered
7 this?

8 [Whereupon, witness is shown State's exhibit 14]

9 A. No sir, I was not.

10 Q. Okay. Did you ever see it that night?

11 A. No sir, I did not.

12 MR. RUNYON: No further questions, Your Honor.

13 THE COURT: Any redirect?
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State v Christopher Boling
Michael Buening-Redirect Examination by Mr. Ferguson
July 29, 2014

REDIRECT EXAMINATION

BY MR. FERGUSON:

Q. You testified you didn't collect this yellow axe handle is that right?

A. Correct.

Q. Do you know the circumstances surrounding the retrieval of the axe handle by the Sheriff's department?

A. Yes, sir.

Q. What are they?

A. The axe handle was found in front of [REDACTED] I believe either that day or the following day.

Q. Is that the same address, about the same area where the two, Mr. Boling and Mr. Russell, had split up when they were running?

A. Yes, sir. They fled directly through the front of

[REDACTED]

Q. Do you know how that got reported to the police?

A. The resident who lives there called the police later on.

Q. Thank you. No further questions.

MR. RUNYON: No further questions, Your Honor.

THE COURT: I assume the witness is excused from the State?

MR. FERGUSON: Yes, Your Honor.

THE COURT: From the defense?

State v Christopher Boling
Michael Buening-Redirect Examination by Mr. Ferguson
July 29, 2014

1 MR. RUNYON: Yes, Your Honor.

2 THE COURT: Sir, you are excused.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: Madame Forelady, and ladies and
6 gentlemen we're going to take advantage of this break in
7 testimony to take our lunch recess. We will break until
8 2:15 which gives you just shy of an hour and 15 minutes
9 for lunch. During the break please do not discuss the
10 case among yourselves or with anyone else.

11 Please do not have any contact with anyone in or
12 about the courthouse when you return after lunch. Please
13 come directly to your jury room. And as soon as you all
14 arrive we will resume testimony. Please leave your
15 notepads in your seats. Hope you all have a good lunch.
16 We'll see you at 2:15.

17 [Whereupon, the jury exits at 1:05 p.m.]

18 THE COURT: Anything before we break for lunch from
19 the State?

20 MR. FERGUSON: No, Judge.

21 THE COURT: From the defense?

22 MR. RUNYON: No, Your Honor.

23 THE COURT: Have a good lunch. See you at 2:15.

24 [Whereupon, court is in recess from 1:05 p.m. to
25 2:18 p.m.]

State v Christopher Boling
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1 THE COURT: We now have all of our jurors. Is the
2 State ready to proceed?
3 MR. FERGUSON: Yes, Judge.
4 THE COURT: Is the defense ready to proceed?
5 MR. RUNYON: Yes, Judge.
6 MS. SHEALY: Judge?
7 THE COURT: Yes?
8 MS. SHEALY: I've already spoken to Mr. Runyon
9 about this but I just wanted to make the court aware. We
10 are going to have SLED D-N-A report coming in through our
11 D-N-A analyst. The actual document had originally listed
12 another victim from a different location on the same
13 night that this defendant was charged with. So we whited
14 out the reference to that victim so as not to confuse the
15 jury.
16 THE COURT: I assume that is without objection?
17 MR. RUNYON: We have no objection.
18 MS. SHEALY: And Judge, what's your preference for
19 stipulations? Do you read them into the record? May we
20 read them into the record?
21 THE COURT: However y'all decide to do it.
22 MS. SHEALY: Okay. And do you like those to be
23 marked as court's exhibits or State's ---
24 THE COURT: --- they are court's exhibits because
25 they are not evidence. Well, they're evidence but they

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July 29, 2014

1 don't go back to the jury.

2 MS. SHEALY: Okay. So I'll go ahead and get her
3 to mark this as a court's exhibit.

4 [Whereupon, court's exhibit number 1 is marked by
5 the court reporter]

6 [Whereupon, State's exhibit number 19 is marked by
7 the court reporter]

8 THE COURT: Okay. Is the State ready to proceed?

9 MR. FERGUSON: Yes, Judge.

10 THE COURT: Is the defense ready to proceed?

11 MR. RUNYON: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 [Whereupon, the jury enters at 2:25 p.m.]

14 THE COURT: Ladies and gentlemen, I hope you all
15 had a pleasant lunch. We will now resume testimony. I
16 would ask that you give the attorneys your attention.
17 The State may proceed.

18 MR. FERGUSON: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 MR. FERGUSON: The State calls Douglas Delong.

21 [Whereupon, Mr. Delong comes forward]

22 [Whereupon, the witness is duly sworn by the Clerk
23 of Court]

24 CLERK OF COURT: Once seated if you could please
25 state your first and last name and spell your last

State v Christopher Boling
Proceedings
July 29, 2014

1 clearly, loudly into the microphone here, sir.

2 THE WITNESS: My name is Douglas Delong,

3 D-E-L-O-N-G.

4 THE COURT: You may proceed.

5 MR. FERGUSON: Thank you, Judge.

6 THE COURT: You're welcome.

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State v Christopher Boling
Douglas Delong-Direct Examination by Mr. Ferguson
July 29, 2014

1 DOUGLAS DELONG,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. FERGUSON:
6 Q. Deputy Delong where do you work?
7 A. The Charleston County Sheriff's Office.
8 Q. And how long have you been there?
9 A. I have been a deputy for 11 years.
10 Q. And what are your duties as a deputy with the
11 Charleston County Sheriff's Office?
12 A. I am a patrol deputy. I patrol mostly James and
13 Johns Island at this time and was patrolling at the time
14 of the incident.
15 Q. All right. Those were your duties back in 2011?
16 A. Yes, sir.
17 Q. Now, were you dispatched to [REDACTED] Cane Slash Road on
18 January 1st, 2011?
19 A. I was.
20 Q. Why?
21 A. Somebody had reported there was an axe handle laying
22 in their front yard. I don't know who it was that called
23 it in. And I was dispatched over there to retrieve it
24 that it may possibly have been used in an incident that
25 had occurred earlier that morning.

State v Christopher Boling
Douglas DeLong-Direct Examination by Mr. Ferguson
July 29, 2014

1 Q. Were you dispatched because you were the patrol
2 deputy that morning for Johns Island?

3 A. Yes, sir.

4 Q. I want to show you what has been marked and entered
5 into evidence as State's exhibit 14.

6 [Whereupon, the witness is shown axe handle]

7 Q. Do you recognize this?

8 A. Yes.

9 Q. How do you recognize it?

10 A. That was the axe handle that I retrieved.

11 Q. All right. And where did you retrieve it from?

12 A. The front yard of [REDACTED] Cane Slash Road.

13 Q. And what did you do after you retrieved it?

14 A. I had secured it in the back of my patrol vehicle
15 and drove back to the squad room where we have access to
16 the evidence log.

17 I logged it into the computer and then eventually --
18 two hours later I drove it over to headquarters and
19 secured it in a secure locker over there.

20 Q. Did anyone else have access to your patrol car
21 during this time?

22 A. No.

23 Q. Did you -- were you the only person who handled the
24 axe handle from the time you collected it to the time you
25 put it into evidence?

State v Christopher Boling
Douglas DeLong-Direct Examination by Mr. Ferguson
July 29, 2014

1 A. Yes.

2 Q. And is the evidence locker a secure location that
3 not just anybody can enter?

4 A. That's correct.

5 MR. RUNYON: Stipulated -- Judge.

6 THE COURT: I'm sorry; I didn't hear you.

7 MR. RUNYON: I said stipulated, Judge. We
8 stipulated that the evidence locker ---

9 MR. FERGUSON: --- I'll withdraw the question.

10 THE COURT: The question is withdrawn. You may
11 proceed.

12 Q. [Mr. Ferguson] And is that the extent of your
13 involvement in this case?

14 A. Yes, sir.

15 Q. No further questions. Please answer any questions
16 the defense may have.

17 THE COURT: Any questions for the witness?

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State v Christopher Boling
Douglas Delong-Cross-Examination by Mr. Runyon
July 29, 2014

1 CROSS-EXAMINATION

2 BY MR. RUNYON:

3 Q. Good afternoon Mr. Delong.

4 A. Good afternoon.

5 Q. Good to see you again. Other than that axe handle

6 you have no concept of what happened the night before

7 because you weren't there?

8 A. No, I wasn't there.

9 Q. You weren't on patrol that night?

10 A. No, I work day shift and that was night shift.

11 Q. All right. Good to see you.

12 THE COURT: Any redirect?

13 MR. FERGUSON: No, Your Honor.

14 THE COURT: Any objection to the witness being

15 excused from the State?

16 MR. FERGUSON: No, Your Honor.

17 THE COURT: From the defense?

18 MR. RUNYON: None, Your Honor.

19 THE COURT: Sir, you're excused.

20 [Whereupon, the witness is excused and exits the

21 witness stand]

22 THE COURT: Call your next witness..

23 MS. SHEALY: Keith Herriott.

24 [Whereupon, Mr. Herriott comes forward]

25 [Whereupon, the witness is duly sworn by the Clerk

State v Christopher Boling
Douglas DeLong-Cross-Examination by Mr. Runyon
July 29, 2014

1 of Court]

2 CLERK OF COURT: Once seated if you could please
3 state your first and last name and then spell your last
4 loudly and clearly into the microphone.

5 THE WITNESS: Keith Herriott. Last name is spelled
6 H-E-R-R-I-O-T-T.

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State v Christopher Boling
Keith Herriott-Direct Examination by Ms. Shealy
July 29, 2014

1 KEITH HERRIOTT,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. SHEALY:
6 Q. Mr. Herriott would you tell the jury please what
7 your rank is?
8 A. Detective.
9 Q. And where are you currently employed?
10 A. Charleston County Sheriff's Office.
11 Q. How long have you worked for the Charleston County
12 Sheriff's Office?
13 A. Seven and half years.
14 Q. And back in 2011 the early part of 2011 could you
15 tell the jury in what capacity you worked there then?
16 A. Crime scene investigator.
17 Q. And what does it mean to be a crime scene
18 investigator?
19 A. You get called out to crime scenes and you process
20 crime scenes and collect evidence. And then also your
21 daily duties is to collect evidence and put it in
22 evidence lockers by the road or anybody working night to
23 get that and bring it back in. You process it into the
24 system and then any work requests that needs to be done
25 on the evidence you complete that.

State v Christopher Boling
Keith Herriott-Direct Examination by Ms. Shealy
July 29, 2014

- 1 Q. And when you say work requests are there certain
2 things that y'all can do at the evidence compound and
3 then certain things that have to be done at the South
4 Carolina Law Enforcement Division?
- 5 A. Yes, ma'am.
- 6 Q. In relationship to this case could you tell the jury
7 please what item of evidence did you have some handling
8 of?
- 9 A. A yellow axe handle.
- 10 Q. Okay. And when you got the yellow axe handle it
11 had been deposited in the evidence compound?
- 12 A. Yes, ma'am.
- 13 Q. And what were you attempting to do with it?
- 14 A. To collect blood swabs from the dried blood that was
15 on the axe handle and attempt to lift latent prints if
16 possible.
- 17 Q. Okay. Now when you say lift latent prints you're
18 talking about fingerprints?
- 19 A. Fingerprints.
- 20 Q. And when you say you saw dried blood could you just
21 see that just with no other type of testing done or did
22 you have to do some testing to detect that there was
23 blood on it?
- 24 A. No, you could see the blood.
- 25 Q. Okay. I'm showing you what has been previously

State v Christopher Boling
Keith Herriott-Direct Examination by Ms. Shealy
July 29, 2014

1 marked as State's exhibit 14.

2 [Whereupon, the witness is shown axe handle]

3 Q. Is this the axe handle?

4 A. Yes, ma'am.

5 Q. And what was the first thing you did with the axe
6 handle?

7 A. The first thing?

8 Q. The first thing. Did you try the fingerprints first
9 or did you do some type of swabbing?

10 A. I did swabbing first of the blood.

11 Q. Now if you would please describe to the jury what is
12 meant by the term swabbing?

13 A. It is like a large q-tip a stick about that long
14 [indicates] with a cotton ball on the end of it. Because
15 the blood was dried we had to bring it back to a liquid
16 state to collect it.

17 So you put saline solution on the cotton swab and
18 then you sort of rub it on there until you get the blood
19 swab on the cotton. At that time it gets put into a
20 little box, a little white box, into an envelope and it's
21 labeled and gets put in the refrigerator until it's being
22 sent to South Carolina Law Enforcement Division.

23 Q. And the South Carolina Law Enforcement Division is
24 commonly known as SLED ---

25 A. --- SLED ---

State v Christopher Boling
Keith Herriott-Direct Examination by Ms. Shealy
July 29, 2014

- 1 Q. --- is that correct?
- 2 A. Uh Huh.
- 3 Q. I'm showing you what has been marked as State's
- 4 exhibit 17 just for I.D. purposes.
- 5 [Whereupon, the witness is shown exhibit]
- 6 Q. I ask you whether or not you recognize what is in
- 7 that packet?
- 8 A. Yes, ma'am. That's the envelope with the two blood
- 9 swabs and inside I can feel the little cardboard boxes.
- 10 Q. Okay. And you're talking about the gold envelope
- 11 inside the plastic bag?
- 12 A. Correct.
- 13 Q. Is your name on that gold envelope?
- 14 A. On the gold one it is the case agent's name on the
- 15 gold on there, which was Detective Boyd.
- 16 Q. Okay. And does it describe on the envelope what in
- 17 fact is inside of it?
- 18 A. Yes, it does. It says two blood swabs from yellow
- 19 axe handle.
- 20 Q. Now are you familiar with when the plastic bag is
- 21 put on an item of evidence? Does that occur at SLED?
- 22 A. That occurs at SLED. It looks like to me it was
- 23 done by Jim Mills [phonetic].
- 24 Q. Who would have taken it up to SLED ---
- 25 A. --- taken it to SLED.

State v Christopher Boling
Keith Herriott-Direct Examination by Ms. Shealy
July 29, 2014

- 1 Q. Now SLED has a D-N-A department, is that correct?
- 2 A. Yes, ma'am.
- 3 Q. And for the jury's education when you are doing the
- 4 swabbing of blood is it for the purpose to determine
- 5 whether -- whose blood that was?
- 6 A. Correct.
- 7 Q. Now you told us about the Q-tip like device. Could
- 8 you tell the jury whether or not that is maintained
- 9 before you use it in a sterile fashion?
- 10 A. It's in a sterile fashion. It comes sterilized in a
- 11 package. You open it up with gloves on and then the
- 12 saline solution is also in a little vial that you have to
- 13 break the tip off and stir.
- 14 Q. And then when you swab an item of evidence do you
- 15 swab the whole handle in its entirety or just the area
- 16 that you detected blood?
- 17 A. Just the area I detected blood is where I swabbed.
- 18 Q. Now after you did that after you applied the liquid
- 19 to do the swabbing were you then able to accomplish
- 20 lifting any type of prints?
- 21 A. No, the contamination of the blood would have been
- 22 unable on that axe handle to get any type of latent
- 23 fingerprints off it.
- 24 Q. Okay. Did you have any other involvement in this
- 25 case other than swabbing the axe handle?

State v Christopher Boling
Keith Herriott-Direct Examination by Ms. Shealy
July 29, 2014

1 A. No, ma'am.

2 Q. And when an item of evidence is taken to SLED there
3 is a chain ---

4 A. --- of custody ---

5 Q. --- of custody that is maintained at SLED, is that
6 correct?

7 A. Yes, ma'am.

8 Q. To make sure that nothing is tampered with.

9 A. Correct.

10 Q. I have no further questions. Please answer any the
11 defense may have.

12 THE COURT: You may proceed.

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State v Christopher Boling
Keith Herriott-Cross-Examination by Mr. Runyon
July 29, 2014

1 CROSS-EXAMINATION

2 BY MR. RUNYON:

3 Q. Good to see you again, sir.

4 A. How you doing.

5 Q. You swabbed this entire handle didn't you?

6 A. I swabbed where the blood was on the handle.

7 Q. Okay. Which was where?

8 A. At this time I couldn't ---

9 Q. --- you don't recall ---

10 A. --- tell you exactly where it was on the handle at

11 the time.

12 Q. All right. And did you try -- see about getting

13 any latent prints off it?

14 A. Yes, but it wasn't able to.

15 Q. Okay. And as a practical matter where on the axe

16 handle was it? I'm not going to ask you to put gloves

17 on; I didn't put any gloves on. Could you kind of point

18 out where the blood was on the...

19 A. No, sir. I could not tell you exactly where the

20 blood was on that handle.

21 Q. Well, was it at the end -- did you have any

22 recollection?

23 A. No.

24 Q. Okay. And you don't know when the blood got put on

25 there?

State v Christopher Boling
Keith Herriott-Cross-Examination by Mr. Runyon
July 29, 2014

- 1 A. Do I know when the blood got put on it?
- 2 Q. Yes?
- 3 A. No, I know when I took the blood off the handle.
- 4 Q. That's right. You know when it came off but you
- 5 don't know when it went on.
- 6 A. No.
- 7 Q. And you don't know how old it was?
- 8 A. No.
- 9 Q. And -- all you know -- could your initial testing
- 10 show that it was present for human blood or just blood?
- 11 A. It was blood.
- 12 Q. Human blood or could it have been animal blood?
- 13 A. I just swabbed the blood that was on the handle.
- 14 Q. Okay. And the chemicals that you used to the do
- 15 the swab that lists -- that shows the presence of blood
- 16 it shows the presence of blood. It doesn't differentiate
- 17 between male, female ---
- 18 A. --- no, sir ---
- 19 Q. --- dogs, cows or anything like that?
- 20 A. No, sir.
- 21 Q. Am I right?
- 22 A. Right.
- 23 Q. Because it took me three semesters to get through
- 24 two semesters of freshman biology in college so you've
- 25 got to help me okay.

State v Christopher Boling
Keith Herriott-Cross-Examination by Mr. Runyon
July 29, 2014

1 MR. RUNYON: No further questions, Your Honor.
2 THE COURT: Any redirect of the witness?
3 MS. SHEALY: Just briefly, Your Honor.
4 THE COURT: You may proceed.
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State v Christopher Boling
Keith Herriott-Redirect Examination by Ms. Shealy
July 29, 2014

REDIRECT EXAMINATION

BY MS. SHEALY:

Q. Mr. Herriott, Mr. Runyon asked you if you knew when the blood was deposited on the handle and you indicated you did not, is that correct?

A. No.

Q. Do you have your forensic report with you?

A. Yes, I do.

Q. Could you tell the jury when it was requested of you?

A. The request was done on January 1st of 2011 by Deputy Delong. So I collected this evidence on the 2nd of January and the work request was completed on January 4, 2011 is when the blood swab was collected.

Q. Okay. So Deputy Delong asked you on the 1st of January, 2011?

A. Correct.

Q. And you had the work completed by the 4th, is that correct?

A. Correct.

Q. And regarding whether or not the blood that you could see on the stick was animal or human that blood sample was sent to SLED to make a determination is that correct?

A. Yes, ma'am.

State v Christopher Boling
Keith Herriott-Redirect Examination by Ms. Shealy
July 29, 2014

1 Q. I have nothing further. Thank you.
2 MR. RUNYON: No further questions, Your Honor.
3 THE COURT: Sir, you may be excused.
4 [Whereupon, the witness is excused and exits the
5 witness stand]
6 MS. SHEALY: Matt Downing.
7 [Whereupon, Mr. Downing comes forward]
8 [Whereupon, the witness is duly sworn by the Clerk
9 of Court]
10 CLERK OF COURT: Once seated if you could state
11 your first and last name and spell your last name loudly
12 and clearly into the microphone please.
13 THE WITNESS: Matt Downing, D-O-W-N-I-N-G.
14 THE COURT: You may proceed.
15 MS. SHEALY: Thank you, Your Honor.
16 THE COURT: You're welcome.
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State v Christopher Boling
Matt Downing-Direct Examination by Ms. Shealy
July 29, 2014

1 MATT DOWNING,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. SHEALY:
6 Q. Detective Downing, tell the jury if you would please
7 where you work?
8 A. I work for the Charleston County Sheriff's Office.
9 Q. And how long have you worked there?
10 A. Going into my 13th year.
11 Q. And your current position there is one of Detective?
12 A. Yes, ma'am.
13 Q. And is that in the major crimes department?
14 A. Yes, ma'am.
15 Q. Back in January of 2011 what was your position?
16 A. I was assigned at that time to the patrol division.
17 Q. And later in 2013 what was your position?
18 A. I was a Detective in the Criminal Investigation
19 Division.
20 Q. In relationship to this case, that being State
21 versus Christopher Boling and the companion case of State
22 versus Kevin Russell were you asked to get buccal swabs
23 of the case?
24 A. Yes ma'am, I was.
25 Q. And did you in fact get search warrants to be able

State v Christopher Boling
Matt Downing-Direct Examination by Ms. Shealy
July 29, 2014

1 to get the buccal swabs?

2 A. Yes ma'am I did, I obtained search warrants.

3 Q. First if you would could you describe for the jury
4 what your understanding of a buccal swab is?

5 A. A buccal swab is essentially almost an oversize Q-
6 tip that is sterile that comes in a package that you open
7 in front of an individual. They use it to swab the
8 inside of their cheek to obtain the D-N-A.

9 That in turn gets placed into a cardboard container
10 and that's turned into forensics lab for comparison to
11 other D-N-A or blood or whatever else we have in that
12 case.

13 Q. Okay. And when you say it's turned in to make a
14 comparison does the Sheriff's office do that or does SLED
15 do that?

16 A. No ma'am, I believe SLED does that.

17 Q. As it relates to Christopher Boling I'll show you
18 what has been previously marked as State's exhibit 15 for
19 I.D. purposes and ask you whether you recognize that
20 envelope?

21 [Whereupon, the witness is shown exhibit]

22 A. Yes ma'am, I recognize the envelope.

23 Q. Would you describe for the jury please what that
24 gold envelope reflects?

25 A. The gold envelope contains the buccal swab from

State v Christopher Boling
Matt Downing-Direct Examination by Ms. Shealy
July 29, 2014

1 Christopher Boling that has my handwriting as well as the
2 location of the collection; my name is of the one who
3 collected it and the description of what it is.

4 Q. And are you familiar with how items are received
5 back from SLED as it relates to these plastic bags?

6 A. No ma'am, not directly.

7 Q. Okay, that's fine. I'll ask the SLED people about
8 that. Tell the jury, when you went to get the buccal
9 swab from Christopher Boling did you in fact use the Q-
10 tip type device to give him -- to achieve swabbing the
11 inside of his cheeks?

12 A. Yes ma'am, I did.

13 Q. And does that come in some form of a kit that y'all
14 are provided with?

15 A. Yes ma'am, our forensics lab packages up essentially
16 what is a kit. It's that manila envelope with an
17 evidence collection sticker on it.

18 The package of sterile Q-tips that are sealed that
19 we open in front of the individual, and a set of rubber
20 gloves and the cardboard container that the used buccal
21 swab goes into.

22 Q. And in this situation if you could just walk us
23 through what you asked Mr. Boling to do.

24 A. Yes, ma'am. What I did on the day of the collection
25 was I made telephone contact with him, explained who I

State v Christopher Boling
Matt Downing-Direct Examination by Ms. Shealy
July 29, 2014

1 was, explained to him that I had a search warrant for his
2 D-N-A to be obtained by a buccal swab. He agreed to meet
3 me. He was on a job site I believe on Kiawah Island. I
4 drove out and met with him, sat with him in my cruiser,
5 showed him the search warrant and explained to him
6 exactly what I had.

7 And at that point I donned the rubber gloves and
8 handed him the package, which I tore the end off and he
9 was the one that in fact touched the buccal swabs,
10 removed them from the container, swabbed the inside of
11 his cheek, and placed them in the cardboard applicator.

12 At no point did I directly touch the buccal swab
13 itself. I just held the package it was in and the
14 cardboard applicator that the buccal swab was introduced
15 into. And at that point I sealed it, put my evidence tag
16 on the outside and turned it into our forensic lab.

17 Q. And the purpose of turning it into the forensic lab
18 is to maintain a chain of custody on the item?

19 A. Yes, ma'am.

20 Q. And you followed protocol in having done so?

21 A. Yes, ma'am.

22 Q. Now as it relates to Kevin Russell did you also get
23 a buccal swab from him?

24 A. Yes ma'am, I did.

25 Q. I'm showing you what has been marked as State's

State v Christopher Boling
Matt Downing-Direct Examination by Ms. Shealy
July 29, 2014

1 exhibit 16 for I.D. purposes.

2 [Whereupon, the witness is shown exhibit]

3 Q. I ask if you can identify that gold envelope?

4 A. Yes, ma'am.

5 Q. And what does that reflect?

6 A. This is also a buccal swab from Kevin Russell that
7 has the evidence sticker on the outside with underneath
8 this tag would be my name, the description of it which is
9 a buccal swab from Kevin Russell, and the location of
10 collection.

11 Q. And did you go through a similar routine with Mr.
12 Russell as you had with Mr. Boling?

13 A. Yes ma'am, I did.

14 Q. And once you had put the sterile swabs back into the
15 kit what did you do with that kit?

16 A. That kit was also submitted to forensic services.

17 Q. And what happened from there would be that a chain
18 of custody had been maintained when it was sent to SLED,
19 is that correct?

20 A. Yes, ma'am.

21 Q. I have no further questions. Please answer any that
22 the defense may have.

23 THE COURT: You may proceed.

24 MR. RUNYON: Good afternoon. Good to see you
25 again. No further questions, Your Honor.

State v Christopher Boling
Matt Downing-Direct Examination by Ms. Shealy
July 29, 2014

1 THE COURT: Any objection to the witness being
2 excused from the State?
3 MS. SHEALY: No, Judge.
4 THE COURT: From the defense?
5 MR. RUNYON: No, Your Honor.
6 THE COURT: Sir, you're excused.
7 THE WITNESS: Thank you, Your Honor.
8 THE COURT: You're welcome.
9 [Whereupon, the witness is excused and exits the
10 witness stand]
11 THE COURT: You may call your next witness.
12 MS. SHEALY: Your Honor, I understand from Mr.
13 Ferguson that our SLED agent is testifying right now in
14 Judge Harrington's courtroom.
15 THE COURT: Okay. Do you have another witness you
16 can ---
17 MS. SHEALY: --- I could read the stipulation into
18 the record and then we have one other witness after her.
19 THE COURT: Okay.
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State v Christopher Boling
Stipulation- read by Ms. Shealy
July 29, 2014

1 MS. SHEALY: There has been a stipulation to the
2 chain of custody of D-N-A evidence. The State and the
3 defendant above named agree that the chain of custody of
4 Christopher Boling's buccal swab taken by Detective
5 Matthew Downing was properly maintained throughout its
6 collection, transportation, and analysis at the South
7 Carolina Law Enforcement Division. The buccal swab was
8 not tampered with prior to analysis by Jennifer Clayton.
9 It was returned to the Charleston County Sheriff's
10 Department.

11 The State and the defendant above named agree that
12 the chain of custody of the blood swab taken by crime
13 scene investigator Keith Herriott was properly maintained
14 throughout its collection, transportation, and analysis
15 at the South Carolina Law Enforcement Division.

16 The swabs were not tampered with prior to analysis
17 by Jennifer Clayton. It was returned to the Charleston
18 County Sheriff's Department. The stipulation is signed
19 by William Runyon, the attorney for Christopher Boling
20 and Emmanuel Ferguson for the State.

21 THE COURT: You may proceed.

22 MS. SHEALY: Let me check on our other witness,
23 Your Honor.

24 MR. FERGUSON: Judge, we're going to skip Jennifer
25 Clayton briefly and the State will call Kevin Sherbine.

State v Christopher Boling
Stipulation- read by Ms. Shealy
July 29, 2014

1 [Whereupon, Mr. Sherbine comes forward]
2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court]
4 CLERK OF COURT: Once seated if you could please
5 state your first and last name, spell your last loudly
6 and clearly into the microphone, please, sir.
7 THE WITNESS: Kevin Sherbine, S-H-E-R-B-I-N-E.
8 THE COURT: You may proceed.
9 MR. FERGUSON: Thank you, Your Honor.
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State v Christopher Boling
Kevin Sherbine-Direct Examination by Mr. Ferguson
July 29, 2014

1 KEVIN SHERBINE,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. FERGUSON:
6 Q. Where do you work?
7 A. I work at the Sheriff Al Cannon Detention Center.
8 Q. And how long have you been there?
9 A. Just over three years.
10 Q. And you are an officer with the Charleston County
11 Sheriff's Office?
12 A. Yes, I am.
13 Q. And what do you do at the Charleston County
14 Detention Center?
15 A. I am the professional visitation officer. I am the
16 main point of contact between inmates and their
17 attorneys, public defenders, other law enforcement
18 agencies, non law enforcement agencies.
19 I handle about 90 percent of the subpoenas that are
20 served on the jail and also assist the regular lobby
21 officers in their normal duties.
22 Q. So in short you understand the functions of how
23 inmates communicate to others outside the jail?
24 A. I do, yes sir.
25 Q. All right. Are inmates allowed to make phone calls

State v Christopher Boling
Kevin Sherbine-Direct Examination by Mr. Ferguson
July 29, 2014

- 1 outside of the jail?
- 2 A. They are, yes.
- 3 Q. And how are they allowed to do that?
- 4 A. When inmates come into the booking process they are
- 5 issued a PIN number. For every outgoing call that they
- 6 make they have to type in that PIN number and that PIN
- 7 number allows them to make as many calls as they wish.
- 8 Q. Does each inmate get a separate individual PIN?
- 9 A. Yes.
- 10 Q. And are those calls that they make recorded?
- 11 A. They are, yes.
- 12 Q. Are the inmates made aware that their calls are in
- 13 fact recorded?
- 14 A. They are, yes.
- 15 Q. And how are they made aware of that?
- 16 A. There are various signs posted throughout the
- 17 facility. When they get their PIN number there is a
- 18 sheet that says it on the bottom.
- 19 In their housing units it is posted in various
- 20 places as well as during the duration of their phone call
- 21 a recorded message will come on periodically letting them
- 22 know that the calls are monitored and recorded.
- 23 Q. Are these calls stored?
- 24 A. Yes, they are.
- 25 Q. Where are they stored?

State v Christopher Boling
Kevin Sherbine-Direct Examination by Mr. Ferguson
July 29, 2014

1 A. They are stored on a secured database that only a
2 limited number of people have access to.
3 Q. Do you have access to them?
4 A. I do.
5 Q. And are these kept in the regular course of
6 business?
7 A. They are.
8 Q. Did you respond to a request from our office to
9 collect the recorded phone calls of Mr. Christopher
10 Boling?
11 A. I did.
12 Q. And what medium did you put that information on?
13 A. I put the call logs on an 'R' [phonetic] sheet and
14 then the audio I put on a disk.
15 MR. FERGUSON: Your Honor, may I approach?
16 THE COURT: You may.
17 Q. [Mr. Ferguson] I want to show you what has been
18 marked as State's exhibit 18 and State's exhibit 20. Can
19 you identify those?
20 [Whereupon, the witness is shown exhibits]
21 A. Yes.
22 Q. What are they?
23 A. This is a printout of all the phone calls that were
24 made for the date specified on the subpoena as well as
25 this disk has the date specified on subpoena for the

State v Christopher Boling
Kevin Sherbine-Direct Examination by Mr. Ferguson
July 29, 2014

1 inmate in question.

2 Q. All right. How do you recognize that disk?

3 A. I recognize the disk it has my name on it as well as
4 this hard copy disk.

5 Q. Did you provide that to our office?

6 A. I did.

7 MR. FERGUSON: Your Honor, at this time I would
8 like to admit State's 18 and 20 into evidence.

9 THE COURT: Any objection?

10 MR. RUNYON: No, Your Honor.

11 THE COURT: Marked and admitted without objection.

12 [Whereupon, State's exhibit numbers 18 and 20 are
13 entered into evidence by the court]

14 Q. [Mr. Ferguson] Now does your records show that Mr.
15 Boling made a telephone call I believe it's on page 24 on
16 January 1st, 2011 at 3:37 p.m.?

17 A. January 11th?

18 Q. January 1st of 2011 at 3:37 p.m.

19 [Whereupon, the witness reviews document]

20 A. It does, yes.

21 MR. FERGUSON: Your Honor, at this time I'd like to
22 publish that call to the jury.

23 THE COURT: Any exception?

24 MR. RUNYON: No, Your Honor.

25 THE COURT: Please proceed.

State v Christopher Boling
Kevin Sherbine-Direct Examination by Mr. Ferguson
July 29, 2014

1 [Whereupon, the audio plays]

2 [Not taken down]

3 Q. [Mr. Ferguson] And according to your records was
4 that call made by the PIN that was assigned to
5 Christopher Boling?

6 A. Yes, it was.

7 Q. Do your records show that that call was made on
8 January 3rd, 2011? I believe its page 22 on January 3rd
9 2011 at 10:41 a.m.?

10 [Whereupon, the witness reviews documents]

11 A. At what time?

12 Q. At 10:41 a.m.

13 A. Yes, it does.

14 MR. FERGUSON: Your Honor, at this time I would
15 like to publish that call to the jury.

16 THE COURT: You may proceed.

17 [Whereupon, the audio plays]

18 [Not taken down]

19 Q. [Mr. Ferguson] Thank you. No more questions.
20 Please answer any questions Mr. Runyon may have.

21 THE COURT: Do you have any questions of the
22 witness?

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State v Christopher Boling
Kevin Sherbine-Cross-Examination by Mr. Runyon
July 29, 2014

1 CROSS-EXAMINATION

2 Q. Good to see you again Mr. Sherbine.

3 A. Mr. Runyon.

4 Q. Usually I see you behind the glass.

5 A. Yes, sir.

6 Q. Good to see that you can come out from behind there.

7 A. I'm a real person, yes sir.

8 Q. And I see more times than my secretary sometimes.

9 A. Yes, sir.

10 Q. As a practical matter you don't know anything about

11 this case. You responded to the subpoena, you were

12 designated to response to the subpoena and you brought

13 the phone calls they requested down and that's what your

14 testimony is.

15 A. Yes, sir.

16 Q. And you don't know anything else about the case

17 whatsoever?

18 A. No sir, I do not.

19 Q. Good seeing you again. No further questions.

20 THE COURT: Any redirect of the witness?

21 MR. FERGUSON: No, Your Honor.

22 THE COURT: Any objection to the witness being

23 excused from the State?

24 MR. FERGUSON: No, Your Honor.

25 THE COURT: From the defense?

State v Christopher Boling
Kevin Sherbine-Cross-Examination by Mr. Runyon
July 29, 2014

1 MR. RUNYON: None from the defense, Your Honor.
2 THE COURT: Sir, you're excused.
3 THE WITNESS: Thank you, Your Honor.
4 THE COURT: You're welcome.
5 [Whereupon, the witness is excused and exits the
6 witness stand]
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State v Christopher Boling
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July 29, 2014

1 MR. FERGUSON: I'm going to check on the status of
2 Ms. Clayton.

3 THE COURT: Do you have any other witnesses other
4 than Ms. Clayton? Is that your last witness?

5 MR. FERGUSON: Yes, Your Honor.

6 THE COURT: Ladies and gentlemen, we beg your
7 indulgence. The witness that we need to call next is
8 upstairs in another courtroom testifying. We need to see
9 how long it will be before she's done.

10 [Off the record momentarily]

11 THE COURT: Madame Forelady and ladies and
12 gentlemen I'm going to send you to your jury room for a
13 brief moment so we can find out exactly at what stage Ms.
14 Clayton's testimony is upstairs so that we can get an
15 idea of how long it will be before we can resume her
16 testimony.

17 If she is just sitting waiting I'm going to send for
18 her and we're going to resume immediately, however if she
19 is in the middle of testifying I'll have to find out from
20 the Judge who is hearing that testimony how long we think
21 that will take. So we appreciate your patience. Those
22 witnesses have to come from Columbia and sometimes they
23 have to be in several different courtrooms. Sometimes --
24 most days, often more than three counties in a day. So
25 sometimes we try to do them by Skype, which works, it

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1 saves the State a whole lot of money, but sometimes it
2 doesn't work out that way and we have to just sort of
3 juggle the logistics. So we appreciate your patience and
4 know that we do not take your time for granted. Please
5 do not discuss the case and please leave your notepads in
6 your seats. If you would go with the bailiff please.

7 [Whereupon, the jury exits at 3:03 p.m.]

8 THE COURT: Yes, sir?

9 MR. FERGUSON: Judge, I just actually went and saw
10 with my own eyes she is in the middle of testifying.

11 THE COURT: Do you know how far along she is?

12 MR. FERGUSON: It looks like the State is still
13 directing her with the results of her testimony so I
14 think she is probably ---

15 THE COURT: --- and they've got two defendants so
16 that could be a while. Don't they have two defendants?

17 MR. FERGUSON: They do have two defendants, Judge.
18 I'm not exactly certain about how long they are going to
19 be. Man, I wish she didn't...

20 THE COURT: I'm sorry? Yes, too bad we didn't get
21 her first because hers would have been a lot shorter down
22 here than up there.

23 MR. RUNYON: Judge, in the for whatever it's worth
24 department.

25 THE COURT: Pardon me?

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July 29, 2014

1 MR. RUNYON: In the for whatever it's worth
2 department since I know -- I can see the wheels turning
3 for planning purposes it would be my understanding that
4 this would be y'all's last witness?

5 MR. FERGUSON: Right.

6 MR. RUNYON: And I don't anticipate my cross-
7 examination is going to be -- let's put it this way it is
8 probably going to be more efficient than upstairs. And
9 if they then rest we do not anticipate putting in any
10 evidence and so we could finish today and close and
11 charge in the morning.

12 THE COURT: We can finish today. If we're not
13 finished testimony by 3 o'clock you always close and
14 charge the next morning unless you know it's going to be
15 really short. But rarely is that the case. Judge
16 Harrington estimates it will be about 25 minutes. How
17 long is your direct testimony of her going to be?

18 MS. SHEALY: Probably ten minutes if that.

19 THE COURT: How long is your cross going to be?

20 MR. RUNYON: Less than that, Judge. I haven't seen
21 her in quite some time so.

22 THE COURT: Judge Harrington has offered to take a
23 break in direct and send her to me. Are you certain
24 she's going to take ten minutes on direct?

25 MS. SHEALY: Judge, I can probably streamline it.

State v Christopher Boling
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1 I haven't timed myself.

2 THE COURT: I just need you to give me an honest
3 estimate because that's going to determine whether I tell
4 her to send her down here and keep her. But I don't want
5 to hold her up either.

6 MS. SHEALY: Okay. I think I can do it in ten
7 minutes.

8 THE COURT: And Mr. Runyon, realistically -- I'm
9 not trying to hamstring you I just need you to give me an
10 honest estimate.

11 MR. RUNYON: Judge, in all candor and honesty we're
12 not arguing about the fact that his D-N-A is on that axe
13 handle.

14 THE COURT: Okay. Then she is going to let me know
15 in just a few minutes if she can do that. But while
16 we're waiting let's go ahead ---

17 MS. SHEALY: --- I actually had two copies of my
18 questions so they're even shorter than I thought.

19 THE COURT: Okay. Do you all have any record you
20 would be seeking to impeach the defendant in this case if
21 he were to testify?

22 MR. FERGUSON: I don't believe so, Judge but let me
23 double check that just be looking at it.

24 THE COURT: I believe his record was a CDV Han, and
25 ABHAN, Malicious Injury to Personal Property, and a

State v Christopher Boling
Proceedings
July 29, 2014

1 Simple Assault none of which ---

2 MR. FERGUSON: --- none of which are for
3 truthfulness Judge, so no.

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State v Christopher Boling
Fifth Amendment Rights
July 29, 2014

1 FIFTH AMENDMENTS RIGHTS
2 THE COURT: Okay. Sir, please stand and raise
3 your right hand to be sworn.
4 [Whereupon, the defendant stands]
5 [Whereupon, the witness is duly sworn by the Court]
6 THE COURT: I need you to speak up for me, please.
7 THE DEFENDANT: Yes, ma'am.
8 THE COURT: You can put your right hand down.
9 State your full name for the record.
10 THE DEFENDANT: Christopher Allen Boling, Sr.
11 THE COURT: Sir, at this time I'm going to explain
12 to you certain of your rights. If you do not understand
13 anything that I say please let me know. If you want me
14 to explain in more detail please let me know. Do you
15 understand?
16 THE DEFENDANT: Yes, ma'am.
17 THE COURT: We have now reached the stage of the
18 trial where you may present your defense, and this is a
19 little premature, the State has one additional witness
20 and they will rest. I will hear some matters of law and
21 then I wouldn't normally give this instruction but I
22 don't see any harm or prejudice to you in giving it to
23 you earlier than that stage because you still need to
24 make an informed decision as to whether you want to
25 testify or not. Do you understand?

State v Christopher Boling
Fifth Amendment Rights
July 29, 2014

1 THE DEFENDANT: Yes, ma'am.

2 MR. RUNYON: We have no objection to the court
3 making this inquiry at this time.

4 THE COURT: Again, as I've indicated we will soon
5 reach the stage of the trial where you may present your
6 defense. You have the right to claim the protections
7 given to you by the Fifth Amendment of the Constitution
8 of the United States and that Amendment states in part
9 that no person shall be compelled in any criminal case to
10 be a witness against himself.

11 This means that you cannot be required to testify in
12 your case. You have the right to testify on your own
13 behalf; however no one can make you testify. This is a
14 personal right and no one can waive this right except
15 you. If you decide to testify you will be subject to the
16 same rules that govern other witnesses and you may be
17 examined and cross-examined on any relevant issue in this
18 case.

19 In addition, if you have any convictions involving
20 dishonesty or false statement or for crimes punishable by
21 imprisonment for more than one year and this court
22 determines that the probative value of admitting this
23 evidence outweighs its prejudicial effect to you the
24 Solicitor will be able to introduce your record to attack
25 your creditability. If you decide to testify this

State v Christopher Boling
Fifth Amendment Rights
July 29, 2014

1 decision on your part must be made freely, voluntarily,
2 and intelligently with knowledge of the protections given
3 to you by the Fifth Amendment and the consequences of
4 your decision to testify.

5 If you decide not to testify I will instruct the
6 jury that they cannot give the fact that you did not
7 testify any consideration whatsoever, that there is to be
8 no prejudice to you. I will further instruct them that
9 you have no burden of proof in this case. You have no
10 duty to present a defense and that they are not to
11 discuss the fact that you did not testify in the jury
12 room during deliberations in any manner whatsoever.

13 It is left entirely up to you whether or not you
14 testify. You may speak with your attorney, your family
15 members and friends or anyone else, but the final
16 decision is yours. Do you understand your rights as I've
17 just explained them to you?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you have any questions about your
20 rights as I've just explained them to you? I need you to
21 tell me yes or no.

22 THE DEFENDANT: No, ma'am.

23 THE COURT: And I'm going to -- have you discussed
24 with your lawyer whether you should or should not
25 testify?

State v Christopher Boling
Fifth Amendment Rights
July 29, 2014

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. And I'm going to give you some
3 more time to discuss that with him. Do you need more
4 time to discuss it Mr. Runyon ---

5 MR. RUNYON: --- not really, Judge ---

6 THE COURT: --- or has that decision already been
7 made?

8 MR. RUNYON: I think he has already made his
9 decision.

10 THE COURT: Okay. Sir, do you need to speak with
11 your lawyer any more at this time about whether you
12 should or should not testify? Only you can determine
13 that. Do you need to ask him any more questions or you
14 need to talk with him any further?

15 [Unintelligible]

16 THE COURT: I can't hear you. It's not a trick
17 question.

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Okay. And sir, do you wish to testify
20 or do you not wish to testify or do you need more time to
21 think about it?

22 THE DEFENDANT: I need more time to think about
23 it.

24 THE COURT: Okay, that's fine. Mr. Runyon, do you
25 need to discuss it any more with your client?

State v Christopher Boling
Fifth Amendment Rights
July 29, 2014

1 MR. RUNYON: I will. I'll answer any questions he
2 has.

3 THE COURT: Why don't we take advantage of this
4 time while we're waiting on the witness for you to do
5 that?

6 [Whereupon, Mr. Runyon confers with his client]

7 THE COURT: How long is the State's closing
8 argument going to be?

9 MR. FERGUSON: Fifteen minutes, Judge.

10 THE COURT: Are you going to open and close or are
11 you going to waive opening?

12 MR. FERGUSON: If he decides not to testify then
13 I'm going to waive opening.

14 THE COURT: Well, if he doesn't testify and they
15 haven't presented any evidence he gets last argument so
16 the decision is made for you. But if he testifies ---

17 MR. FERGUSON: --- oh, if he testifies we're not
18 going to waive opening. I'm going to open on the law.

19 THE COURT: Okay. And so all total you think
20 that will be fifteen minutes?

21 MR. FERGUSON: Well, you're right. If I have to
22 open on the law then add another five minutes, ten
23 minutes to that; so no more than a half hour certainly.

24 THE COURT: And Mr. Runyon, how long do you think
25 your closing will be?

State v Christopher Boling
Fifth Amendment Rights
July 29, 2014

1 MR. RUNYON: Probably no longer than my learned
2 colleague right here.

3 THE COURT: About 30 minutes?

4 MR. RUNYON: Yes, Your Honor.

5 THE COURT: So that's an hour and then charge is
6 about 20 or 30 minutes so that's an hour and half.

7 [Off the record momentarily]

8 THE COURT: Mr. Runyon, did you want to talk with
9 your client some more about whether he is going to
10 testify?

11 MR. RUNYON: We've just been chatting here, Judge.

12 THE COURT: I can have them take him into a more
13 private area so y'all can talk.

14 MR. RUNYON: Your Honor, he's ready to tell you
15 what his decision is.

16 THE COURT: Okay. Sir, have you totally discussed
17 with your lawyer whether you should or should not
18 testify?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you need to speak with him any
21 further?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: And sir, do you wish to testify?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Okay. Thank you sir, you may take

State v Christopher Boling
Fifth Amendment Rights
July 29, 2014

1 your seat.
2 [Whereupon, the defendant complies]
3 THE COURT: And are you going to have any other
4 witnesses Mr. Runyon?
5 MR. RUNYON: No ma'am, we're going to close.
6 THE COURT: Okay. So then we need to just plan to
7 close and charge in the morning but I'll dismiss -- I
8 will, of course, hear motions and then we'll dismiss the
9 jury and have a charge conference.
10 [Off the record momentarily]
11 THE COURT: Okay. She's sending her down to us
12 now.
13 MR. FERGUSON: Judge?
14 THE COURT: She's here?
15 MR. FERGUSON: She's here.
16 THE COURT: Perfect.
17 [Whereupon, the jury enters at 3:23 p.m.]
18 THE COURT: Ladies and gentlemen, we appreciate
19 your patience. Judge Harrington was very kind and
20 allowed us to borrow the witness for the time period we
21 would need her and then return her. So she is taking a
22 break in her proceedings so that we will not be any
23 further delayed. We will now have the State's next
24 witness. You may proceed.
25 MS. SHEALY: Thank you, Your Honor. Jennifer

State v Christopher Boling
Fifth Amendment Rights
July 29, 2014

1 Clayton.
2 THE COURT: Ma'am, could you come to the witness
3 stand to be sworn.
4 [Whereupon, Ms. Clayton comes forward]
5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]
7 CLERK OF COURT: Once seated if you could please
8 state your first and last name, spell your last loudly
9 and clearly into the microphone, please.
10 THE WITNESS: Jennifer Clayton, C-L-A-Y-T-O-N.
11 THE COURT: You may proceed.
12 MS. SHEALY: Thank you, Your Honor.
13 THE COURT: You're welcome.
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State v Christopher Boling
Jennifer Clayton-Direct Examination by Ms. Shealy
July 29, 2014

1 JENNIFER CLAYTON,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. SHEALY:
6 Q. Ms. Clayton, tell the jury please where you are
7 currently employed?
8 A. I'm currently employed by the South Carolina Law
9 Enforcement Division also known as SLED.
10 Q. And in what capacity are you employed there?
11 A. I'm a D-N-A analyst.
12 Q. Tell the jury a little bit about your educational
13 background.
14 A. I earned a Bachelor of Science in Biology from the
15 University of North Carolina at Chapel Hill. I've also
16 taken classes at NC State and USC. My course work
17 includes genetics, molecular biology, biochemistry, and
18 statistics.
19 I originally hired on with SLED as a forensic
20 technician in the D-N-A department and I worked as a
21 technician for two years before being hired as a D-N-A
22 analyst.
23 Once I was hired as a D-N-A analyst I completed a
24 one year training program under another qualified analyst
25 and worked case work under his supervision before I was

State v Christopher Boling
Jennifer Clayton-Direct Examination by Ms. Shealy
July 29, 2014

1 allowed to do case work on my own.
2 Q. And do you also do work in the area of serology is
3 that included in the term D-N-A analysis?
4 A. Correct. Serology is the testing for -- serology
5 analysis involves the testing of possible body fluids
6 such as blood, semen, or saliva.
7 Q. And could you tell the jury approximately how many
8 D-N-A and serology analyses you've completed?
9 A. I don't know an exact number. I've completed
10 hundreds of cases at this point.
11 Q. And how many times have you testified in court
12 before?
13 A. Approximately 35 times.
14 Q. And you testify all over the state?
15 A. That's correct.
16 Q. When you testified previously were you qualified as
17 an expert?
18 A. Yes, I was.
19 Q. And was that in the area of D-N-A analyses and
20 serology?
21 A. Some of them were only in D-N-A analysis and some of
22 them were in D-N-A analysis and serology, correct.
23 MS. SHEALY: Your Honor, at this time we would
24 offer Ms. Clayton as an expert in the field of D-N-A
25 analyses and serology.

State v Christopher Boling
Jennifer Clayton-Direct Examination by Ms. Shealy
July 29, 2014

1 THE COURT: Any objection or questions?

2 MR. RUNYON: Stipulated, Judge.

3 THE COURT: So admitted without objection. You may
4 proceed.

5 Q. [Ms. Shealy] Will you describe briefly to the jury
6 what is meant by the term D-N-A?

7 A. D-N-A is a long chain chemical and it's found in
8 every cell in the body with the exception of red blood
9 cells. And we inherit half of our D-N-A from our Mother
10 and half of our D-N-A from our Father.

11 In forensic D-N-A analysis we're able to develop
12 D-N-A profiles from this D-N-A and with the exception of
13 identical siblings no two individuals have the same D-N-A
14 profile.

15 And this is what makes it useful in forensics
16 because a profile can be compared -- a profile can
17 developed from a known sample, a known standard from an
18 individual, which is a sample that is known to come
19 directly from an individual.

20 And that standard can be compared to a profile
21 developed from an evidence sample to determine if there
22 is a match.

23 Q. So when you say a known sample the use of buccal
24 swabs that would be a known sample because you would know
25 from which individual the buccal swab comes from, is that

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1 correct?

2 A. Correct. A buccal swab is it looks kind of like a
3 one sided Q-tip with a longer stick on it and it's used
4 to swab the inside of an individual's cheeks and it
5 collects the loose cells inside the mouth.

6 And from that we are able to develop a D-N-A profile
7 and we know because that sample is collected directly
8 from that individual that the profile developed came from
9 that individual.

10 Q. And in cases of murder, for example, the victim you
11 get a blood spot from an autopsy as a known standard.

12 A. That's the most common sample, correct.

13 Q. In this case did you in fact receive a buccal swab
14 kit from Christopher Boling and from Kevin Russell? And
15 I will show you what has been previously marked as
16 State's exhibit 15 for I.D. purposes.

17 [Whereupon, the witness is shown exhibit]

18 A. State's exhibit 15? You said or 150 ---

19 Q. Fifteen for I.D.

20 A. Okay. This is buccal swabs from Christopher
21 Boling. It is in a SLED adhesive pouch with a label on
22 it that has the SLED lab number associated with the case.

23 It also has the item number, which is item number 2
24 for the buccal swabs from Christopher Boling. And along
25 the side it has where I cut open the pouch and then

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1 resealed it. It has the date that I resealed it and my
2 initials. The lab number as well as the item number and
3 my initials are on the inner envelope of the item of
4 evidence as well.

5 Q. Okay. And then similarly with State's exhibit
6 number 16 for I.D. purposes did you also receive a buccal
7 swab from Kevin Russell?

8 [Whereupon, the witness is shown exhibit]

9 A. Correct. This is buccal swabs from Kevin Russell
10 and again it has the same information. It has my
11 initials and the date along the seal as well as the lab
12 number, the item number, and my initials on the item of
13 evidence within the pouch.

14 Q. And you've explained to us that once you have known
15 standards you're then able to compare it to an item of
16 evidence, is that correct?

17 A. Correct.

18 Q. And that is for the purpose of what? What would
19 that then tell us?

20 A. To determine if there is a match between the item of
21 evidence and the standard the D-N-A profile was developed
22 from the item of evidence generally because it's not
23 known who deposited the D-N-A on the evidence, and if
24 we're able to match it to an item that indicates which
25 individual deposited D-N-A on that item.

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1 Q. Okay. I'm showing you what has been marked as
2 State's exhibit 17 for I.D. purposes.

3 [Whereupon, the witness is shown exhibit]

4 Q. Did you also receive two blood swabs from a yellow
5 axe handle?

6 A. I did receive blood swabs from an axe handle. Yes,
7 it is described as being a yellow axe handle. I never
8 actually saw the axe handle. I only received the swabs
9 but it's described as a yellow axe handle.

10 And again it has the item number associated with
11 that item as well as the lab number, my initials on the
12 inner pouch, and my initials and the date on my seals.

13 Q. Now, could you give us a brief description of what
14 your analysis includes? What is it that you actually do
15 once you have the known sample and the swabbing from an
16 item of evidence?

17 A. If there is an indication of a body fluid present on
18 the item of evidence versus sometimes the sample only
19 contained skin cells from being touched. If it has -- if
20 there is an indication there is a body fluid present I
21 would begin by testing for the possible presence of a
22 body fluid.

23 At that point if it is present I will do D-N-A
24 analysis, which that entails separating the D-N-A from
25 everything else the cotton swab; the other parts of the

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1 cell, so that a D-N-A profile can be developed. No
2 serology testing is done on the buccal swabs because it's
3 already known exactly what the source of those samples
4 is. Those samples go directly to D-N-A analysis and a
5 D-N-A profile is developed from the buccal swabs.

6 Q. And regarding your conclusions in this case did you
7 in fact prepare a report?

8 A. Yes, I did.

9 [Whereupon, Ms. Shealy shows document to Mr. Runyon]

10 MR. RUNYON: No objection, Your Honor.

11 MS. SHEALY: Your Honor, at this time I would move
12 in State's exhibit 19.

13 THE COURT: Marked and admitted without objection.

14 [Whereupon, State's exhibit number 19 is entered
15 into evidence by the court]

16 Q. [Ms. Shealy] Is this a copy of the report that you
17 prepared?

18 [Whereupon, the witness is shown document]

19 A. Yes, this does appear to be a copy of the report I
20 prepared.

21 Q. Now on the back page of your report is a chart.
22 Could you just describe briefly to the jury what that
23 chart reflects?

24 A. When a D-N-A profile is developed the kit that we
25 use tests 15 locations on the D-N-A. And our software

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1 interprets these test results as a set of numbers. And
2 as I said before we inherit half of our D-N-A from our
3 Mother and half of our D-N-A from our Father so in every
4 location tested we would typically expect to see either
5 one number or two numbers for that location.

6 One number would indicate that both the Mother and
7 the Father donated the same number to the profile. The
8 two different numbers would indicate that one parent
9 donated one number and the other parent donated the other
10 number to the D-N-A profile.

11 Q. Okay. So if the jury were to look at this chart
12 you divided into three different lines, one being the
13 buccal swab from Christopher Boling, one being from Kevin
14 Russell, and then one being the swabs from the axe
15 handle, is that correct?

16 A. That's correct. Those would be three of the ones we
17 would take.

18 Q. Tell the jury as it relates to Kevin Russell did you
19 find his D-N-A in the swab from the axe handle?

20 A. No, his profile did not match the D-N-A profile
21 developed from the axe handle.

22 Q. And would you tell the jury what your conclusions
23 were regarding Christopher Boling's D-N-A and the
24 swabbing from the axe handle?

25 A. The D-N-A profile developed from the axe handle

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1 matches the D-N-A profile of Christopher Boling. The
2 probability of randomly selecting an unrelated individual
3 from the population having a D-N-A profile matching this
4 item is approximately one in one point five quadrillion.

5 What that means is that if you were to go out into
6 the population and pick any individual at random the
7 probability that that individual would happen to have a
8 D-N-A profile matching the D-N-A profile on the evidence
9 when they are unrelated to the individual that left the
10 profile on the item, is approximately one in one point
11 five quadrillion.

12 Q. In that you have done so many different D-N-A
13 analyses could you explain to the jury whether that
14 numerical probability is -- how does that compare to some
15 of the other ones that you did? In other words can you
16 sometimes have a D-N-A result that would be one in 90
17 people.

18 A. Sometimes if a partial profile is developed, and a
19 partial profile is sometimes there is a limited amount of
20 D-N-A present or the D-N-A has been damaged and the tests
21 that we do does not yield complete results it will give a
22 partial profile.

23 And so sometimes we can get smaller statistics
24 obviously with that because we don't have enough
25 information to work with as far as statistical

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1 calculation. One in one point five quadrillion is it's
2 fairly typical. It's in the range of a typical result
3 for a complete profile in a single source sample.

4 Q. And do you know how many zeros are on a quadrillion?

5 A. Yes, there are 18 zeros.

6 Q. Very good. Thank you. I have no further questions
7 but please answer any the defense may have.

8 THE COURT: You may proceed.

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State v Christopher Boling
Jennifer Clayton-Cross-Examination by Mr. Runyon
July 29, 2014

1 CROSS-EXAMINATION

2 Q. Hi. Good to see you again. You're going to have to
3 help me again because as I've said three semesters and
4 get credit for two semesters for freshman biology in
5 college okay, so just bear with me. You took buccal
6 swabs from my client and analyzed them did you not?

7 A. That's correct.

8 Q. And then you took some swabs from this [indicates]
9 axe handle or that were identified as being from the axe
10 handle, correct?

11 A. Correct. I received swabs from an axe handle that's
12 correct.

13 Q. Now these swabs were they just D-N-A or blood or
14 what?

15 A. They had a visible stain on them that had the
16 appearance of blood so I performed a serology testing on
17 it. I did a presumptive test and it was positive, which
18 means the presence of blood was indicated on that item.

19 Q. Okay. Is that Christopher Boling's blood or?

20 A. That would be the indication because the D-N-A
21 profile that we developed was from Christopher Boling.
22 So that would indicate that the blood sample was from
23 Christopher Boling.

24 Q. Okay. So this axe handle [indicates] came in
25 contact with my client at least by getting his blood on

State v Christopher Boling
Jennifer Clayton-Cross-Examination by Mr. Runyon
July 29, 2014

1 it.

2 A. At some point that would indicate that yes, his
3 blood was in one way or another deposited on the axe
4 handle.

5 Q. Thank you, ma'am. No further questions.

6 THE COURT: Any redirect of the witness?

7 MS. SHEALY: No, Your Honor. Thank you.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MS. SHEALY: No, Your Honor.

11 THE COURT: From the defense?

12 MR. RUNYON: None from the defense.

13 THE COURT: Ma'am, you're excused. Thank you.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: The State may proceed.

17 MR. FERGUSON: Your Honor, may the State approach
18 the court reporter briefly?

19 THE COURT: Yes.

20 MR. FERGUSON: Thank you.

21 [Whereupon, Mr. Ferguson confers with the court
22 reporter regarding exhibits]

23 MR. FERGUSON: Thank you, Your Honor. At this time
24 the State rests.

25 THE COURT: Madame Forelady and ladies and

State v Christopher Boling
Jennifer Clayton-Cross-Examination by Mr. Runyon
July 29, 2014

1 gentlemen, the State has rested their case. I have some
2 very brief matters of law to take up with the attorneys.
3 It should take about five minutes after which we will
4 resume the proceedings. During this break please do not
5 discuss the case and please leave your notepads in your
6 seats. We appreciate your patience.

7 [Whereupon, the jury exits at 3:38 p.m.]

8 THE COURT: The State has rested. Are there any
9 motions?

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State v Christopher Boling
Motion for Directed Verdict-Remarks by Mr. Runyon
July 29, 2014

1 MR. RUNYON: Yes, Your Honor. We would move at
2 this time for a directed verdict on the indictment on the
3 grounds the State has not offered evidence from anyone,
4 and I'll get to one gentleman in a moment, but there is
5 no evidence from anyone in this case other than Mr.
6 Owens, and I'll get to him in a second, that these
7 individuals -- there is a breaking, there is an entering,
8 there is nighttime and all those other elements.

9 But there is no testimony that the entered with the
10 intent to commit a crime therein. There may have been a
11 crime of assault ultimately committed but there was no
12 evidence produced or testimony otherwise that they
13 entered with the intent to commit a crime.

14 The evidence is such that they entered with the
15 intent to recover stolen property from Mr. Dempsey that
16 Mr. Dempsey was trying to sell Mr. Owens. And that's a
17 crucial element to the crime of Burglary whether its 1st
18 degree or 2nd degree or whatever.

19 And so therefore based -- and Mr. Owens is the only
20 person who can testify and even he was not testifying
21 that they came in there with the intent to do anything
22 other than get a hold of Mr. Dempsey to get the phone.
23 And, of course, the phone as it turned out from the
24 testimony was stolen. Therefore, I think that the case
25 failed because they didn't put in evidence of intent to

State v Christopher Boling
Motion for Directed Verdict-Remarks by Mr. Runyon
July 29, 2014

1 commit a crime even though there was a break in.

2 THE COURT: Would the State like to respond?

3 MR. FERGUSON: Briefly, Your Honor.

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State v Christopher Boling
Motion for Directed Verdict-Remarks by Mr. Ferguson
July 29, 2014

1 MR. FERGUSON: As you know this motion is made in
2 the light most favorable to the non moving party, which
3 is the State. Mr. Owens, Joseph Owens has indicated, of
4 course, that there was a breaking into his home at night.
5 And that in addition the two individuals, one being
6 Christopher Boling, entered the home and went directly
7 towards them without speaking to them and started
8 fighting, started assaulting. And that is a crime.

9 Further, the jury can infer intent simply by the
10 manner in which they entered the home by kicking in the
11 door rather than knocking or opening an unlocked door.
12 The jury can infer that they had intent to commit a crime
13 just by mere fact that they kicked in and forced their
14 way inside the home.

15 Further, Joseph Owens testimony that he did not
16 invite and that they did assault him, injure his property
17 and trespass into his home and injured him, his wife, as
18 well as Tad Dempsey would defeat that burden and take
19 that issue to the jury.

20 THE COURT: Anything further?

21 MR. RUNYON: Nothing further on that point, Your
22 Honor.

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State v Christopher Boling
Motion for Directed Verdict-Ruling by the Court
July 29, 2014

1 THE COURT: In considering a motion for directed
2 verdict the court is concerned with the existence or the
3 non existence of evidence and not its weight. It's not
4 for the court to weigh evidence. The evidence is
5 considered in a light most favorable to the non moving
6 party, which is the State. The State is not required to
7 prove guilt beyond every other reasonable hypothesis and
8 the court is concerned with the existence or non
9 existence of evidence and not its weight.

10 I find for the record that there is direct as well
11 as substantial circumstantial evidence reasonably tending
12 to prove the guilt of the defendant on the offense of 1st
13 Degree Burglary. First the State is required to prove
14 that the defendant entered a dwelling without consent.
15 They have established that those elements it is
16 uncontroverted that the residence at [REDACTED] Cane Slash Road
17 was a residence.

18 They've established the testimony of Joseph Owens
19 that three individuals entered his house without consent.
20 There is even some testimony potentially that there was
21 an entering by deception, artifice or trick, or
22 misrepresentation to get consent to the entry. There is
23 further testimony that there was -- in the direct
24 testimony of Mr. Owens that the parties in some
25 conspiratorial effort entered into the residence with the

State v Christopher Boling
Motion for Directed Verdict-Ruling by the Court
July 29, 2014

1 intent to commit a crime either a felony or a
2 misdemeanor, that being some sort of evasion or theft,
3 and that being in Mr. Owens testimony that once he
4 advised this gentlemen he was not going to buy the
5 telephone that he then heard a further disruption at his
6 premises and his door was being kicked in.

7 He then testified, that being direct testimony that
8 direct threats were made to him, to his person and that
9 he as well as his co-occupant of the residence suffered
10 some injury as a result of these individuals being armed
11 with a deadly weapon as there is testimony that a gun was
12 held to him with a threat made. And in this instance the
13 fact that his testimony is and supported by independent
14 corroborative testimony evidence in the form of the
15 pictures that apparently some level of struggle took
16 place in the residence and there was damage done to the
17 residence.

18 And there is certainly some evidence that there were
19 ordinary objects that were used that could have been what
20 we would consider ordinary objects that could be
21 construed as deadly weapons, that being the axe handle as
22 well as -- well, that being the axe handle and I'll leave
23 it at that. I don't know if there is any real testimony
24 that their fists were being used as deadly weapons. The
25 other element, which is while in the dwelling or when

State v Christopher Boling
Motion for Directed Verdict-Ruling by the Court
July 29, 2014

1 fleeing the defendant or an accomplice caused physical
2 injury to anyone not participating in the crime. There
3 is testimony from Mr. Owens that physical injury was
4 caused both to others in the dwelling as well as Virginia
5 -- Vivian Watkins his common-law-wife or girlfriend as he
6 refers to her.

7 That when entering, while in the dwelling, or when
8 fleeing the defendant or an accomplice used or threatened
9 to use a dangerous object and there is direct testimony
10 from Mr. Owens that someone pointed a gun to him and
11 threatened him, which certainly a gun is a dangerous
12 object.

13 There is also testimony that while in flight the
14 defendant used an axe handle against Ms. Watkins and that
15 when entering, while in the dwelling, or when fleeing the
16 defendant or an accomplice displayed what was or appeared
17 to be a knife, a revolver, rifle, shotgun, machine gun or
18 other firearm.

19 There is testimony that in fact there was what
20 appeared to be a revolver or gun used in this incident.
21 And there is certainly replete testimony in the record
22 that the defendant entered or remained in the dwelling in
23 the nighttime; that being the period between sunset and
24 sunrise. The arguments that have been made regarding
25 what his intentions were when he entered the residence or

State v Christopher Boling
Motion for Directed Verdict-Ruling by the Court
July 29, 2014

1 certain factual issues that in dispute it's not for the
2 court to resolve those factual disputes. Those are
3 certainly issues that can be factual differences or
4 inferences that can be drawn from that evidence that can
5 be argued to the fact finder; that being the jury. The
6 motion is denied. Are there any further motions before
7 we proceed from the State?

8 MR. FERGUSON: No, Your Honor.

9 THE COURT: From the defense?

10 MR. RUNYON: None, Your Honor.

11 THE COURT: Do you want to go ahead and rest and go
12 ahead and renew your motions so that when I bring the
13 jury back in you can just rest in their presence and I
14 can just let them go and we could do charge conference?

15 MR. RUNYON: Yes, Your Honor. That would be
16 acceptable, Your Honor.

17 THE COURT: So does the defendant rest?

18 MR. RUNYON: The defense would rest, Your Honor.

19 THE COURT: Are there any motions now that the
20 defense has rested?

21 MR. RUNYON: Your Honor, even in light of the
22 court's very specific denial of our initial motion we
23 would renew that same motion at this time for the court's
24 consideration and we anticipate the court's not changing
25 the ruling.

State v Christopher Boling
Motion for Directed Verdict-Ruling by the Court
July 29, 2014

1 THE COURT: Would the State have anything in
2 response?

3 MR. FERGUSON: The State relies on its previous
4 position and the court's previous ruling.

5 THE COURT: The court would deny the motion and
6 incorporate its previous rulings for purposes of the
7 record in the interest of time.

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State v Christopher Boling
Proceedings
July 29, 2014

1 THE COURT: So what we will do then is I will bring
2 in the jury. Mr. Runyon you can rest in their presence.
3 I'll let them go for the day. We'll do charge conference
4 and then we'll close and charge in the morning. Any
5 exception from the State?
6 MR. FERGUSON: None, Your Honor.
7 THE COURT: From the defense?
8 MR. RUNYON: None, Your Honor.
9 THE COURT: Please bring in the jury.
10 [Whereupon, the jury enters at 3:50 p.m.]
11 THE COURT: Ladies and gentlemen, if you will give
12 the attorneys your attention. The defense may proceed.
13 MR. RUNYON: The defense would rest at this point,
14 Your Honor.
15 THE COURT: Madame Forelady and ladies and
16 gentlemen, both the State and the defense have rested
17 their case. The next part of the process is closing
18 arguments and the court's instructions.
19 I anticipate that that process would take over an
20 hour and half, which would take us beyond 5 o'clock and
21 so we are going to break for the afternoon because I
22 still have some matters of law that are going to take
23 another 20 minutes that I need to deal with with the
24 lawyers before we would be able to begin closing argument
25 an instruction and I wouldn't want to hold you hostage

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1 here half the night deliberating. I'd rather you all do
2 that fresh in the morning. So what we are going to do is
3 we're going to break for the afternoon. We'll resume in
4 the morning at 9:30 with closing argument and the court's
5 instructions after which you will be allowed to
6 deliberate regarding this case.

7 It is absolutely essential that you have no
8 discussion about this case among yourselves or with
9 anyone else. While you have heard all the evidence in
10 this case you have not heard closing arguments or the
11 court's instructions.

12 It is also absolutely essential that you have no
13 interaction with anyone in or about the courthouse.
14 Again, I would not want an innocent conversation to be
15 observed and misinterpreted. I don't know if you all
16 have noticed but there are these little bubbles
17 [indicates] that are over the courthouse; those are
18 cameras. They record almost all 177,000 square foot of
19 this building.

20 And so I cannot tell you how many silent movies I've
21 had to watch. Lawyers tend to be very paranoid during
22 litigation. I don't like having to lip read. So I would
23 appreciate it if you all would only talk to one another.
24 It makes life easier. Also, if you would not make any
25 comments regarding your jury service on any social

State v Christopher Boling
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1 networking sites; again, we would not want an innocent
2 comment to be misinterpreted. Please don't do any
3 independent research regarding any issue or matter
4 involved in this case on the Internet. I'm not aware of
5 any media coverage but if there is any please do not
6 read, watch, or listen to any news reports or other media
7 accounts regarding this case.

8 If you would leave your notepads in your seats for
9 us we'll secure them during the evening recess. They
10 will be given back to you in the morning when we resume
11 court. And again, in the morning for your planning
12 purposes we will be having closing argument and
13 instruction. And for your planning purposes I've already
14 selected another jury, which I will begin once you all
15 begin to deliberate.

16 We may have another one day case that I may be able
17 to select on Friday and begin but it is my anticipation
18 that I will be able to excuse you all once you have
19 completed this case so that that would complete your jury
20 service. Judge McDonald is trying the only civil case
21 that will be tried this week and I believe Judge
22 Harrington her case will probably go the rest of the
23 week. So I'm the only game left in town. I've already
24 picked my other jury, however, and I pretty much know
25 that is going to take two days and then I may have

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July 29, 2014

1 another little short case to try but I feel like I will
2 probably be able to let you all go once we've concluded
3 this case. So I tell you for your planning purposes so
4 that you will know how to plan for the remainder of your
5 week. I hope you all have a great evening. We will see
6 you in the morning at 9:30. If you will, leave your
7 notepads in your seats please.

8 [Whereupon, the jury exits at 3:54 p.m.]

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State v Christopher Boling
Charge Conference
July 29, 2014

1 THE COURT: I will give the jury a general
2 instruction regarding their responsibility and my
3 responsibility, how they are to judge witness
4 creditability and believability. I will give them a
5 general instruction on expert witness testimony as well
6 as the prior record of a witness, which is that it can be
7 used to judge a person's creditability or believability.
8 I will charge State v Grippon. I will give a
9 general instruction on direct and circumstantial
10 evidence. I will give a general instruction that the
11 charge, the arrest, and the indictment are not evidence
12 as well as on the presumption of innocence.
13 I'll then charge Victor v Nebraska on reasonable
14 doubt. And then I will instruct regarding the fact that
15 the defendant did not testify and that he is not to
16 suffer any prejudice or inferences as a result of that.
17 Then charge the elements of 16-11-311, which is 1st
18 Degree Burglary. I will instruct the basic elements,
19 that being entry without consent, defining a dwelling as
20 well as consent. I'll then only instruct the elements
21 which are applicable in this case, which is (1)(a) of the
22 Statute, (1)(b), (1)(c) and (d) and subsection (3), which
23 deals with nighttime. I will also give an instruction on
24 mere presence as well as identification of the defendant
25 as the person who committed the offense. I will also

State v Christopher Boling
Charge Conference
July 29, 2014

1 instruct on accomplice liability, which is the hand of
2 one. I will then instruct on the form of the verdict.
3 Are there any exceptions to the -- the State requested
4 and submitted an instruction on 1st Degree Burglary. I
5 will use my standard instruction on 1st Degree Burglary.
6 Also, on accomplice liability I will use my standard
7 instruction on the hand of one is the hand of all.

8 They also submitted an email asking for an
9 instruction on flight and I would not instruct that.
10 Under South Carolina law although evidence of flight is
11 proper and the State may argue that it is improper for
12 the court to give an instruction on that as it is an
13 improper comment on the facts.

14 MR. FERGUSON: Thank you, Judge. And just to be
15 clear it is okay to address in the closing ---

16 THE COURT: --- oh, you can argue flight. I just
17 can't instruct on it because it is an impermissible
18 comment on the facts.

19 MR. FERGUSON: Thank you, Judge.

20 THE COURT: Any exceptions from the State?

21 MR. FERGUSON: None, Your Honor.

22 THE COURT: Any exceptions from the defense?

23 MR. RUNYON: No exceptions or additions, Judge.

24 THE COURT: Okay. Perfect. Make sure all the
25 evidence is in place for me please. And then if you all

State v Christopher Boling
Charge Conference
July 29, 2014

1 give me one moment I will show you the verdict form so
2 you can look at it before we adjourn.

3 [Whereupon, Mr. Ferguson and Mr. Runyon confer with
4 the court reporter regarding the exhibits]

5 THE COURT: Would counsel approach form me please
6 to review the verdict form?

7 [Whereupon, all counsel review verdict form with the
8 court]

9 THE COURT: Any exceptions to the form of the
10 verdict from the State?

11 MR. FERGUSON: None from the State.

12 THE COURT: From the defense?

13 MR. RUNYON: None, from the defense, Your Honor.

14 THE COURT: Perfect. Y'all have a great evening.
15 I'll see you at 9:30.

16 [Whereupon, court adjourns at 4:00 p.m.]
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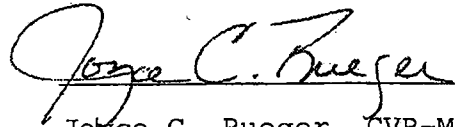
State v Christopher Boling
Certificate of the Court Reporter
July 29, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 29th day of July, 2014.

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

October 6, 2014



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

CHRISTOPHER ALLEN BOLING

Defendant

COURT OF GENERAL SESSIONS

DOCKET NO. 2011-GS-10-2405

TRANSCRIPT OF RECORD

July 30, 2014

Charleston, South Carolina

VOLUME 3 (OF 3)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

EMMANUEL FERGUSON, ESQ.

JENNIFER SHEALY, ESQ.

Attorneys for the State

WILLIAM RUNYON, ESQ.

Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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Proceedings
July 30, 2014

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THE COURT: Is the State ready to proceed?

MR. FERGUSON: Yes, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. RUNYON: Yes, Your Honor.

THE COURT: Please bring in the jury.

[Whereupon, the jury enters at 9:44 a.m.]

THE COURT: Good morning ladies and gentlemen. I hope that everyone had a pleasant evening. As I explained on yesterday both the State and the defense have rested their cases. The next part of the process is closing argument and then the court's instructions.

We have taken your lunch orders and I'll make a decision shortly prior to beginning instructions as to what time we will order lunch and what time it will arrive. I will keep you posted as to that.

I would ask that you give the attorneys your undivided attention. Mr. Ferguson, you may proceed.

MR. FERGUSON: Thank you, Judge. May it please the court?

THE COURT: Yes, sir.

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Closing Argument-Remarks by Mr. Ferguson
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1 CLOSING ARGUMENT

2 BY MR. FERGUSON:

3 Christopher Boling January 1st, 2011:

4 [Whereupon, the C.D. plays]

5 [Not taken down]

6 MR. FERGUSON: Christopher Boling January 3rd,
7 2011:

8 [Whereupon, the C.D. plays]

9 [Not taken down]

10 MR. FERGUSON: This very moment this scene, which
11 we are all engaged from the public viewing the
12 proceedings to the court reporter writing down everything
13 that is said, to you all members of our community who are
14 engaged in the judicial process, this very scene is a
15 testament to the world that our society is civil, and
16 fair. This is how we resolve disputes.

17 Now Mr. Runyon in his opening remarks yesterday said
18 something that I really disagree with. He said that this
19 is not a fair fight. This is the most fair venue in the
20 world. Where else would you want to be tried but in
21 America where your rights are guaranteed. This is the
22 most fair venue. And this is not a fight. A fight is
23 brutal. A fight is uncivilized. A fight is an absolute
24 last resort. No, this is fair. This is impartial. This
25 is how you resolve a dispute. What's not fair is a man's

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1 door being kicked in, his property being damaged, his
2 home being ransacked, destroyed, his property maliciously
3 injured by no doing of his own. Joe Owens did not steal
4 a cell phone. Joe Owens was not out and about looking
5 for trouble. Joe Owens was at home. No one was invited.

6 Chris Boling was not invited to that home. And how
7 do we know? [Indicates knocking] Tad Dempsey knocked on
8 the door and was invited. Christopher Boling and Kevin
9 Russell kicked the door in. What do you intend to do
10 when you kick in somebody's door? You're not trying to
11 say hello. You're not asking for a cup of sugar. You're
12 not being a neighbor. You're being a burglar.

13 Members of the jury we have proved that today. We
14 have proved that Chris Boling did commit a burglary. A
15 person is guilty of burglary when they enter a dwelling
16 without consent. Joe Owens testified that he did not
17 invite them, Christopher Boling or Kevin Russell into his
18 home. The pictures show you a damaged door, a broken
19 door jamb, a shoe print.

20 There was no consent whatsoever. The intent to
21 commit a crime. I'll talk to you more about this but use
22 your life experiences. If somebody kicks in a door do
23 they intend to do positive things? No one can kick in
24 your door for any reason. The police can't even kick in
25 somebody's door and look for a stolen cell phone unless

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1 they swear before a Judge that there is probable cause
2 and they get a warrant that is signed. Why can
3 Christopher Boling do it? Because he can because there
4 was nothing Joe Owens could do to stop him.

5 And this happened at nighttime. Nighttime is not
6 a.m. and p.m. Nighttime is when the sun goes down until
7 the sun goes up. It's uncontroverted and uncontested
8 that this did occur at nighttime and with or without a
9 weapon it is Burglary. But the facts show that
10 Christopher Boling and Kevin Russell went beyond that.

11 Not only did they kick in the door without consent
12 and enter with the intent to commit a crime at nighttime,
13 he came with an axe handle. This [indicates] is a deadly
14 weapon. Is it foreseeable that if someone was struck in
15 the head with this axe handle is it foreseeable that they
16 would die? People have died from less; a punch.

17 Joe Owens testified that a gun was placed to his
18 head. He could have easily told you that Christopher
19 Boling held that gun. He could have said that but Joe
20 Owens told you the truth. He said that Kevin Russell had
21 the gun and pointed it at my face and Christopher Boling
22 was right beside him encouraging him to pull that
23 trigger. We'll talk about the hand of one is the hand of
24 all. I want to talk with you about intent. Now the
25 Judge is going to give you some instructions on intent.

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1 She is going to give you lots of instructions on how to
2 weigh the facts and how you are to deliberate. But she
3 is going to make some comment to the effect of saying
4 that there is no way that medical science can dissect a
5 person's brain and determine what the person had in mind.
6 So what we do so the law says that criminal intent may be
7 inferred from the circumstances shown to have existed.

8 What does our common sense and what do the
9 circumstances show us what is in someone's mind because
10 it's impossible to look in somebody's head and tell their
11 intent. The law does not mandate that Christopher Boling
12 say I intend to burglarize somebody. We can infer that
13 intent. What circumstances infer that intent?

14 What have we heard -- what did we hear yesterday?
15 Well, we heard from Joseph Owens. And his statement is
16 consistent. His statement, his testimony here in 2014 is
17 consistent with that in 2011. Christopher Boling and
18 Kevin Russell kicked in my door and immediately started
19 assaulting everyone, immediately.

20 There was no hey, let me talk to Tad. Hey, how you
21 doing? Hey, can I come in? No, there was a kick and a
22 punch, a kick and another kick, a kick and a swing of a
23 fist. That's probably why Christopher Boling's blood is
24 on this axe handle because when you fight with your fists
25 you get cut. He was not the victim of this axe handle;

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1 he was the aggressor. The show print on the front door
2 infers intent. When you kick in somebody's door you are
3 not asking for a cup of sugar. When you kick in
4 somebody's door you are showing that you are in control
5 of the situation and you will do whatever you please.
6 You will fight, you will hurt, you will damage.

7 The door jamb was broken. That shows that this
8 wasn't a hard knock [indicates knock] on a flimsy door.
9 This shows that this was a purposeful attack; a
10 purposeful blitz on this home. Where was this axe handle
11 found? Exactly where Deputy Buenting said that they
12 split up; [REDACTED] Cane Slash. The axe handle was found
13 right where Christopher Boling was seen splitting up
14 running away. And it had his D-N-A on it. We're not
15 guessing that he had this axe handle. That scientist
16 told you that the blood on that axe handle is his.

17 And the neighbor, Ms. Koger was next door. She
18 heard those gunshots. A disinterested party. She heard
19 gunshots. She called 911. Her home is here [indicates],
20 the trailer is here [indicates], the gunshots were here
21 [indicates]. She heard the shots. She has no reason to
22 come up here and tell a falsehood and neither does Deputy
23 Buenting. Every day he puts his life on the line for our
24 security and safety. That is a trained officer. He
25 knows what gunfire looks like. He knows what gunfire

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1 sounds like. He is not someone like you or me, well
2 especially me, who doesn't know what a gun blast looks
3 like or truly sounds like. He knows the difference
4 between a firecracker, the backfire of a car, and a
5 weapon. He's trained to know that. And what does he
6 see? He sees two people exit Joe Owens trailer. He does
7 not lose contact with Christopher Boling at all until he
8 is caught, apprehended on the scene. He doesn't lose
9 sight of him.

10 That man [indicates] is the one who was inside the
11 trailer without consent. That man [indicates] is the one
12 who saw the police and ran. He wasn't trying to help
13 out a friend by getting his cell phone back. Do we know
14 why? Because a stolen cell phone is illegal, right?
15 And if you see the police you'd be happy. Oh, thank God.
16 Officer, arrest this man. He stole a cell phone.

17 No. He ran from the police and flight is evidence
18 of guilt. If he was trying to help somebody he would
19 welcome the sight of a police officer. Officer, let me
20 tell you my story. I just wanted to get the cell phone
21 back. No, that was a ruse to do whatever you want while
22 intoxicated or high on New Year's night. Bunting
23 apprehends him seconds later, not the next day, not the
24 next week; right then and there at the scene of the
25 crime. And his cohort Kevin Russell is found nearby in

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1 a trailer naked. Why is that important? He was hiding
2 in a close naked was the testimony because he didn't want
3 to get caught with gunshot residue on his clothes. He
4 didn't want to get caught with the smell and the odor
5 that a dog could detect. He hid in the closet and hoped
6 it would all go away.

7 And then the tape. Christopher Boling on January
8 1st and January 3rd, 2011 the same day as the incident
9 gets on the telephone that he knows is being recorded
10 calls somebody and so nonchalantly says yes, I kicked in
11 the door. Yes, we went to Joe Owens house. Not Joe or
12 Mr. Owens or my buddy Joe, he went to Joe Owens house.

13 Think about when you're going to visit a friend and
14 you're telling somebody about that visit. Oh, I'm going
15 over to Susan's house to have some coffee. I went over
16 to Ted's house and talked about the game. We use casual
17 vernacular. Christopher Boling doesn't know Joe Owens.
18 He just knows where he lives. We went over to Joe Owens
19 house and beat the hell out of everybody.

20 Members of the jury these are the circumstances that
21 point to intent. He intended to do nothing but commit a
22 crime. Which crime? Take your pick; trespass, assault,
23 battery, assault and battery of a high and aggravated
24 nature, pointing and presenting a firearm, unlawful
25 possession of a firearm. He intended to commit a crime.

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1 And the law says he doesn't even have to go that far to
2 actually have committed it. He just had to intend it.
3 But we see through his actions that he did. We see
4 through the evidence that he did. All of these
5 circumstances, all of these facts point to guilt. He's
6 guilty of burglary because this is burglary.

7 I come from a big family. I have five brothers and
8 sisters. And sometimes we had to watch each other when
9 our parents were at work. And if one of us got in
10 trouble when our parents got home we all got in trouble.
11 Why? Because we all contributed to whatever it was that
12 we did. The hand of one is the hand of all. That is the
13 law.

14 The Judge will instruct you that if a crime is
15 committed by two or more people who are acting together
16 in committing a crime the act of one is the act of all.
17 The act of Chris Boling is Kevin Russell. The act of
18 Kevin Russell is the act of Christopher Boling. If Kevin
19 Russell points a gun, Christopher Boling pointed a gun.
20 If Kevin Russell kicked in the door, Christopher Boling
21 kicked in the door because they were acting together.

22 A person who joins with another to accomplish an
23 illegal purpose is criminally responsible for everything.
24 Not some things, not one or two things; everything done
25 by the other person, which occurs as a natural

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1 consequence of the acts done in carrying out the common
2 plan and purpose. You heard it on the tape. We went to
3 Joe Owens house. We kicked in the door. We beat the
4 hell out of everybody. Not only does that extend to the
5 beating but that also extends to possession and the
6 pointing of that gun. You cannot encourage someone to
7 blow another's F-ing brains out.

8 The Judge will also instruct on beyond a reasonable
9 doubt. This is not beyond any reasonable hypothesis.
10 This is not beyond every or any doubt. There are few
11 things in this world that we know with absolute certainty
12 and in criminal cases the law does not require that that
13 proof overcome every possible doubt. That is not the
14 standard here.

15 Are you firmly convinced that Christopher Boling did
16 this burglary? Are you convinced? If you believe it
17 happened then the burden has been met. I believe he did
18 it. There is the verdict. Christopher Boling January
19 the 3rd, 2011:

20 [Whereupon, the C.D. plays]

21 [Not taken down]

22 MR. FERGUSON: Christopher Boling on January 1st,
23 2011:

24 [Whereupon, the C.D. plays]

25 [Not taken down]

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1 MR. FERGUSON: Thank you for your time ladies and
2 gentlemen.

3 THE COURT: You may proceed.
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State v Christopher Boling
Closing Argument-Remarks by Mr. Runyon
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1 CLOSING ARGUMENT

2 BY MR. RUNYON:

3 Madame Forelady and ladies and gentlemen of the
4 jury, if I tell you anything about the law that you don't
5 hear from the Judge you take what the Judge says. If I
6 tell you anything about the facts that have been
7 testified to and that's not what you recall you take what
8 your recollection is and what the record shows.

9 It was interesting that the State says such things
10 as Christopher Boling fled that is evidence of guilt. I
11 got news for you. I want you to listen real, real close
12 to what the Judge says. She ain't going to be telling
13 you that. That may be a fact that occurred but that's
14 not what the Judge is going to tell you the law is.

15 Now Mr. Ferguson talks to you about the famous axe
16 handle. Mr. Owens never testified that Christopher
17 Boling brought this axe handle in the front door. In
18 fact he said he didn't know where it came from. And the
19 only blood on it is Christopher Boling's blood. Their
20 expert proved that.

21 Logical inference; Christopher Boling took this from
22 somebody that was striking him. By the way they make a
23 big deal about Mr. Owens testimony was consistent. Who
24 was there to prove that it wasn't consistent? His wife?
25 Where was she? She didn't come in and tell you this

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1 story. Look, he plays the telephone message and exactly
2 what it says. Tad Dempsey stole and it wasn't just a
3 flip phone it was an expensive cell phone and today we
4 know these smart phones have all sorts of information on
5 them and what have you. And where does he go at 1
6 o'clock in the morning on New Year's Day? He goes to Mr.
7 Owens house. Now how did he know to do that?

8 Well, Mr. Owens says I wasn't in the market for a
9 phone that morning. But as you heard Mr. Owens has a
10 conviction for receiving stolen goods. Now several years
11 ago there was a movie in which the late James Garner
12 starred called Support Your Local Gunfighter. It was an
13 interesting amusing little western comedy. And the title
14 of this case might be for the State support your local
15 fence because they went down there and how did they know
16 to go down there because Mr. Dempsey had just stolen this
17 thing. And they don't contradict that. They don't
18 contradict that at all.

19 Mr. Dempsey goes down to the neighborhood, a
20 gentlemen entrepreneur let's put it that way, who sees a
21 profit in things sometimes or maybe not. By the way Mr.
22 Owens, who they so readily rely upon, has a conviction
23 for breach of trust. I think that's stealing. Now, Mr.
24 Owens has his truck vandalized that night by Mr. Dempsey
25 because he didn't protect Mr. Dempsey from these two

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1 folks that were trying to get the cell phone back. And
2 here's a picture of the damaged truck.

3 [Whereupon, the photograph is shown to the jury]

4 MR. RUNYON: That's kind of a nice truck. It has
5 an extended cab and all that sort of stuff. Terrible
6 thing to do to a pickup truck. The only thing worse you
7 can do in South Carolina to a man is mess up his boat.

8 Now it's interesting that he has that nice pickup
9 truck because he don't have a driver's license. Now,
10 that's what he testified to. Now, the whole -- this case
11 -- I've been practicing for 47 years. I got to feeling
12 real old the other day when I noticed that one of the
13 jurors was born the year I started practicing law. It
14 made me feel real old.

15 But the simple fact is that this case, like new
16 cases every lawyer has to make a decision in a case
17 whether or not to complicate the simple in any case or
18 simplify the complicated. And I have chosen to simplify
19 the complicated. And in this case it's because the axe
20 is what it's all about. It's a very simple fact of life;
21 the intent to commit a crime therein.

22 When they went down there to Mr. Owens house, the
23 local fence, all they wanted to do was get the stolen
24 cell phone or smart phone, whatever it is, back. And
25 what did Mr. Owens say after the door flew open -- and

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1 we'll get to some of these things in just a minute -- the
2 door flew open and they didn't start beating up
3 everybody. That's not what Mr. Owens said. They went
4 straight to Tad Dempsey to get the phone and that's when
5 the fight started and then the tussling and yes,
6 everything happened. And things got pushed out the back
7 door and then apparently someone came around the front
8 door and somewhere in this whole thing Tad Dempsey had
9 the time to take a two by four and do this [indicates] to
10 this man's truck.

11 Now, the only crime that was being committed or that
12 was intended to be committed in that house that night was
13 Tad Dempsey selling stolen property to Mr. Owens. That's
14 the crime but that's not their crime. Now, is Mr. Boling
15 charged with shooting a gun? He's not charged with that.
16 He's not charged with that. They make a big deal about
17 the gunshot.

18 By the way Ms. Koger, and my friend Mr. Ferguson
19 asked the question, Ms. Koger said she heard the gunfire
20 coming from across Cane Slash Road. That was in response
21 to his question. So there was gunfire that night, but
22 he's not charged with that. He's not charged with that.
23 He's not charged with beating up this [indicates]
24 gentlemen. And by the way the wife who was on the floor
25 and then in the backyard, and on the backyard and getting

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1 hit and all that sort of stuff she was on Ms. Koger's
2 front porch saying I want to use the phone to call the
3 police. Well, where was she? I don't know. The simple
4 fact is they didn't bring her in here to prove any
5 inconsistencies to Mr. Owens story.

6 Now here's the deal. I'm not asking you to find Mr.
7 Boling not guilty of Burglary in the 1st Degree because
8 none of these other things happened. Burglary in the 1st
9 Degree is as serious as a heart attack, okay. It's just
10 that simple. He's not charged with these assaults, he's
11 not charged with the gun situation, he's not charged with
12 firing at this fine officer. No one should encounter
13 that. He charged with going to the neighborhood fence's
14 house. Everybody knows where somebody takes something
15 stolen, right -- to Cane Slash Road and going after Tad
16 Dempsey who has stolen this very expensive item to get it
17 back. And the item itself may not even be that
18 important.

19 And I'm not suggesting to you that that's the way
20 you should do it. I'm not suggesting that but that's
21 what happened. So what you've got to do is take the
22 facts of the case and apply them to the charge that is
23 made. If he's charged with hitting somebody you've got
24 to find him guilty of that because at some point in time
25 he did hit somebody. There again you don't know from the

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1 facts and from even Mr. Owens testimony that they went to
2 Tad Dempsey and that's when the fight occurred. And
3 famous picture on the wall, I love these pictures on the
4 wall given for effect and they are really effective but
5 the voice behind them we got in a fight and I got charged
6 with Burglary 1st. That's what he said.

7 And what did he do? What did Christopher Boling do
8 when they wanted to test this stuff right here off this
9 [indicates] thing? The Detective calls him on the phone
10 at his work site and says will you meet me and he says
11 sure he will. And he does the buccal swab so that they
12 can prove, my friends over here, could prove that that
13 was his blood on this axe handle.

14 And by the way it's interesting from Mr. Boling's
15 [sic] testimony because you've got to remember everybody
16 in this case that has testified doesn't really know what
17 happened that night except for Mr. Owens' testimony
18 because Ms. Koger she just said I heard a bunch of ruckus
19 and I called the cops and I heard some gunshots from
20 across Cane Slash Road.

21 The police officers arrive on the scene. They don't
22 know what happened. They don't know how the thing
23 occurred. Did the door get kicked in? Yes siree Bob it
24 sure did. Well, what's your intent? Your intent is to
25 recover stolen property from the neighborhood fence. Too

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1 bad James Garner passed away. This might make a good
2 movie for a fence to star in for Mr. Owens support your
3 neighborhood fence.

4 Now he says this is not a fight, this is -- I said
5 yesterday this is not a fair fight. You know you got all
6 these people over here [indicates]. They got aerial
7 photographs [indicates]. They got other photographs
8 [indicates]. They got experts to come down from Columbia
9 to tell you that it was Mr. Boling's blood on this
10 [indicates] axe handle and all that sort of stuff. We
11 ain't got all that, okay.

12 What we've got in this case are the facts that they
13 went down there. They went down there to get that stolen
14 goods. Maybe it had just been stolen. The larceny had
15 just occurred and they're going to get it because when it
16 gets to Mr. Owens house by golly you don't have time
17 because it's gone. Should they have done it that way?
18 Absolutely not.

19 The question is when they went down there did they
20 have intent to commit a crime when they went in.? If
21 they don't have that intent it ain't Burglary 1st. And
22 all these things surrounding the nice little picture
23 around there and all this other stuff and he's guilty and
24 all that stuff; that's fine. But none of that proves
25 what the intent was when they went in. And frankly even

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1 the State doesn't argue with the fact that the smart
2 phone was stolen. Even they don't argue with that. They
3 would say what you've got to do is go down and tell the
4 police and all that sort of stuff; and that's what you're
5 supposed to do or you come to court.

6 And that's the nice thing you got the rarefied
7 atmosphere of this courthouse, nice air conditioning. I
8 remember 47 years ago we didn't have court in the
9 summertime. It was too hot. Air conditioning was just
10 coming in. Now we can have it all year round. We all
11 discuss things but life is not a law school examination
12 question. Life is real people responding to
13 circumstances and sometimes they get themselves cross
14 ways with the law.

15 And that's exactly what happened here. Mr. Russell
16 and Mr. Boling got crossways because they went after the
17 stolen property and they shouldn't have done it the way
18 they did. But when they went in that home and they
19 didn't do it the way they should have done it, but when
20 they went in there they didn't have any intent to commit
21 a crime. But he committed some crimes once he got in
22 there. And that's the -- that's the simplicity of this
23 case. And all the airplanes in the sky and experts from
24 Columbia doesn't change that. Now the Judge is going to
25 tell you about the different kind of evidence. She'll

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1 talk about circumstantial evidence that you can consider.
2 And that's good evidence. You often hear on T.V.
3 circumstantial evidence, it's a circumstantial case it
4 can't be. Well, circumstantial evidence is good
5 evidence.

6 And direct evidence and circumstantial evidence will
7 be defined for you. Direct evidence is if you see
8 something or if you have some direct result from
9 something. Back in 2007 I got me five bypasses and a
10 prescription for Insulin and I'm still going strong. So
11 that's direct evidence that modern medicine really works.

12 Circumstantial evidence would be if someone walked
13 in and they had a wet raincoat and in this building there
14 is no windows. You might say well that's circumstances
15 that indicate it might be raining outside. Listen to
16 what the court says -- tells you. This is a simple case
17 but it's a hard case because the consequences of finding
18 him guilty of Burglary in the 1st Degree is very
19 substantial.

20 And I'm asking you to find him not guilty not out of
21 sympathy, not out of approving of anything this assaults
22 -- if you want to charge him with anything charge him on
23 that because when they went in there to the neighborhood
24 fence with stolen property they didn't have an intent to
25 commit a crime. So that's the reality of life in the

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1 law. Now, I'm going to sit down now in a few minutes and
2 the Judge is -- a couple of seconds here actually, and if
3 I've said or done anything during this short trial that
4 has offended you by all means call me up later on if you
5 want to -- meet me down the road and I'll apologize.
6 I've never had a juror in 47 years hold anything against
7 the lawyer because they got mad at the lawyer.

8 That's why they call it practicing law because we
9 never get it right. I told that to my doctor the other
10 day and he wasn't too amused by that. But anyway I
11 appreciate your attention and I appreciate your
12 consideration. This really, really, really is an
13 important decision to make..

14 And you can decide that gunfire didn't happen and
15 you can decide all these other things. But one big
16 issue you have to decide I think, and I would
17 respectfully submit to you, is the one issue was there an
18 intent to commit a crime when they went in that house;
19 not the method when they went in the house, but with the
20 intent to commit a crime when they went in that house.
21 And I would respectfully submit to you that there wasn't.
22 I thank you for your attention and I'm going to sit down.

23 THE COURT: Does anyone need to use the restroom?
24 You all can stand up if you like to stretch a little bit
25 to get your circulation going. There are no windows in

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1 here which makes it a little -- with this florescent
2 light you may get a little sleepy.

3 [Whereupon, the jurors comply]
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1 THE COURT: During this trial ladies and gentlemen
2 you and I have certain duties to perform. As the trial
3 Judge it is my responsibility to preside over the trial
4 of this case. And I also have the duty to rule upon or
5 pass upon the admissibility of evidence which has been
6 offered during this trial.

7 You are to consider only the competent evidence that
8 is before you. You are to consider only the testimony
9 which has been presented from the witness stand together
10 with any exhibits which have been made part of the record
11 in this case along with any other stipulations of
12 counsel, which have been made a part of the record. And
13 so that you understand a stipulation is an agreement
14 between the attorneys and it requires no further proof.

15 I also have the additional duty to charge or
16 instruct you on the law applicable to this case. As the
17 presiding Judge I am the sole Judge of the law of this
18 case. And it is your duty as jurors to accept and apply
19 the law as I now state it to you. If you have a
20 preconceived idea as to what the law is or what the law
21 ought to be in a case or in this case and it should not
22 agree with what I now tell you the law is you are
23 obligated under your oath to abandon this preconception
24 on your part because you are sworn to accept the law and
25 apply the law precisely as I now state it to you. In

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1 every case tried in this court before a jury the jury
2 becomes the sole and exclusive judges of the facts in a
3 case. You are the judges of the facts in this case.
4 This court is the Judge of the law. The Constitution of
5 our state has declared that a trial Judge shall not
6 intimate, state, comment upon, or make any comment or
7 statement to a trial jury about the facts in a case.

8 Since you, the jury, are the sole judges of the
9 facts in this case you are not to infer anything from
10 what I have said during the progress of this trial and
11 ruling upon the admissibility of evidence or otherwise or
12 anything that I say now to you during the course of this
13 instruction that I have any opinion about the facts.

14 The law does not allow me to have an opinion about
15 the facts. This is a matter solely for you the jury to
16 determine. As jurors then it is your duty, as I have
17 explained, to determine the effect, the value, the
18 weight, and the truth of the evidence presented during
19 this trial.

20 Necessarily you must assess the creditability of
21 witnesses who have testified in this case. Creditability
22 is simply a legalistic term meaning believability. It
23 becomes your duty as jurors to analyze and to evaluate
24 the evidence and determine that evidence which convinces
25 you of its truth. Some of the things you may consider as

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1 you decide whether or not to believe a witness's
2 testimony about a particular matter include, what was the
3 manner and appearance of the witness who testified? Was
4 he or she hesitant or straight forward in answering? Was
5 the testimony of a witness consistent or inconsistent?
6 How did the witness come to know the facts that he or she
7 testified to? Or what was his or her ability to know
8 these facts?

9 Is there some reason a witness would want to give
10 testimony which would help or hurt one side or the other?
11 In other words was the witness biased or prejudiced? And
12 was the testimony of a witness strengthened or weakened
13 by other testimony or evidence? You can believe as much
14 or as little of each witness's testimony as you think
15 proper.

16 I further instruct you that in determining the
17 question of creditability or believability of witnesses
18 who have testified you may believe one witness as against
19 several witnesses or several witnesses as against one
20 witness. You may believe a part of the testimony of a
21 witness and reject the remaining part of the testimony of
22 that same witness. If you have a good and sound reason
23 you may believe the testimony of a witness in its
24 entirety or reject the testimony of a witness in its
25 entirety. You may consider the demeanor of a witness;

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1 that is the appearance and manner of the witness from the
2 witness stand. Throughout this process ladies and
3 gentlemen you have but one objective; to seek the truth
4 regardless of its source. Ordinarily our rules of
5 evidence do not permit witnesses to testify to opinions
6 or conclusions.

7 An exception to this rule exists for witnesses we
8 call expert witnesses. A witness who by their education,
9 training, and experience has become an expert in some
10 art, science, profession, or calling may state an opinion
11 as to relevant and material matters in which the witness
12 claims to be an expert and may also state the reasons for
13 that opinion.

14 You should consider any expert opinion received in
15 evidence in this case like any other evidence; give it
16 the weight you think it deserves. If you decide that the
17 opinion of an expert is not based on sufficient education
18 and experience, or if you conclude that the reasons given
19 in support of the opinion are not sound, or that the
20 opinion is outweighed by other evidence you may disregard
21 the opinion entirely.

22 An expert witness's testimony is to be given no
23 greater weight than that of other witnesses simply
24 because the witness is an expert. Further you are not
25 required to accept an expert's opinion even though it is

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1 not contradicted. I further instruct you that a person
2 who has a past criminal record is competent to testify
3 during a trial. A past record does not affect the
4 ability of that witness to testify. The past record may
5 only be considered by you if at all in determining the
6 witness's believability. Remember ladies and gentlemen,
7 you are the sole judges of the facts in the case and of
8 the believability of any and all of the witnesses.

9 There are two types of evidence which are generally
10 presented during a trial; direct evidence and
11 circumstantial evidence. Direct evidence is the
12 testimony of a person who asserts or claims to have
13 actual knowledge of a fact such as an eyewitness.
14 Circumstantial evidence is proof of a chain of facts and
15 circumstances indicating the existence of a fact.

16 The law makes absolutely no distinction between the
17 weight or value to be given to either direct or
18 circumstantial evidence nor is a greater degree of
19 certainty required of circumstantial evidence than of
20 direct evidence.

21 Ladies and gentlemen you should weigh all of the
22 evidence in this case. After weighing all of the
23 evidence if you're not convinced of the guilt of the
24 defendant beyond a reasonable doubt you must find the
25 defendant not guilty. Conversely, if you are convinced

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1 of the guilt of the defendant beyond a reasonable doubt
2 then you must find him guilty. I instruct you that the
3 fact that the defendant was arrested, charged, and
4 indicted is not evidence in this case and cannot be
5 considered by you as evidence of guilt in this case nor
6 does it create any presumption or inference of guilt.

7 This documentation, ladies and gentlemen is simply
8 the formal written instrument which contains the charge
9 or charges made against a defendant. It serves as the
10 formal documents by which this case is processed or
11 brought into this court. The defendant has pled not
12 guilty to the indictment and that plea casts the burden
13 on the State to prove the defendant guilty because a
14 person charged with committing a criminal offense in
15 South Carolina is never required to prove himself
16 innocent.

17 I instruct you Madame Forelady, ladies and gentlemen
18 that it is a cardinal, an important rule of the law of
19 evidence that the defendant in a criminal trial, no
20 matter what the seriousness of the charge made against
21 him may be, will always be presumed to be innocent of the
22 crime for which he is indicted unless his guilt has been
23 proven by evidence satisfying you of that guilt beyond a
24 reasonable doubt. This presumption of innocence does not
25 cease when you retire to deliberate but it accompanies

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1 the defendant from the time of his appearance throughout
2 this trial until you reach a verdict in this case. Our
3 Supreme Court has said that the presumption of innocence
4 is like a robe of righteousness placed about the
5 shoulders of the defendant and it remains with him and
6 assigns him to that class, the innocent, until that
7 presumptive robe of righteousness has been stripped from
8 his person by evidence satisfying you of that guilt
9 beyond a reasonable doubt.

10 Madame Forelady, ladies and gentlemen the
11 presumption of innocence is not mere legal theory. It is
12 not just a legal phrase. It is a substantial right to
13 which every defendant is entitled unless you, the jury,
14 are satisfied from the evidence of his guilt beyond a
15 reasonable doubt.

16 The State has the burden of proving the defendant
17 guilty beyond a reasonable doubt. Some of you may have
18 served as jurors in civil cases where you were told that
19 it is only necessary to prove that a fact is more likely
20 true than not true such as by the greater weight or
21 preponderance of the evidence.

22 In criminal cases the State's proof must be more
23 powerful than that. It must be beyond a reasonable
24 doubt. Proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced of the defendant's guilt.

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1 There are very few things in this world that we know with
2 absolute certainty. And in criminal cases the law does
3 not require proof that overcomes every possible doubt.

4 If based on your consideration of the evidence you
5 are firmly convinced that the defendant is guilty of the
6 crime charged you must find the defendant guilty. If, on
7 the other hand, you think there is a real possibility
8 that the defendant is not guilty you must give the
9 defendant the benefit of that doubt and find him not
10 guilty.

11 I instruct you and emphasize that the fact that the
12 defendant did not testify is not a factor to be
13 considered by you in any manner whatsoever in your
14 deliberation and in your consideration on the question of
15 the guilt or innocence of the defendant. It must not be
16 considered by you in any manner whatsoever. And I
17 strictly instruct you that it is not to be discussed in
18 the jury room during your deliberations in any manner
19 whatsoever.

20 A defendant has the constitutional right to remain
21 silent and the assertion of this right must not be
22 considered by you in your deliberations. I repeat, under
23 your oath, you are to draw no conclusion whatsoever from
24 the fact that the defendant in this case did not testify.
25 The fact that this defendant did not testify should not

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1 even be discussed in the jury room. The burden of proof
2 as I have stated to you is on the State. The defendant
3 is not required to prove his innocence. The burden of
4 proof remains on the State to prove guilt beyond a
5 reasonable doubt.

6 The defendant is charged with 1st Degree Burglary.
7 The State must first prove beyond a reasonable doubt that
8 the defendant entered a dwelling without consent. A
9 dwelling is any building or portion of a building in
10 which a person ordinarily sleeps. A building constructed
11 as a dwelling that has never been occupied cannot be
12 considered a dwelling for purposes of burglary. But a
13 building is a dwelling even if the residents are
14 temporarily absent from the building.

15 In order to prove that the defendant entered the
16 dwelling the State does not have to show that the
17 defendant's entire body entered the dwelling. The
18 smallest entry is sufficient. It may be any part of the
19 body such as a hand or foot or even an instrument such as
20 a hook or other instrument.

21 In addition the State does not have to prove that
22 force was used to gain entry. If a person enters a
23 building by using deception, artifice, trick, or
24 misrepresentation to get consent to enter this is an
25 entry without consent. Next, the State must prove beyond

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1 a reasonable doubt that the defendant intended to commit
2 a crime either a felony or a misdemeanor at the time of
3 the entry. The mere entry into a dwelling without
4 consent is not burglary.

5 If the intent to commit a crime is formed after the
6 entry, it is not burglary. On the other hand if the
7 defendant intended to commit a crime at the time of the
8 entry it is a burglary even if the intent was abandoned
9 after the entry. It does not matter that the intended
10 crime was not completed. Intent may be shown by acts and
11 conduct of the defendant and other circumstances from
12 which you may naturally and reasonably infer intent.

13 Finally, the State must prove beyond a reasonable
14 doubt one or more of the following -- one of the
15 following: when entering, while in the dwelling, or when
16 fleeing the defendant or accomplice was armed with a
17 deadly weapon or explosive. A deadly weapon is any
18 article, instrument, or substance which is likely to
19 cause death or great bodily harm.

20 Whether an instrument has been used as a deadly
21 weapon depends on the facts and circumstances of each
22 case. The following are examples of instruments which
23 may be deadly weapons: A pistol, a shotgun, a rifle, a
24 dirk, a dagger, a knife, a slingshot, metal knuckles, a
25 razor, gasoline, a fire bomb or Molotov cocktail, and

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1 lighter fluid. A gun may be a deadly weapon even if it
2 is not operating. Ordinary objects may become deadly
3 weapons when the facts show that they have been used to
4 inflict serious bodily harm or death. These are simply
5 evidentiary facts for you to consider and for you, the
6 jury, to give it the weight, value, and effect you decide
7 it should receive.

8 Or when entering, while in the dwelling, or when
9 fleeing the defendant or accomplice caused physical
10 injury to anyone not participating in the crime. Or when
11 entering, while in the dwelling, or when fleeing the
12 defendant or an accomplice used or threatened to use a
13 dangerous object. Or when entering, while in the
14 dwelling, or when fleeing the defendant or an accomplice
15 displayed what was or appeared to be a knife, pistol,
16 revolver, shotgun, rifle, machine gun or other firearm.
17 Or the defendant entered or remained in the dwelling in
18 the nighttime. Nighttime is the period between sunset
19 and sunrise during which there is not enough daylight to
20 recognize a person's face except by artificial light or
21 moonlight.

22 I instruct you that mere presence at the scene is
23 not sufficient to prove someone guilty of a crime. A
24 defendant's presence where a crime is being committed or
25 mere association with a person who commits a crime does

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1 not make a defendant an accomplice or an aider and
2 abettor of the person committing the crime. The burden
3 is on the State to prove every element of the crime
4 charged.

5 If you find after reviewing all the evidence that
6 the State has proved that the defendant was only present
7 at the scene of a crime and that they have not proven
8 beyond a reasonable doubt any other participation in the
9 crime then you must find the defendant not guilty. The
10 law is that proof of at the scene of the crime is not
11 sufficient to find someone guilty.

12 I instruct you ladies and gentlemen that if a crime
13 is committed by two or more people who are acting
14 together and committing a crime the act of one is the act
15 of all. A person who joins with another to commit an
16 unlawful act is criminally responsible for everything
17 done by the other person, which happens as a probable or
18 natural consequence of the acts done in carrying out the
19 common plan and purpose.

20 For example, two people can be guilty of killing
21 another person when only one of the two had a gun, there
22 was only one bullet, and only one of the two fired the
23 shot that caused the death. If two or more people are
24 together, acting together, assisting each other in
25 committing the offense the act of one is the act of all.

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1 As it is said sometimes the hand of one is the hand of
2 all. Prior knowledge that a crime is going to be
3 committed without more is not sufficient to make a person
4 guilty of that crime. Mere knowledge that another person
5 is going to commit a crime even if the defendant is
6 present when the crime is committed is not sufficient to
7 convict the defendant as a principal.

8 Guilt as a principal is shown by actual or
9 constructive presence at the scene as a result of prior
10 arrangement. Therefore a finding of a prior arranged
11 plan or common scheme is necessary for a finding of guilt
12 as a principal. The State must prove beyond a reasonable
13 doubt by competent evidence the theory of the hand of one
14 is the hand of all. A principal in a crime is one who
15 actually commits the crime or who is present aiding,
16 abetting, or assisting in the commission of the crime.

17 When a person doesn't act in the presence of and
18 with the assistance of another the act is done by both.
19 Where two or more acting with a common plan or intent are
20 present at the commission of a crime it does not matter
21 who actually commits the crime; all are guilty. The hand
22 of one is the hand of all. Present at the commission of
23 a crime means to be sufficiently near to aid and abet and
24 assist in the commission of the crime. However, as I've
25 explained, mere presence at the scene of a crime is not

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1 sufficient to convict one as a principal on the theory on
2 aiding and abetting. Intent is also a necessary element
3 for there must have been a common design or intent to
4 commit the crime and the crime must have been committed
5 pursuant thereto with the person aiding and abetting by
6 some overt act.

7 Intent means intending the result which actually
8 occurs, not accidentally or involuntarily. Intent may be
9 shown by acts and conduct of the defendant and other
10 circumstances from which you may naturally and reasonably
11 infer intent. The State must prove these elements beyond
12 a reasonable doubt.

13 The State must also prove identification of the
14 defendant as the person who committed the crime charged.
15 The State has the burden of proving identity beyond a
16 reasonable doubt. You must be satisfied beyond a
17 reasonable doubt of the accuracy of the identification of
18 the defendant before you convict the defendant.

19 Identification testimony is an expression or belief
20 of impression by a witness. You must determine the
21 accuracy of the identification of the defendant. You
22 must consider the believability of each identification
23 witness in the same way as any other witnesses. You may
24 consider whether the witness had an adequate opportunity
25 to observe the offender at the time of the offense. This

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1 will be affected by things like how long or short a time
2 was available. How far or close the witness was the
3 lighting conditions, and whether the witness had the
4 chance to see or know the person in the past. Once again
5 I instruct you the burden of proof on the State extends
6 to every element of the crime charged.

7 And this specifically includes the burden of proving
8 beyond a reasonable doubt the identity of the defendant
9 as the person who committed the crime. If after
10 examining the testimony you have a reasonable doubt as to
11 the accuracy of the identification you must find the
12 defendant not guilty.

13 Ladies and gentlemen during arguments you heard
14 reference or comments referencing a potential penalty or
15 the severity of a potential penalty a person may receive
16 for a crime alleged in the indictment. In determining
17 the guilt or innocence of the defendant you cannot
18 consider any possible penalty for any particular offense.

19 The punishment for the crimes is a matter of law for
20 the court to determine and should never be considered by
21 you in any manner whatsoever in arriving at a fair and
22 impartial verdict as to the guilt or innocence of the
23 defendant. Ladies and gentlemen, there are two possible
24 verdicts in this case. You don't have to try to write
25 this down because the verdict form will go back into the

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1 jury room with you. There is no significance whatsoever
2 to the order in which I state these potential verdicts;
3 it is simply that one must be stated first. And it
4 reads as follows: As to indictment number 2011-GS-10-
5 2405 we, the jury, by unanimous consent find the
6 defendant guilty of Burglary 1st Degree or not guilty.
7 Again, there is no significance whatsoever to the order
8 in which I have stated these potential verdicts. It is
9 simply that one must be stated first.

10 Ladies and gentlemen, your verdict must be a
11 unanimous one, which means that all 12 of you must agree
12 in order to reach a verdict in this case. Madame
13 Forelady, once the jury has reached a verdict it is your
14 responsibility to fill out the verdict form, sign and
15 date the form, and knock on the door and advise the
16 bailiffs that the jury has reached a unanimous verdict.

17 Also, if the jury has any questions during
18 deliberations it is your responsibility to write out
19 those questions and follow the same procedure by knocking
20 on the door and advising the bailiffs that the jury has a
21 question. Ladies and gentlemen, please know that if you
22 have any questions during deliberations there will be a
23 delay in our response because there is a procedure that
24 we have to follow in answering your question. So know
25 that if you have a question I'm telling you in advance

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1 that there will be a delay because there is a process
2 that we have to follow in answering your questions.
3 Again, I instruct you that your verdict must be
4 unanimous, which means that all 12 of you must agree.
5 I'm going to ask that you return to your jury room but do
6 not yet begin your deliberations. I have some very brief
7 matters of law that I have to take up with the attorneys
8 that may require further instruction or clarification of
9 an instruction.

10 However, if there is no further instruction we will
11 send in your notebooks, the verdict form, the evidence
12 and at that time we will excuse the alternate and you
13 will be allowed to begin your deliberations. We have
14 ordered your lunch and it will arrive at 11:30. I just
15 tell you all that for planning purposes. If you will, go
16 with the bailiffs and please leave your notebooks in your
17 seats.

18 [Whereupon, the jury exits at 10:50 a.m.]

19 THE COURT: Any exceptions from the State?

20 MR. FERGUSON: No exceptions from the State, Your
21 Honor.

22 THE COURT: From the defense?

23 MR. RUNYON: No exceptions or additions, Judge.

24 THE COURT: Could you all please make sure all the
25 evidence is in place before the bailiffs take it back.

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1 [Whereupon, counsel review the exhibits with the
2 court reporter]
3 THE COURT: You got everything?
4 CLERK OF COURT: Yes, I've got it; yes ma'am.
5 THE COURT: You got the verdict form?
6 CLERK OF COURT: Yes, ma'am.
7 THE COURT: If y'all could bring out the alternate
8 for me.
9 [Whereupon, evidence out to the jury at 10:50 a.m.]
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1 MR. FERGUSON: Judge, do you mind if we put
2 something on the record to bring it to your attention?

3 THE COURT: Yes, sir?

4 MR. FERGUSON: We are a little concerned about the
5 juror, and I don't have the number in front of me ---

6 THE COURT: --- I've been watching him the whole
7 time. He's just grumpy, he's been listening.

8 MR. FERGUSON: We are -- we noticed his demeanor as
9 well and do think he was listening. We do have an issue,
10 we do think he may have a trouble being fair and
11 impartial or just being a diligent juror.

12 THE COURT: I just think it's a little late for
13 that now because both gentlemen sitting together have
14 been grumpy. It's my understanding they've been grumpy
15 since roll call so y'all should have observed that during
16 jury qualification. They are both over 65 and could have
17 been exempted and chose not to be because they said they
18 wanted to fulfill their civic obligation.

19 You all have exercised preemptory challenges
20 instructive and you had more than -- you had more time to
21 observe him than I did. I have observed all of the
22 jurors. Lots of jurors, especially who wear glasses who
23 are older with this fluorescent light and no natural
24 light in this room often listen with their eyes closed.
25 But he's been listening. I've watched him the entire

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1 time for this very reason because they already alerted me
2 to their disposition. One I have learned, the gentlemen
3 that is in the second to the last seat just has a real
4 wry sense of humor; he really isn't grumpy. This other
5 guy is grumpy.

6 He -- I don't know why he chose to serve but he did
7 when he could have been exempted. And I just have no
8 reason to excuse him at this point or to believe that he
9 can't be fair and impartial. I mean his disposition is
10 what it is and again, y'all had a whole hour and a half
11 to have observed it long before I did.

12 MR. FERGUSON: Thank you, Judge.

13 MR. RUNYON: Judge, for record we don't raise any
14 issue. We chose ---

15 THE COURT: --- I've watched him. He's been
16 listening and when things are interesting he opens his
17 eyes.

18 MR. RUNYON: We chose the bull that we're trying to
19 ride and we got ride it.

20 THE COURT: I think we're sort of -- now if he --
21 and again, I've watched him very closely. If -- you know
22 juries are a funny thing and because I guess I do this
23 about 47 weeks out of 52 if my math is correct or 46 out
24 of 52 every so many weeks we have an odd week with
25 jurors. You know every probably 12th week or so you just

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1 get an odd batch of jurors. You have -- and not all of
2 them are pleasant. And I have found that the least
3 innocuous thing can set a juror off; something that would
4 not bother any of us becomes huge for them. And we just
5 have to roll with it.

6 MR. FERGUSON: And just as a side note I thought
7 that him being 65 and over and choosing to be a juror
8 would be ---

9 THE COURT: --- they both are strange. And I use
10 that word not pejoratively. They just are different and
11 like I said I've had an opportunity to observe one of
12 them and he just has a real wry sense of humor. He
13 really is not grouchy, but the other gentleman he's a
14 little grouchy but I don't think that makes him -- means
15 he cannot be fair and impartial.

16 I've been observing him the whole time and he has
17 been listening. He just listens with his eyes closed.
18 And probably if I could get away with it some days I'd
19 close my eyes because this fluorescent light is very
20 harsh especially when you have to use a computer in
21 addition to it. But he's been listening very intently
22 so.

23 MR. FERGUSON: Thank you, Judge.

24 THE COURT: If I -- if it rose to the level of me
25 really being -- where I really thought he couldn't be

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1 impartial or where I thought he was disruptive I would
2 remove him from the panel. But I think at this point to
3 remove him would be such -- he would really perceive that
4 as us targeting him and I think it would create such a
5 bad -- it would just be really bad good will. I know
6 that's a double negative but ---

7 MR. FERGUSON: --- I understand, Judge.

8 THE COURT: He -- and I've observed him in the jury
9 room with the other jurors and he has been communicative
10 with them. And I was telling them while they were
11 waiting he was congenial with his fellow jurors so I have
12 no reason to believe he wouldn't communicate in terms of
13 deliberations.

14 Now if they tell me that he won't deliberate then
15 that's a whole -- we'll have to cross that bridge when we
16 come to it. But I tend to think he is probably grouchy
17 about everything. I just think it is his natural
18 disposition.

19 MR. FERGUSON: I won't disagree with your ---

20 THE COURT: --- I don't think he is an unpleasant
21 person. I just think he doesn't see the bright side of
22 anything right now.

23 MR. RUNYON: Judge, there is no problem with
24 targeting the juror as long as the juror knows it's the
25 State that wants to cut him.

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1 THE COURT: I just think -- just based on some
2 comments in passing he has made to us I think he just has
3 a heightened sense of -- if we did that he would be like
4 oh, I've been targeted and you just don't want me. And I
5 just think for the system it just would not be a good
6 idea.

7 MR. FERGUSON: Thank you, Judge.

8 THE COURT: And I can't keep our alternate. Once
9 they start deliberating I have to let her go. So we'll
10 just have to ride this one out and see how it all works
11 out. The record should reflect that the jury -- what
12 time did...

13 THE COURT REPORTER: 10:50 is when the evidence
14 went out.

15 THE COURT: 10:50, okay. The jury began its
16 deliberations at 10:50. And just so that you all know
17 their lunch will be here at 11:30. We had some early
18 eaters so I went ahead and ordered their lunch and most
19 of it is cold. But if they are already deliberating then
20 they will be set. And once they get their lunch I'll let
21 you all know so you all can go get something to eat if
22 you would like and I'm going to excuse the alternate.

23 [Whereupon, the alternate juror enters the
24 courtroom]

25 THE COURT: Ma'am, we want to thank you for your

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1 time and your attention to this case. I've watched and
2 you've been attentive, punctual, and very engaged in the
3 proceedings. I hope that jury service even though you
4 have not had the opportunity to deliberate that it has
5 been educational and informative for you.

6 You are -- we would like for you to stay until your
7 lunch arrives and I will have the deputies situate you
8 until it arrives and once it comes you're welcome to stay
9 here and eat if you would like or you are welcome to
10 leave.

11 You are welcome to stay as well if you would like
12 and we will keep you in a separate room and see how it
13 all turns out if you would like to remain for that as
14 well. But if you could accommodate us your lunch should
15 be here by 11:30 and so I'll Mr. Major put you -- yes
16 ma'am?

17 ALTERNATE JUROR: Can I just leave and maybe someone
18 else could take my lunch?

19 THE COURT: Well, I guess we could do that. Yes,
20 we'll accommodate you. Ma'am, you're excused for the
21 week. If you need a work excuse, that will be mailed to
22 you along with your check. But if you need one today
23 just go to the first floor Clerk's Office on the Circuit
24 Court side and any of the deputy clerk's can give you an
25 excuse. Thank you, ma'am. Have a great day.

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1 [Whereupon, the alternate juror is excused at 11:02
2 a.m.]

3 THE COURT: Okay. We'll be at ease until we get
4 further instructions from the jury. And once their lunch
5 arrives I will let you all know. If you all could, give
6 your cell phone numbers to my law clerk please.

7 [Whereupon, court is in recess awaiting word from
8 the jury]

9 THE COURT: The question is the rule of one if one
10 person has a gun both have a gun question mark. We agree
11 this is true but with regard of intent if one person has
12 the intent to use the gun to commit the crime does that
13 intent extend to the other person question mark.

14 That's really a mixed question of law and fact. I'm
15 going to reinstruct them on hand of one. And have the
16 question marked as a court's exhibit.

17 [Whereupon, court's exhibit number 3 is marked by
18 the court reporter]

19 THE COURT: Any exception from the State?

20 MR. FERGUSON: Court's indulgence, Judge.

21 [Whereupon, Mr. Ferguson and Ms. Shealy confer]

22 THE COURT: The simple answer is yes, but I'm not
23 going to factually answer that question for them. They
24 are the fact finders. The instruction answers the
25 question because it instructs them on the hand of one.

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1 But I'm not going to answer a factual question.

2 MR. FERGUSON: Judge, we would ask that you also
3 charge burglary -- recharge burglary as well.

4 THE COURT: That's not what they asked. They asked
5 about the hand of one is the hand of all ---

6 MR. FERGUSON: --- Thank you, Judge ---

7 THE COURT: --- so I'm going to reinstruct on that.
8 I don't think they have any question about burglary.
9 They're trying to figure out accomplice liability.

10 MR. FERGUSON: I understand. Thank you, Judge.

11 THE COURT: And whether the act -- and actually I
12 think the portion of the instruction will answer their
13 question deals with whether you're aiding and abetting,
14 whether you are simply there, or whether you have entered
15 into a conspiracy with somebody to commit an act. Yes,
16 sir?

17 MR. RUNYON: I was just going to object to
18 instructing them on something they didn't ask about.

19 THE COURT: I'm not going to instruct on burglary.
20 Is there any exception to reinstructing on hand of one
21 from the defense ---

22 MR. FERGUSON: --- no, Your Honor.

23 THE COURT: I'm sorry Mr. Ferguson I didn't mean to
24 cut you off -- from the State?

25 MR. FERGUSON: None, Judge.

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1 THE COURT: From the defense?
2 MR. RUNYON: None from the defense, Your Honor.
3 THE COURT: Please bring in the jury.
4 [Whereupon, the jury enters at 12:35 p.m.]
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State v Christopher Boling
Reinstruction to Jury
July 30, 2014

1 THE COURT: Ladies and gentlemen I received your
2 note. The rule of one if one person has a gun both have
3 a gun question mark. We agree this is true. But with
4 regard of intent if one person has the intent to use the
5 gun to commit the crime does that intent extend to the
6 other person.

7 And in response to that question I'm going to
8 reinstruct you on accomplice liability as the court
9 cannot answer factual questions. That is a question that
10 must be resolved within your fact finding province with
11 you all applying the law to the facts as you find them
12 from the evidence. And in response to the question I
13 reinstruct you as follows:

14 If a crime is committed by two or more people who
15 are acting together and committing a crime the act of one
16 is the act of all. A person who joins with another to
17 commit an unlawful act is criminally responsible for
18 everything done by the other person, which happens as a
19 probable or natural consequence of the acts done in
20 carrying out the common plan and purpose.

21 For example, two people can be guilty of killing
22 another person when only one of the two had a gun, there
23 was only one bullet, and only one of the two fired the
24 shot that caused the death. If two or more people are
25 together, acting together, assisting each other in

State v Christopher Boling
Reinstruction to Jury
July 30, 2014

1 committing the offense the act of one is the act of all.
2 Or as it is sometimes said the hand of one is the hand of
3 all. Prior knowledge that a crime is going to be
4 committed without more is not sufficient to make a person
5 guilty of that crime. Mere knowledge that another person
6 is going to commit a crime, even if the defendant is
7 present when the crime is committed, is not sufficient to
8 convict the defendant as a principal.

9 Guilt as a principal is shown by actual or
10 constructive presence at the scene as a result of prior
11 arrangement. Therefore a finding of a prior arranged
12 plan or common scheme is necessary for a finding of guilt
13 as a principal. The State must prove beyond a reasonable
14 doubt by competent evidence the theory of the hand of one
15 is the hand of all.

16 A principal in a crime is one who either actually
17 commits the crime or who is present aiding, abetting, or
18 assisting in the commission of the crime. When a person
19 doesn't act in the presence of and with the assistance of
20 another the act is done by both. Where two or more
21 acting with a common plan or intent are present at the
22 commission of a crime it does not matter who actually
23 commits the crime; all are guilty. The hand of one is
24 the hand of all. Present at the commission of a crime
25 means to be sufficiently near to aid and abet and assist

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Reinstruction to Jury
July 30, 2014

1 in the commission of the crime. However, mere presence
2 at the scene of a crime is not sufficient to convict one
3 as a principal on the theory on aiding and abetting.

4 Intent is also a necessary element for there must
5 have been a common design or intent to commit the crime
6 and the crime must have been committed pursuant thereto
7 with the person aiding and abetting by some overt act.
8 Intent means intending the result which actually occurs,
9 not accidentally or involuntarily.

10 Intent may be shown by acts and conduct of the
11 defendant and other circumstances from which you may
12 naturally and reasonably infer intent. The State must
13 prove these elements beyond a reasonable doubt.

14 Ladies and gentlemen, that concludes the court's
15 instruction in response to your question. If you need
16 anything further, please do not hesitate to let us know.

17 [Whereupon, the jury exits at 12:40 p.m.]

18 THE COURT: Any exceptions from the State?

19 MR. FERGUSON: No, Your Honor.

20 THE COURT: From the defense?

21 MR. RUNYON: Short of getting a directed verdict
22 Judge, no.

23 THE COURT: Okay. We'll be at ease.

24 [Whereupon, court is in recess from 12:40 p.m. until
25 12:59 p.m.]

State v Christopher Boling
Verdict
July 30, 2014

1 VERDICT

2 THE COURT: All right. I've been advised that we
3 have a verdict. Is there anything before we bring in the
4 jury from the State?

5 MR. FERGUSON: Nothing from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. RUNYON: Nothing from the defense, Your Honor.

8 THE COURT: You can go ahead and get the jury for
9 me, Mr. Major.

10 [Whereupon, the jury enters at 1:01 p.m.]

11 THE COURT: Madame Forelady, is it correct that the
12 jury has reached a verdict?

13 MADAME FORELADY: It is correct.

14 THE COURT: If you would, give the verdict form the
15 bailiff for me please.

16 [Whereupon, the Forelady complies]

17 [Whereupon, the bailiff provides verdict form to the
18 court]

19 [Whereupon, the court provides verdict form to the
20 Clerk of Court for publication]

21 THE COURT: Sir, if you would stand for publication
22 of the verdict.

23 [Whereupon, the defendant stands]

24 CLERK OF COURT: The State of South Carolina County
25 of Charleston in the Court of General Sessions for the

State v Christopher Boling
Verdict
July 30, 2014

1 Ninth Judicial Circuit indictment number 2011-GS-10-02405
2 the State of South Carolina versus Christopher Allen
3 Boling. As to indictment number 2011-GS-10-02405 we, the
4 jury, by unanimous consent find the defendant guilty of
5 Burglary 1st Degree. Signed Madame Forelady July 30th,
6 2014.

7 THE COURT: Is there any request to poll the jury
8 from the State?

9 MR. FERGUSON: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RUNYON: Request to poll, Judge.

12 THE COURT: Ladies and gentlemen if you would give
13 the clerk your attention. You may proceed.

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State v Christopher Boling
Polling of the Jury
July 30, 2014

1 POLLING OF THE JURY
2 CLERK OF COURT: Ladies and gentlemen whenever I
3 call out your juror number if you would please first
4 raise your hand signifying that that is you. I will ask
5 you two questions. Please respond to each question
6 appropriately. Starting with Madame Forelady, juror
7 number 133 is this your verdict?
8 MADAME FORELADY: Yes, it is.
9 CLERK OF COURT: Is this still your verdict?
10 MADAME FORELADY: Yes.
11 CLERK OF COURT: Thank you, ma'am. Juror number
12 95. Is this your verdict?
13 MS. FERRELL: Yes.
14 CLERK OF COURT: Is this still your verdict?
15 MS. FERRELL: Yes.
16 CLERK OF COURT: Thank you, ma'am. Juror number
17 34. Is this your verdict?
18 MR. BRADY: Yes, it is.
19 CLERK OF COURT: Is this still your verdict?
20 MR. BRADY: Yes, it is.
21 CLERK OF COURT: Thank you. Juror number 120. Is
22 this your verdict?
23 MR. GARRAUX: Yes, it is.
24 CLERK OF COURT: Is this still your verdict?
25 MR. GARRAUX: Yes, it is.

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Polling of the Jury
July 30, 2014

1 CLERK OF COURT: Thank you. Juror number 245. Is
2 this your verdict?
3 MS. MOLINOFF: Yes, it is.
4 CLERK OF COURT: Is this still your verdict?
5 MS. MOLINOFF: Yes, it is.
6 CLERK OF COURT: Thank you. Juror number 119. Is
7 this your verdict?
8 MS. GARLAND: Yes, it is.
9 CLERK OF COURT: Is this still your verdict?
10 MS. GARLAND: Yes, it is.
11 CLERK OF COURT: Thank you. Juror number 397. Is
12 this your verdict?
13 MS. WOODWARD: Yes.
14 CLERK OF COURT: Is this still your verdict?
15 MS. WOODWARD: Yes.
16 CLERK OF COURT: Thank you. Juror number 255. Is
17 this your verdict?
18 MS. MYATT: Yes.
19 CLERK OF COURT: Is this still your verdict?
20 MS. MYATT: Yes.
21 CLERK OF COURT: Thank you. Juror number 999.
22 MR. WALDREP: Yes.
23 CLERK OF COURT: Is this your verdict?
24 MR. WALDREP: Yes.
25 CLERK OF COURT: Is this still your verdict?

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Polling of the Jury
July 30, 2014

1 MR. WALDREP: Yes.
2 CLERK OF COURT: Thank you very much, sir. Juror
3 number 7. Is this your verdict?
4 MR. AZZOLINO: Yes.
5 CLERK OF COURT: Is this still your verdict?
6 MR. AZZOLINO: Yes.
7 CLERK OF COURT: Thank you. Juror number 140. Is
8 this your verdict?
9 MR. HALL: Yes.
10 CLERK OF COURT: Is this still your verdict?
11 MR. HALL: Yes.
12 CLERK OF COURT: Thank you. Juror number 217. Is
13 this your verdict?
14 MR. LUCAS: Yes.
15 CLERK OF COURT: Is this still your verdict?
16 MR. LUCAS: Yes.
17 CLERK OF COURT: Your Honor, the jury has been
18 polled and the verdict stands.
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State v Christopher Boling
Proceedings
July 30, 2014

1 THE COURT: Ladies and gentlemen, we thank you for
2 your time and your attention to this case. We know that
3 jury service is thankless in some ways. I'm almost
4 embarrassed at what the level that we compensate jurors
5 for your service to us, which I really don't have any
6 words to tell you how really very valuable it is to us.
7 Charleston County is one of the busiest counties in the
8 State ranking only second, well probably neck and neck
9 with Richland County, which is Columbia and Greenville
10 County, which is in the upstate.

11 We hold jury trials an average of 46 weeks out of
12 the year and we generally have four trial courts
13 operating. In this building we usually have four Family
14 Courts that operate every day, the Master in Equity,
15 several Probate Courts as well as the Circuit Courts. So
16 as you can well imagine it is a very busy courthouse. We
17 transact a whole lot of business.

18 Just so that you know South Carolina has one of the
19 largest case filings per capita in the nation at 5,000
20 cases per Judge. We have 49 Circuit Judges whose job it
21 is to rotate throughout the state and hear cases.
22 Pursuant to our Constitution we are supposed to travel in
23 another circuit January through June and then we return
24 home July through December. But because of significant
25 deficits at some point we suspended travel but we have

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1 resumed limited travel about a week a month, which really
2 is in my estimation the perfect balance. I was never a
3 big fan of being away from home for six months at a time,
4 which meant we were only home basically on Fridays and
5 then we had to leave again on Sunday.

6 Although I liked -- I've seen probably I think I've
7 held court in every county in South Carolina with the
8 exception now of about three or four. So there are many
9 counties that I never would have seen and I'm grateful
10 for that experience but there is nothing like your own
11 house as I'm sure you all would well imagine.

12 But I give you that information just anecdotally so
13 that you can know that even though there are many cases
14 that we hear in a non-jury capacity in other words where
15 the court is the fact finder and we make the decision in
16 motions and other non-jury trials and appeals. But the
17 majority and the bulk of our work requires citizens to
18 sit as fact finders and apply the law to those facts and
19 render verdicts.

20 Our system is the only kind of its nature in the
21 world. It's the only system where 12 individuals
22 determine the facts in a case and render verdicts. So I
23 hope that you've learned through this process that real
24 court is nothing like what you see on television. It's
25 nothing like Judge Judy, Judge Mathis, Judge Joe Brown,

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1 the People's court and I hope you know how very valuable
2 you are to us as we would not be able to dispose of the
3 majority of our docket without you really being able and
4 willing to donate your time to us.

5 You are welcome to discuss this case if you would
6 like but I would ask that you not do that until after
7 Friday when the entire panel is dismissed. By the same
8 token you don't have to discuss the case. Often times
9 lawyers will contact you because they'd like to know how
10 they could do something a little better.

11 That's why we call it the practice of law because
12 it's never perfected. Every day you're practicing a
13 little more to become more proficient at your vocation.
14 So do not be surprised if anyone contacts you to get your
15 feedback on how they performed on otherwise.

16 We will destroy your notes. The bailiffs are adept
17 at that; we do it all the time. So you don't have to
18 worry about your privacy. We will destroy those. And
19 you are welcome to stay for sentencing if you would like.
20 If you would like to do that you can just remain in the
21 jury box once I excuse you. If you don't, of course, you
22 are welcome to be dismissed at this time and you're
23 dismissed for the remainder of the week. Again, we give
24 you our profound thanks for your service and for your
25 patience with us during this week. And we'll have

State v Christopher Boling
Proceedings
July 30, 2014

1 sentencing and post-trial motions in a moment.

2 [Whereupon, the jury is excused and exits at 1:08
3 p.m.]

4 THE COURT: Do you have the sentencing sheet?

5 MR. FERGUSON: I have it, Your Honor. May I
6 approach?

7 [Whereupon, Mr. Ferguson provides document to the
8 court]

9 THE COURT: Mr. Runyon, are there any post-trial
10 motions?

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State v Christopher Boling
Motion for Directed Verdict
July 30, 2014

1 MOTION FOR DIRECTED VERDICT

2 MR. RUNYON: Your Honor, we would renew our motion
3 for directed verdict essentially the same grounds that we
4 argued on two previous occasions, Judge, as it relates to
5 testimony as to the crucial element and the statutory
6 offense of burglary that is with the intent to commit a
7 crime therein. We think the testimony failed in that
8 regard and we renew that motion for a directed verdict
9 and judgment notwithstanding the verdict of the jury.

10 THE COURT: Would the State like -- oh, I'm sorry;
11 I didn't mean to interrupt you. Is that the totality of
12 the motion or was there more?

13 MR. RUNYON: That's the totality, Judge and we're
14 renewing. I know the court is familiar with the argument
15 we previously made.

16 THE COURT: Yes, sir?

17 MR. FERGUSON: Judge, the State would just rely on
18 its arguments made previously and the court's reasoning
19 as previously stated on the record.

20 THE COURT: The court would incorporate its
21 previous findings on the motion denying the motion for
22 directed verdict as we know the standard is considering
23 the evidence in the light most favorable to the State and
24 whether there is direct or substantial circumstantial
25 evidence reasonably tending to prove the defendant's

State v Christopher Boling
Motion for Directed Verdict
July 30, 2014

1 guilt. There is certainly direct and substantial
2 circumstantial evidence and the jury found beyond a
3 reasonable doubt the defendant guilty on the crime of
4 Burglary in the 1st Degree.

5 There is evidence that he entered the dwelling, not
6 only in the testimony of the victim in this case, but
7 also on his direct admission against interest in the
8 phone recordings from the jail that he did, in fact,
9 enter a dwelling, that he entered it without consent, and
10 that he did intend to commit a crime therein.

11 Whether it is a felony or misdemeanor his direct
12 admission is that he entered whether it was to retrieve a
13 stolen cell phone or not he entered it with the intent to
14 assault a person who was on the premises of the victim's
15 -- on the premises of Mr. Owens.

16 In addition to that there is direct testimony of Mr.
17 Owens who articulated that which really sort of I don't
18 know I guess it muddles the issue of what the true intent
19 was, whether it was to get this cell phone or whether it
20 was in fact to assault the owner of the premises, that
21 being Mr. Owens and to riffle through or steal items from
22 his residence and that being the testimony of the second
23 entry where the door was kicked in and then the assault
24 took place upon the occupants of the trailer. And there
25 was certainly direct testimony supported -- required by

State v Christopher Boling
Motion for Directed Verdict
July 30, 2014

1 the statute that being and under the theory of accomplice
2 liability hand of one is the hand of all that under
3 subsection 1(a) when entering, while in the dwelling, or
4 when fleeing the defendant or an accomplice was armed
5 with a deadly weapon or explosive as there was testimony
6 regarding a gun being pointed at Mr. Owens.

7 Also, ordinary objects that being the axe handle
8 that could be considered a deadly weapon even though it
9 is what we would consider an ordinary object not
10 necessarily used to cause great bodily harm or death --
11 serious bodily harm or death. 1(c) of the statute when
12 entering, while in the dwelling, or when fleeing the
13 defendant or an accomplice used or threatened to use a
14 dangerous object under accomplice liability that was
15 established in the direct testimony of Mr. Owens where he
16 testified he was threatened with a gun.

17 And 1(d) when entering, while in the dwelling, or
18 when fleeing the defendant or an accomplice displayed
19 what was or appeared to be a knife, pistol, rifle,
20 revolver, shotgun, machine gun or other firearm.

21 And certainly of subsection (3) of the statute which
22 is that he entered or remained in the dwelling in the
23 nighttime. And there was sufficient evidence of
24 accomplice liability that being the hand of one the hand
25 of all is that they collaborated to carry out a common

State v Christopher Boling
Motion for Directed Verdict
July 30, 2014

1 plan, purpose, or scheme prior to entering the residence.
2 And he is certainly responsible under that theory as a
3 principal of all of the results that followed that prior
4 arrangement, which happened as a probable or natural
5 consequence of the acts done in carrying out the common
6 plan and purpose. Therefore, the motion is denied.
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State v Christopher Boling
Sentencing
July 30, 2014

SENTENCING

THE COURT: Does the State have anything it wishes to present -- and I have his prior record. Is there anything that the State needs to add to that? I have a 2002 Criminal Domestic Violence, a 2003 Assault and Battery of a High and Aggravated Nature, and Malicious Injury to Personal Property, and a 2005 Simple Assault. Is that the extent of his record or is there more that I need to be made aware of?

MR. FERGUSON: That is the extent of his record, Judge. There is a little bit of background that we would like to share with the court.

THE COURT: Sure.

MR. FERGUSON: This happened on January 1, 2011. And after this defendant and the co-defendant were on the news a man named Richard Alan Woods also called the police and reported a burglary on the same night in the same style. Somebody had busted -- he actually told officers that this defendant and co-defendant had come into that trailer before and assaulted Mr. Woods.

As a result he was also charged with that Burglary 1st as well. However, Mr. Richard Woods had died of unrelated medical issues so the State was forced to dismiss that charge. And that's only given as background as to what this entire night was like. Deputy Buening

State v Christopher Boling
Sentencing
July 30, 2014

1 is here. I'm unaware if he wants to speak but if he
2 would at this time if he would like to address the court
3 we would ask your permission.

4 THE COURT: Sure. Sir, I'll be glad to hear from
5 you.

6 DEPUTY BUENTING: Yes, ma'am. I would just like to
7 advise the court that Mr. Boling did not have to shoot at
8 me that night. Him and his accomplice were willing to
9 take my life to flee the scene and I would like you to
10 take that into consideration before sentencing.

11 THE COURT: Thank you, sir.

12 MR. FERGUSON: Your Honor, also ---

13 THE COURT: --- by all accounts however it was the
14 co-defendant that shot at this officer, correct ---

15 MR. RUNYON: --- that's correct, Your Honor ---

16 THE COURT: --- that being Mr...

17 MR. FERGUSON: That is correct, Judge.

18 THE COURT: Although under accomplice liability he
19 is responsible because you should know when you're
20 dealing with somebody that has a gun that they are
21 prepared to use it. And we all know that you cannot
22 anticipate where a bullet will land once it is expelled
23 from a projectile.

24 MR. FERGUSON: Judge, also Mr. Owens is present and
25 he indicated he would just like to make a brief

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1 statement.

2 THE COURT: Yes sir, I'll be glad to hear from you.

3 MR. OWENS: Ma'am, I've known this boy since he was
4 a little boy. I know his family. Please be lenient on
5 him.

6 THE COURT: I'm sorry; I didn't hear you sir. You
7 were muffled. I couldn't hear the last of what you said
8 to me.

9 MR. OWENS: If you could Your Honor, be lenient on
10 him.

11 THE COURT: I still -- I'm sorry; I still didn't
12 hear you.

13 MS. SHEALY: He said if you could please be lenient
14 on him.

15 THE COURT: Thank you, sir. I appreciate your
16 concern and your candor with the court. Anything further
17 from the State?

18 MR. FERGUSON: Nothing from the State, Judge.

19 THE COURT: Mr. Runyon, I'll be glad to hear from
20 you.

21 MR. RUNYON: Your Honor, I would respectfully
22 suggest that the court not take into consideration the
23 rendition of the State as it relates to Mr. Wood. That's
24 not a conviction. There is no one alive to testify to
25 that. And that was merely put in the record to poison

State v Christopher Boling
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1 the well. Now having said that, Mr. Boling is present.
2 He has a young child, his wife, his mother, and father
3 and brother are in the court today, Judge -- excuse me,
4 his grandmother. He's been a lifelong resident of
5 Charleston County. He's not -- his prior record is not
6 such that would indicate that he would -- that this was
7 more than what, in fact, they said it was; retrieving a
8 cell phone but that's ---

9 THE COURT: --- they ---

10 MR. RUNYON: --- the jury has spoken. The jury has
11 spoken and we don't argue with that.

12 THE COURT: Does he have any drug addiction? Did
13 the co-defendant have any other drug addictions?

14 MR. RUNYON: I don't know about the co-defendant
15 Judge. He works. He works in construction. He might
16 drink a little bit too much beer from time to time ---

17 THE COURT: --- but no addictions?

18 MR. RUNYON: No addictions.

19 MR. FERGUSON: Judge, in order for clarification we
20 have met with Mr. Boling and he has admitted that he is a
21 drug addict. He has used crack cocaine and other drugs.
22 He also admitted that when he gave his statement on
23 January 1st. So it's the State's position that he is a
24 drug addict.

25 [Whereupon, Mr. Runyon confers with his client]

State v Christopher Boling
Sentencing
July 30, 2014

1 MR. RUNYON: And since that time he has been to
2 rehab ---

3 THE COURT: --- I mean -- I guess I'm not talking
4 about currently. I mean previously because this -- I
5 been doing this a long time and you know how it is, and
6 people just don't -- I can look at your client and tell
7 from objective signs that there is some level of or
8 previously -- and I don't mean that pejoratively in any
9 sense. You know as a Judge there is just objective
10 things that I can see that tell me --- and I ask that in
11 case he wants to get treatment at the institution; not to
12 hold it against him. In fact that would be mitigation to
13 some extent.

14 MR. RUNYON: Well Judge, he'd indicated after
15 talking with the State in the past he in fact went to
16 rehab for some dealings with drugs. But as a practical
17 matter his major addiction, if it is an addiction, is
18 alcohol.

19 THE COURT: Well, that's an addiction.

20 MR. RUNYON: And so the simple fact is although ---

21 THE COURT: --- when I say drugs I mean -- some
22 people separate the two. Anything that impairs the mind
23 and is an intoxicant that has the ability to alter your
24 perception and your reality is a drug. So even though
25 it's legal it still has the ability to alter your

State v Christopher Boling
Sentencing
July 30, 2014

1 perception so when I say that I'm talking about alcohol,
2 not necessarily crack cocaine, marijuana, or any of that.

3 MR. RUNYON: And we include that even though the
4 United States Supreme Court in years past has handed down
5 some decisions which they've dealt fairly lightly with
6 alcohol.

7 THE COURT: Well, as we know it can destroy a life
8 very easily.

9 MR. RUNYON: That's correct. And so, Your Honor,
10 Mr. Owens has said he would like you to be as lenient as
11 possible. Under the circumstances, of course, a
12 conviction of Burglary 1st is as serious as a heart
13 attack as I said and your limitations are fairly...

14 THE COURT: They're very stringent.

15 MR. RUNYON: Stringent. But we would ask the court
16 to be as lenient as possible. Over in Federal Court I
17 would say give us the bottom of the guidelines. And over
18 here I would ask the court to give us the bottom of the
19 statutory authority that the court has.

20 THE COURT: And just so that we are all clear the
21 offense of Burglary in the 1st Degree is considered and
22 classified as most serious and violent. It is served at
23 85 percent almost day for day. The minimum is 15 years
24 and the maximum is life of which no portion of that can
25 be suspended nor probation given. Is that correct?

State v Christopher Boling
Sentencing
July 30, 2014

1 MR. RUNYON: That's correct, Your Honor.

2 THE COURT: Okay. Anything further from the
3 defense?

4 MR. RUNYON: No, Your Honor. We just submit
5 ourselves to the mercy of the court.

6 THE COURT: Anything further from the State?

7 MR. FERGUSON: No, Your Honor.

8 THE COURT: Sir, if you would stand for sentencing.

9 [Whereupon, the defendant stands]

10 THE COURT: The court has given consideration to
11 many factors. Again, I ask questions of the defense
12 because I -- not to punish the defendant but to have a
13 clear picture as to exactly what the circumstances were
14 because there are some things that would rise to the
15 level of mitigation. How old is your client again, Mr.
16 Runyon?

17 MR. RUNYON: He just turned 30, Judge. I was going
18 to say he was 29 but he just turned 30.

19 THE COURT: I want to make sure I was accurate.
20 How old is his child?

21 MR. RUNYON: He has an eight year old and a six
22 month, Judge.

23 THE COURT: There are some things that the court
24 has given mitigation -- substantially I've given
25 mitigation to the statement of the victim in this case,

State v Christopher Boling
Sentencing
July 30, 2014

1 which is very rare that the court has victims who come to
2 the court and ask for leniency and not for the maximum
3 penalty. And I appreciate his candor with the court;
4 even in light of what happened to him because I could not
5 imagine anything more egregious than the peace and
6 quietude of your home being disturbed and being disturbed
7 so violently. So Mr. Owens the court appreciates your
8 candor and the state of your heart really in being so
9 very candid with the court.

10 Based on what has been presented and based on his
11 prior criminal record as well as other mitigating factors
12 the court has considered sir, you are sentenced to the
13 State Department of Corrections for a period of 15 years.
14 You will get credit for any time that you've served to be
15 calculated and applied by the Department of Corrections.
16 I've ordered the A-T-U if it is available to you so that
17 you can get treatment for any issues that you may have
18 regarding any substances.

19 MR. RUNYON: Thank you very much, Your Honor.

20 THE COURT: Thank you very much.

21 MR. FERGUSON: Thank you, Judge.

22 THE COURT: Thank you all very much.

23 [Whereupon, the jury trial concludes at 1:25 p.m.]
24
25

State v Christopher Boling
Certificate of the Court Reporter
July 30, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 30th day of July, 2014.

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

October 6, 2014



Joyce C. Rueger, CVR-M

Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONChristopher Allen Boling #360859
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2015-CP-10-4672
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2015 AUG 21 PM 2:53
JULIE J. ARMSTRONG
CLERK OF COURTINSTRUCTIONS - 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 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.

- McCormick C.I. 386 Redemption Way
1. Place of detention McCormick SC 29899
 2. Name and location of Court which imposed sentence Charleston County S.C.
 3. Name(s) of co-defendant(s) (if any) Kevin Russell
 4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-10-2405 / Burglary 1st degree
 - (b) _____
 - (c) _____
 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 30 2014 / 15 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 29, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2015-CAP-374
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N
- (b) _____
- (c) A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of trial counsel
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
 (b) See attached sheets 1-4
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? 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. Appeal
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. S. C. Court of Appeals
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Denied
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. July 29, 2015

ii. _____

iii. _____

iv. _____

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

i. 2015-WP-374

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. N | _____

ii. _____

iii. _____ A

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

i. N | _____

ii. _____

iii. _____ A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) See ground 10; Applicant first time presenting ground

(b) _____

(c) _____

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

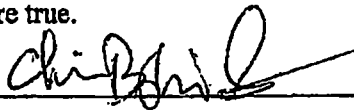
- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you: 29407
- i. William Runyon #3 Ganecock Ave Suite 303 Charleston SC
- ii. Robert M. Pachak 1330 Lady Street suite 401 P.O. Box 11589
Columbia SC 29201-3332
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
New trial and or any other relief that I am entitled to
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of McCormick)Christopher Allen Boling)

VERIFICATION

I, Christopher Allen Boling, 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.



SWORN to and subscribed before me this 14
day of August, 2015.

J. Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

Christopher Allen Boling
I, 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.

Chi Boling
Applicant

SWORN or affirmed to and subscribed before me this

14 day of August, 2015.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Per the Bill of Rights to the Federal Constitution I were denied the right to effective assistance of counsel.

thereby. my conviction and sentence violates the Constitutions and laws of the United States, as guaranteed by the 6th and 14th Amend. Also see S. C. Const. Article 1 Sec 3 and Sec. 14 and Strickland v Washington
104 S. Ct. 2052

Counsel William Runyon acts and or omissions including but not limited

to - failed to properly research
and investigate my facts and laws
surrounding my case and trial.

Where counsel had a DUTY to
conduct a reasonable investigation

SEE: State v Williams 485 S.E.2d 99.

Faretta v California 422 U.S. 806; Pauling

v State 503 S.E.2d 468; Thomas v State

417 S.E.2d 531; Ingle v State 560

S.E.2d 401; Martinez v State 403

S.E.2d 113 and Brier v State 384

S.E.2d 772.

Which I will prove this and more
per. the second point of Strickland, by
the preponderance of the evidence

With the aid of P.C.R. Counsel SEE:

S.C.R. Civil P. Rule 71.1 (d) and Rule 407 of the Rules of Professional conduct

Also see: Frasier v State 570 SEd 172.

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

Thereby. I am entitled to a FULL and FAIR P.C.R. evidentiary hearing SEE: Shaffer v State 305 SEd 247; Odom v State 523 SEd 753. And a

ruling on all my issues SEE: SC. Code
Ann § 17-27-80: Marler v State 653
Serd 266 and Bostick v Stevenson 589
F3d 164.

Date aug 14 2015 Respectfully submitted
s/ Christopher Bony

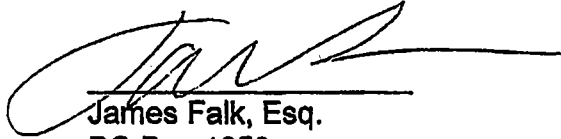
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
	)	
CHRISTOPHER BOLING	)	
Applicant	)	2011-CP-10-2405
vs.	)	
	)	
State of South Carolina	)	AMENDED APPLICATION FOR
Respondent,	)	POST-CONVICTION RELIEF
	)	

TO: Alicia Olive, Esq., Office of SC Attorney General, PO Box 11549,
Columbia, SC 29211-1549.

Applicant, by counsel, amends his response to questions 10 & 11 of his previously filed application for Post-Conviction relief. In addition to those grounds set forth in his original Application, Applicant also asserts:

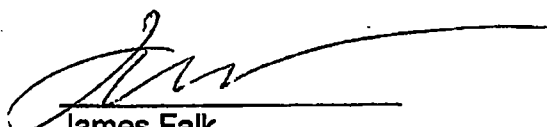
1. Trial counsel failed to call witnesses whose testimony would have exculpated Applicant, namely Samantha Keith, Thomas Dempsey, and or Nick Chavis.
2. Trial counsel failed to advise applicant of his potential exposure under the "hand of one hand of all jury charge" thereby misadvising him whether he should reject the state's plea offer.
3. Trial counsel failed to object to the "hand of one hand of all" jury charge.
4. Trial counsel failed to seek a charge to a lesser included offense.

Respectfully Submitted,


James Falk, Esq.
PO Box 1058
Charleston, SC 29402
(843) 606- 6007
(843) 972 9005 fax
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on January 4, 2016 a copy of the above was deposited in the US Mail to the above named party at the above identified address. Additionally, undersigned certifies that a copy of the above was sent via email to the above named at aolive@scag.gov.


James Falk

FILED

2017 JAN -4 PM 12:44

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Christopher Allen Boling, #360859,

2015-CP-10-4672

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on August 21, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the April 2011 term of the Charleston County Grand Jury for Burglary, 1st degree (2011-GS-10-2405). William Runyon, Esquire, represented him. On July 28, 2014, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for fifteen (15) years.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Boling, Op. No. 2015-UP-374 (filed on July 29, 2015). The Remittitur was issued on August 14, 2015.

II.

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

1. "Ineffective Assistance of Trial Counsel"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

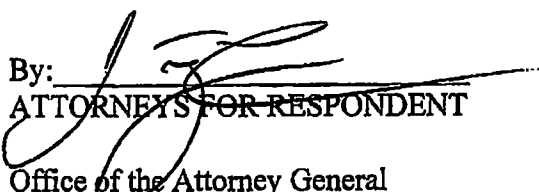
ALAN WILSON
Attorney General

JOHN W. McINTOSH

Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

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

June 2, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2015-CP-10-4672

CHRISTOPHER ALLEN BOLING,
#360859)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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(s) by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Post Office Box 1058
Charleston, South Carolina 29402

DATED this 2nd day of June, 2016.


Brianna Arnone, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3) Case No. 2015-CP-10-4672
4)
5 CHRISTOPHER BOLING,)
6 Applicant,)
7 vs.) Transcript of Record
8 STATE OF SOUTH CAROLINA,)
9 Respondent.) DATE: January 11, 2017
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

B E F O R E:

THE HONORABLE WILLIAM SEALS

A P P E A R A N C E:

JAMES FALK
Attorney for the Applicant

ALICIA OLIVE
Attorney for the Respondent

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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1 THE COURT: Call your next case whenever you are
2 ready.

3 MS. OLIVE: Thank you, Your Honor. This is the case
4 of Christopher Boling, 2015-CP-10-4672. Mr. Boling was
5 indicted in April of 2011 for burglary in the first degree.
6 He was represented by William Runyon on that charge.

7 On July 28th, 2014, he proceeded to a jury trial,
8 after which he was found guilty. Judge Jefferson sentenced
9 him to 15 years. A notice of appeal was filed on his behalf
10 and the appeal was perfected pursuant to Anders vs.
11 California. South Carolina Court of Appeals dismissed his
12 conviction -- or, excuse me, dismissed his appeal. And that
13 was in an order dated July 29th, 2015. The remittitur was
14 issued on August 20th, 2015. He filed this application for
15 post-conviction relief on August 21st, 2015, alleging
16 ineffective assistance of counsel.

17 Your Honor, he also filed an amended application for
18 post-conviction relief setting forth four grounds of
19 ineffective assistance of counsel. Your Honor, it's my
20 understanding that the first ground regarding the failure to
21 call several witnesses is being withdrawn.

22 Mr. Boling is present in the courtroom today
23 represented by James Falk. I will turn it over to Mr. Falk
24 at this time.

25 THE COURT: All right. Mr. Falk.

1 MR. FALK: At this time, I would like to call
2 Mr. Runyon to the stand.

3 WILLIAM RUNYON,
4 having been duly sworn, testifies as follows:

5 THE CLERK: Sir, for the record, if you will please
6 state your name, spelling your last name.

7 THE WITNESS: My name is William L. Runyon, Jr.,
8 R-u-n-y-o-n.

9 DIRECT EXAMINATION

10 BY MR. FALK:

11 Q. Mr. Runyon, could you please tell me when you were
12 retained in this case?

13 A. Mr. Boling came to my office. I'm not sure how he
14 got there, referred him or what have you, but it was some
15 time after the 1st of July. This case went to trial on July
16 28th. And we had discussed the case. And I, quite frankly,
17 found a young man who was without counsel, who was mandated
18 to go to trial on the 28th. And I told him he was in serious
19 trouble and he needed to think about what he was going to do,
20 because I didn't think he was capable of handling the case
21 himself, and if he had a plea offer or whatever, he might
22 want to take it, things of that sort.

23 I filed the motion for discovery, I believe, on the
24 14th of July. So sometime between, let's say, July 5th or
25 6th and the 14th, Mr. Boling partially retained me. He paid

1 \$1,000 or so down against a \$3,500 minimum retainer, which I
2 reluctantly took the case on, somewhere in that neighborhood.

3 Q. So how long was that before trial?

4 A. I had the parameters before trial was about 20 days,
5 quite frankly.

6 Q. Okay. And what did you do to investigate the case?

7 A. Well, first of all, I sat down with Mr. Boling and I
8 went over everything he said, he could tell me. I then -- of
9 course, I filed for discovery. And Mr. Ferguson promptly
10 provided discovery to me. Mr. Boling indicated that he
11 wasn't -- he had a lot of drugs and alcohol in him that day,
12 so he wasn't very familiar with what was going on.

13 I went to the scene. And it was on a Sunday. I
14 went to the scene to familiarize myself with the scene. We
15 didn't have enough money to hire an investigator, that sort
16 of thing.

17 The mobile home was -- this was out on Johns Island.
18 These are not suburban lots. These are rural lots. Mobile
19 home is located, as you look at the area, to my right. And
20 then there was about a couple hundred feet at least, Ms.
21 Culver's house. And next to hers, there was a house with a
22 fenced-in yard. And I don't recall whether it was chain-link
23 fence or whatever. They had a goat in the yard.

24 And I familiarized myself with the scene, because,
25 as a practical matter, it was -- there was an allegation that

1 in fleeing, someone shot at a deputy. Mr. Russell allegedly
2 had shot at the deputy and Mr. Boling had run into the woods.
3 Mr. Russell had run into another section of woods. And so
4 the physical layout was kind of important to just be familiar
5 with.

6 I wasn't happy about having to do this, but he was
7 standing on the tracks and the train was coming down on the
8 tracks, and I reluctantly took the case, but investigated the
9 scene. I talked extensively with Mr. Ferguson about possibly
10 getting some sort of arrangement for Mr. Bolong.

11 Q. By arrangements, you mean plea?

12 A. Plea, yes. In discovery, I received a memorandum of
13 an uncounseled interview he had with the solicitor's office
14 on 6/16/14. In that interview, he was not very forthcoming.
15 I shouldn't say wasn't forthcoming, because I think he was
16 trying to be forthcoming. But he indicated he had lots of
17 drugs or alcohol that day, and he just didn't remember a lot
18 of things.

19 Things he was very familiar with or that he was very
20 certain about was that Mr. Russell -- he never saw
21 Mr. Russell with a gun and he never heard any shots, and that
22 they had been left (sic) into the house -- led into the house
23 voluntarily. That was his position.

24 That became important because whether or not it's a
25 burglary case, whether or not there was a breaking with

1 attempt to commit a crime therein, basically, the position
2 was, they went over there to get Mr. Russell's cell phone.
3 Somebody had taken it from Mr. Russell. So this is not your
4 classic burglary where somebody broke in to steal something.

5 And once they got in, according to Mr. Boling and
6 according to some of the indicators, that's when an
7 altercation occurred, supposedly spilled outside and went
8 back into the house. And it was a nice question for a law
9 school, criminal law class to answer on a test, for example.

10 Q. Why do you say that?

11 A. Well, because assuming that you were given access to
12 the house voluntarily, you did not have an intent to commit a
13 crime when you entered, and then you started getting into a
14 fight, an altercation over the cell phone, and y'all spill
15 out into the backyard, and then you chase somebody back into
16 the house, is that an intent to knock open the door? Is that
17 a breaking in to commit an assault, that sort of thing?

18 Basically, it was clear that this wasn't your
19 typical burglary case. Also was clear from talking with
20 Mr. Ferguson that the real import of this case was the fact
21 that the deputy apparently had been shot at when people were
22 fleeing. That was the crux of it. If the deputy had not
23 been shot at -- at least that was the allegation. And I
24 believe the deputy was telling the truth, but there was all
25 sorts of questions about whether or not that actually

1 happened, because this is rural Johns Island. It was New
2 Year's Eve. Actually, it was New Year's morning the whole
3 thing shook out. And if you've ever been on Johns Island on
4 New Year's Eve, you know there's more than fireworks set off
5 there from time to time. So there was perhaps a serious
6 question as to whether or not the deputy was, in fact, shot
7 at.

8 Mr. Boling had not been offered a plea. As a matter
9 of fact, the memorandum that I got in discovery, which I
10 found strange to get it, because the solicitor's office here,
11 a lot of the solicitors take very narrow reading of *Brady*.
12 This was a memorandum by an intern who at the end of the
13 memorandum says: Megan wonders why offer not made to Boling.
14 Not fair to give Russell offer. Boling wants offer, not
15 trial. They hadn't made him an offer of any kind.

16 Then, apparently, Mr. Boling, in talking to the
17 solicitor's office, they said, well, if you can testify about
18 the gun and -- truthfully, that is, they weren't asking him
19 to lie, I'm not suggesting that -- if you can testify
20 truthfully about the gun that Mr. Russell had and the shots
21 fired and that you heard the shots, we can make you some sort
22 of an offer. They were talking about 15 years, what have
23 you, which was still pretty steep.

24 Mr. Boling had apparently aggravated the solicitor's
25 system by changing counsel and what have you. He appeared

1 before Judge -- his consultation with the solicitor's office
2 had resulted in him being taken before Judge Young, who I
3 believe was the administrative judge at the time. And Judge
4 Young, who, if you know him, if you turn to the chapter on
5 judicial temperament, his picture is there. But in this
6 case, Mr. Boling was given an ultimatum of Judge Young, on
7 the 28th of July, this case is going to be tried. You either
8 come back here, try it yourself, or you come back here with a
9 lawyer. We are not going to have all this changing lawyers
10 and that sort of stuff. And that was the impetus for him to
11 wind up in my office.

12 Now, in addition to the investigation, I also talked
13 to Mr. Thrower, talked to him in person and on the phone.
14 Mr. Thrower represented Mr. Russell. What I was concerned
15 about was the fact that Mr. Boling would be going to trial
16 and that Mr. Russell would then -- because he had been given
17 an offer, according to this memorandum, and that we would be
18 getting mouse trapped because Mr. Boling would be going to
19 trial and Mr. Russell would be getting the benefit of some
20 plea offer to testify against Mr. Boling.

21 Mr. Thrower assured me that that was not going to
22 happen. So with that in mind, we talked back and forth. And
23 Mr. Boling was adamant that he did not see the gun, did not
24 see Mr. Russell with the gun, did not hear the gun, did not
25 hear a gunshot. So he was left in a position of having to go

1 to trial, because he didn't want to plead straight up to
2 burglary first.

3 And there was an offer ultimately made to him,
4 testify truthfully -- and he said he couldn't do that --
5 about the gun. And they were talking about 15 years minimum
6 sentence. So we wound up in trial. And that's -- you know,
7 I reluctantly did this. The young man was standing on the
8 tracks and the train was getting ready to run over him.

9 After talking to him, he's a nice young fellow.
10 Doesn't have a lot of formal education. There was no way he
11 was going to stand in this courtroom or any other courtroom
12 in this building without really messing himself up. So
13 that's where I was.

14 Q. So you had a chance to look at the discovery in this
15 case?

16 A. Looked at the discovery. Talked to Mr. Thrower.
17 Went to the scene. I realized that one of the potential
18 witnesses, the lady who was the girlfriend of the occupant of
19 the trailer, had a drug history, also had, I believe, as I
20 recall -- I think I've got it. She had, I think, some open
21 bad check warrants. So there was a very good chance she
22 wasn't going to show up. As a matter of fact, she didn't
23 show up to testify.

24 So this was kind of caught in the hand with a pair
25 of 2s in your hands, so to speak. And I told Mr. Boling

1 that, we maybe have a pair of 2s here. This is your case.
2 What do you want to do? And he said he wanted to go to
3 trial. Because, otherwise, stand up with no plea agreement,
4 without explaining it in toto, might be not advantageous for
5 him. So we wound up with a trial.

6 Q. In the discovery, what evidence did you find in the
7 discovery that would have supported a condition for a
8 burglary first, as opposed to second or trespass?

9 A. Well, my professional opinion in reviewing the
10 evidence was that this was an aggravated trespass case, if
11 you want to put it that way, and aggravated assault case. It
12 was not a burglary case. And that was our theory and that
13 was our argument to the jury. And, quite frankly, but for
14 the deputy allegedly being shot at by somebody, this wouldn't
15 have been tried as a burglary case. We could have probably
16 gotten this thing worked out.

17 But the solicitor's office took a very dim view of
18 their deputies being placed in harm. And I understand that.
19 But Mr. Boling just simply couldn't help himself in that,
20 with a plea offer.

21 Q. Well, they made a plea offer in the midst of trial,
22 isn't that correct?

23 A. They made a plea offer prior to.

24 Q. Immediately prior to trial?

25 A. Prior to trial, Mr. Ferguson said, Bill, he said, if

1 your client can testify truthfully about Mr. Russell having a
2 gun and having heard the shots, we can do business. That's
3 when I talked to Mr. Boling again. And all of this was kind
4 of on the fly, you know. It was not a formal appointment to
5 see him, come in, what have you, but he would. And he said,
6 Mr. Runyon, he said, I can't testify to that, I cannot tell
7 you that I saw Russell with a gun, and I never heard the
8 shots.

9 In fact, what we had to overcome was the fact that
10 on 6/16, these notes from this interview, which I got in
11 discovery, which I was surprised that I got them, quite
12 frankly, as I said, because the solicitor's office is usually
13 not that forthcoming, because they take a very narrow reading
14 of what *Brady* means. But he specifically said, Russell and
15 he were the only one days running, did not hear gunshots,
16 Kevin did not have a gun. Only gun he remembers was Sean
17 Cummins' gun. That was the person who was in the trailer. I
18 mean, which Bill Thrower would eventually have gotten that,
19 had Mr. Thrower gone to trial, which he did, by the way, I
20 think. And he would have been subject to cross-examination
21 on that.

22 So his value as a witness, if they had made me a
23 firm offer -- and they did make a firm offer as it relates to
24 working out a plea if he could testify.

25 Q. Did you have an opportunity to read the transcript

1 in this case?

2 A. I did.

3 Q. Do you have a copy of it with you?

4 A. I do.

5 Q. If you look at around page 48 to up through 53, it
6 looks as though another offer was made that wasn't contingent
7 on testifying?

8 A. Okay. Let me see. Mr. Ferguson, we extended an
9 offer of burglary second, violent, for negotiated 15 years.
10 Yes, sir.

11 Q. Okay.

12 A. But our conversation was that it was contingent upon
13 him being able to testify.

14 Q. I see.

15 A. Now, that wasn't stated in the transcript, but that
16 was what our clear conversation was.

17 Q. Okay.

18 A. And to Mr. Boling's credit, I will have to say this,
19 to his credit, he steadfast maintained that he could not
20 testify truthfully the way they wanted him to. And, of
21 course, they weren't asking him to lie. But -- and the way I
22 explained to him, I just explained it to him, and the simple
23 fact of the matter is that he had it explained to him prior
24 to that too. And I even said: I'm not sure he's had enough
25 time to adjust it and consider that offer.

1 Okay. Tell me what the offer is again.

2 The offer is to plead to burglary, second, violent,
3 for negotiated 15 years. And that would be a 65 percent
4 sentence and eligibility. You need nonviolent for 65
5 percent.

6 The Court tells him, yes, nonviolent would be 65
7 percent. Violent is 85 percent. Burglary second, violent,
8 still constitutes violent.

9 And that's when we had a talk about the 15 years.
10 And so they really didn't offer us anything on the record
11 that is different. I mean, ultimately, we got 15 years on
12 burglary first, which is 85 percent. And they only offered
13 15 years violent, I think it was.

14 Emmanuel said it was 65 percent, but, I think, he
15 just talked about it -- yeah, burglary second, violent, for
16 negotiated 15 years. That's 85 percent.

17 Q. And then if you could look at page 57, starting at
18 line 19, it would appear that some time there was a break in
19 the action and actually somebody from the solicitor's office
20 contacted possibly the Department of Corrections or whomever.

21 A. 57, line --

22 Q. 19.

23 A. I spoke with Chris from the General Counsel's
24 Office. With burglary first, you have to serve 85 percent.
25 That is after --

1 Q. That --

2 A. I'm assuming it is -- she may have said that, but
3 meant years. We understood that. Burglary second he would
4 be eligible for parole after five years. His max-out date
5 would be 55 to 60 percent in front of every notepad -- I'm
6 sorry. I'm sorry. I skipped a page.

7 Average is eight years, three months. I mean, we
8 are talking about projections. I mean, any time you get into
9 the Department of Corrections, once you leave this courthouse
10 and once the judge has signed the paperwork, that's all pie
11 in the sky.

12 Q. Did you make him -- did you make a recommendation
13 about whether or not he should accept the offer?

14 A. Yeah. I told him when he first came in to my
15 office, he ought to go down and plea. You shouldn't stand
16 trial with or without a lawyer. I mean, here he was, he was
17 standing on the tracks without a lawyer. And then with
18 basically three weeks to prepare, I wasn't about to make him
19 any promises about what was going to happen, because I knew
20 nothing about the case. My hopes were that if I got into it,
21 maybe I could sooth the savage beast. Because, apparently,
22 Mr. Boling had agitated the solicitor's staff and a very --
23 and a circuit judge who was very understanding had mandated
24 that he go to trial. So I was trying to work it out with
25 something that would be acceptable to him.

1 And I was always told, prior to this colloquy, it
2 was contingent on testifying. It wasn't until this colloquy
3 that there was any indication that his testimony would not be
4 mandated by the plea agreement.

5 But once he pled, he would be a witness. He would
6 be subject to being a witness. That was also explained to
7 him. They could subpoena him and he would have to get on the
8 stand and testify. And he said he didn't want to testify.

9 Q. Is it -- I'm just trying to get the posture here.
10 Is it your recollection that on July 29th, he had an
11 opportunity to plead to burglary second, violent, for 15
12 years? I mean, was the offer still open when this colloquy
13 was going on?

14 A. I'm not sure that we really had an open offer. We
15 were talking back and forth, because Judge Jefferson wanted
16 us to try to get it worked out, if possible. But the simple
17 fact is that -- and then she finally asked Mr. Boling if it
18 changes his decision. And he's the one that said no. I
19 didn't have a chance to talk to him about that.

20 Q. So it would appear that an offer was still open on
21 July 29th when she asked him if he changed his decision?

22 A. I assume that at that point in time, yes. On July
23 29th, had he looked at the court and looked at the solicitor
24 and said, okay, I will go ahead and plea, he probably could
25 have.

1 Q. Okay.

2 A. I certainly wouldn't have objected to it.

3 Q. Did you make any recommendation to him about it?

4 A. I said -- I think my conversation was, I think you
5 ought to take them up on this deal before they sober up. I
6 mean, I am not being sarcastic here. That's exactly the way
7 I kind of put it to him. They were still going to be looking
8 for him to be a witness, so that was part of the outside
9 conversation, not on the record.

10 Q. If you could go back to page 53, lines 10 through
11 18.

12 A. All right. Yes, sir.

13 Q. I'm just trying to get clear. Had there been a time
14 for you to talk to him again, or is this you recounting the
15 discussion you had prior to trial that he's rejecting the
16 offer with your recommendation?

17 A. Okay.

18 Q. With my advice, but I can't say I disagree with his
19 position, and I assume that means rejecting the offer?

20 A. I'm not sure whether we had a break and we talked or
21 whether we talked at the table. I just honestly can't recall
22 that. I mean, I've had I don't know how many trials since.

23 Q. I guess what I'm trying to get at is, was the advice
24 that he needed to go forward because you were saying we are
25 going to win this trial, or because he's going to get jammed

1 up with having to be a witness at Mr. Foster's trial, or
2 whatever the co-defendant's name was?

3 A. I've been at this since 1967. I never told a client
4 in a civil or criminal case we are absolutely going to win.
5 That's not possible for me to make those predictions. If I
6 could predict that fully, I would be going to Vegas and be
7 retired now.

8 Q. I appreciate that response. What had you explained
9 to him about accomplice liability prior to going into this?
10 Because it sounds as though -- and, again, is it Ferguson?
11 Is that the other -- who was the person who allegedly may
12 have had a gun?

13 A. Mr. Russell.

14 Q. Excuse me, Mr. Russell.

15 A. Emmanuel Ferguson was the assistant solicitor.

16 Q. I'm sorry. I'm sorry. Mr. Russell. Did you
17 explain to him the exposure he would have faced under a "hand
18 of one is the hand of all" type?

19 A. Yeah, we talked about it. Because he said, I didn't
20 have a gun, I didn't have a weapon, I just went over there
21 with Mr. Russell to get his cell phone. Like I said, this
22 was not a typical burglary case. Even in the best light of
23 the solicitors looking at it, it wasn't a typical burglary
24 case. And I said, yeah, but, you know, here's the problem
25 you have, if Mr. Russell did have a gun and Mr. Russell had

1 the weapon on him, then you are kind of hung with the actions
2 of your co-defendant.

3 And I think we talked briefly about, you could be
4 driving a car, typical example, you could be driving the car
5 and man goes in the bank and shoots somebody, you can be
6 charged with murder, that sort of thing.

7 Q. Right.

8 A. I mean, we didn't sit there and do a law school
9 class. We didn't have a lot of time. By the time he
10 stumbled into my office, literally stumbled into my office,
11 to the time he went to trial, we didn't have a lot of time to
12 really digest -- or he didn't have a lot of time to digest
13 all the law in the matter.

14 And, frankly, I will be honest with you, I believe
15 it was -- I wasn't privy to all the goings on beforehand.
16 And like I said, a very understanding circuit judge had
17 ordered it for trial with or without a lawyer. So I figured
18 he used up all of his --

19 Q. Goodwill?

20 A. -- goodwill. And I figured that, but once I started
21 talking to Emmanuel Ferguson, I knew he used up all of his
22 goodwill, and I was in for a trial, which I wasn't happy
23 about. I thought I could help him. But, quite frankly, I
24 thought being a leveling influence, maybe we could get this
25 thing worked out, because I didn't view it as a typical

1 burglary case.

2 Q. All right. So you had just said that hopefully we
3 can get it worked out. So there was a workout? He could
4 have pled to burglary second?

5 A. Yes, but you've got to remember, that's the colloquy
6 on the record. Okay? But there's always this conversation
7 about he's going to have to testify truthfully. And then we
8 have the memorandum, which I don't think they let their
9 interns take notes anymore. Okay? But we have the notes of
10 the intern and, apparently, in this case, on 6/16, the intern
11 Megan wonders why offer is not made to Boling, not fair to
12 give Russell offer. Apparently, there had been an offer to
13 Russell. And they were just letting this poor young man just
14 hang out to dry.

15 And so -- and then when Russell turned down the
16 offer, allegedly, apparently turned down the offer, that's
17 when they started thinking about maybe giving him some. And
18 that's when -- my understanding is, and I don't have this in
19 notes, I don't have this -- my understanding from my
20 conversation with Mr. Boling is that the solicitor talked to
21 him about an offer and testifying. That's when they wound up
22 in front of Judge Young. And Judge Young finally threw up
23 his hands and said, here's the deal, y'all work it out, fine,
24 otherwise, you be back here on the 28th, you are going to
25 trial with or without a lawyer.

1 Q. Okay. What was your trial strategy then?

2 A. Well, trial strategy was to rely upon the consensual
3 entry into the premises, quite frankly. And there was nobody
4 in this -- nobody in the witness statements or what have you,
5 even Mr. Owens didn't testify, if you read his testimony, he
6 didn't testify these people came in with intent to commit a
7 crime. There's all of this talk about the cell phone. And
8 that's something that a jury, I think, would understand.
9 They weren't there to steal something. They were there to
10 get Mr. Russell's phone back. Mr. Owens was in their
11 defense. I think I brought that up in closing argument and
12 all that sort of stuff.

13 So the strategy was to try to get out the facts,
14 which I think we did, that they went there without the intent
15 to commit a crime. And their position was that they didn't
16 kick in the door or what have you. They were led in.

17 Of course, testimony on that didn't go the way we
18 thought it would, no. We wound up having Mr. Boling and Mr.
19 Owens basically being the folks to testify. Because Mr.
20 Owens's girlfriend had a warrant out on her and she didn't
21 show up at the courthouse. Ms. Coker, next-door neighbor,
22 nice lady, but she heard a ruckus, but she didn't know
23 anything about what was going on. In fact, she wouldn't even
24 let the girlfriend in her house so she could call the police.
25 Apparently, there was nobody at the house where the goat was.

1 So there was no -- there were no other witnesses, just Mr.
2 Owens was really the only one, about what was going on.

3 And then there was the talk about, you know, the
4 disagreement. His testimony was spilled in the backyard and
5 went back in the house and that sort of thing.

6 Q. Did you consider a strategy that would seek a
7 lesser-included offense?

8 A. Aggravated assault is not a lesser-included offense
9 of burglary.

10 Q. Burglary second?

11 A. Burglary second, I would have been more than happy
12 to get a charge of burglary second. But, you know, we didn't
13 ask for that. To be quite candid, we didn't ask for that.

14 Q. Was that part of an all-or-nothing trial strategy?

15 A. Well, basically, yes. I mean, they weren't charged
16 with assaulting these people. They weren't charged with
17 anything, okay, other than the burglary first. As a matter
18 of fact, the interesting thing is that they weren't charged
19 with shooting at the deputy. Okay? This all came in as this
20 big kind of conglomeration of facts situation to make it
21 burglary first. And that was the whole point. It's not a
22 burglary case, ladies and gentlemen. Maybe it's an
23 aggravated trespass. Maybe it's aggravated assault. But
24 that's not what he's charged with.

25 Q. Burglary third?

3 A. Well, I don't think -- I don't know that it would
4 necessarily shake out to where Judge Jefferson would have
5 given me that, because it was basically not a burglary first
6 case. Yes, there was an all-or-nothing strategy. But simple
7 fact is that the facts -- this is not a regular burglary
8 case. I mean, that was the whole point from the get-go.
9 This was not your typical burglary case.

10 I mean, this is like the burglary case where the
11 police charge somebody with burglary because two people get
12 in the fight on the front porch and they fall through the
13 front door and that's a burglary. And next thing you know,
14 you are -- I don't know how many times a year I get that
15 charge. Usually you get it worked out and then they drop it
16 and just goes back to regular assault. That's what this was.
17 This was not a burglary case of any kind.

18 And, particularly, the greater offense of burglary
19 first, you know, it was something that a jury could
20 understand, particularly with all of this talk about -- I
21 hate cell phones. That's why I always leave mine in the
22 truck. Never bring it to the courthouse. But I just hate
23 cell phones. But this is all about this darn cell phone of
24 Mr. Russell's. And Mr. Boling was just along for the ride.

25 MR. FALK: We have no further questions.

1 THE COURT: Cross?

2 MS. OLIVE: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. OLIVE:

5 Q. Good afternoon, Mr. Runyon.

6 A. Yes, ma'am.

7 Q. You stated you had been practicing law -- I don't
8 recall the year. What was the year?

9 A. September 13th, 1967, I was sworn in.

10 Q. And how much of that practice has been criminal?

11 A. Depends upon what years, but as a practical matter,
12 I do a lot of trial work. I was the first public defender
13 for Charleston County, formalized public defender for
14 Charleston County. That's just obituary material. That's
15 not any credentials.

16 And I would imagine 50 percent of my practice is
17 criminal work, over at least 40 years of that or 45 years of
18 that.

19 Q. And you testified that you became involved in
20 Mr. Boling's case very late in the game. You had less than
21 30 days before trial?

22 A. Right. Typical case of no good deed goes
23 unpunished. The young man came in to my office and he was
24 just -- he was looking to get himself run over by the train
25 and maybe wind up with 30 years. I mean, you know, I charged

1 him a minimal amount of money, which he never paid the whole
2 amount. But that's not the first time I've been stuck on a
3 fee. Just couldn't get the money. It was just a
4 nightmare.

5 Q. And you stated that when you requested discovery,
6 that was provided fairly --

7 A. It was provided immediately. And that's when I got
8 this memorandum about the 6/16 debriefing that he had with
9 the solicitor's office, uncounseled debriefing with the
10 solicitor's office. And that's where I saw where he had
11 talked to me about a -- they talked to him about pleading and
12 testifying and all of that sort of stuff. That's when I saw
13 he hadn't had a plea offer up through June, I mean, less
14 than -- oh, about six weeks before the trial, he hadn't had
15 any kind of plea consideration at all, which I found strange.

16 Q. Was there a plea offer made before you began
17 representing him?

18 A. My understanding was that based upon this
19 conversation that he had with the solicitor's office on 6/16,
20 subsequent to that, they had then talked to him about
21 pleading to burglary second and testifying. But then he was
22 going to have to testify as part of the plea offer, testify
23 truthfully. They didn't want him to lie. And he indicated
24 he couldn't do that, or what have you. I'm not sure what all
25 the conversation was.

1 That's how you wound up back in front of Judge
2 Young, because, A, at this point, he didn't have a lawyer.
3 He wasn't taking whatever plea arrangements he could work out
4 with the solicitor. And Judge Young finally threw up his
5 hands and said, look, when are we going to try this? 28th
6 you have to be here. Either try it by yourself or come back
7 here with a lawyer, but we are going to court on the 28th.
8 And that's how he wound up stumbling into my office
9 somehow.

10 Q. So he had been previously represented by another
11 attorney prior to coming to your office?

12 A. He had been -- I think he had been represented by
13 the public defender's office. And they had had some falling
14 out over something. And my understanding, triple hearsay, is
15 that that falling out was based upon some preliminary talk
16 between -- advanced by the public defender about him
17 testifying and getting some sort of deal, which I don't think
18 Mr. Boling wanted to. But I didn't get into all that. I
19 didn't have time to ask why y'all had a falling out, because
20 we just didn't have enough time to do all that.

21 Q. Do you know if he just had one lawyer previously or
22 more than one lawyer previously?

23 A. I haven't the foggiest notion, but my impression was
24 that there had been -- it was at least a public defender's
25 office and maybe one other attorney or maybe a couple of

1 lawyers in the public defender's office. But, anyway, I have
2 no information on that. I didn't have time to go back and
3 thrash through all that.

4 Q. Do you feel that you had sufficient time to review
5 the discovery in this case?

6 A. Truthfully, I sure would have liked a lot more time
7 to prepare to try a case of burglary first, more than 20
8 days. But, yeah, I think I moved some things aside and we
9 got discovery. And I was able to figure out what was going
10 on. And it wasn't a pure yellow pad case, because we had to
11 do some legal research. But it was a -- it was -- I think I
12 was able to prepare for it. Yes, ma'am. Should I have had
13 more time? Yes. Should I have thought better about
14 accepting the case? Yes. Is this a case of no good deed
15 goes unpunished? Absolutely.

16 Q. You testified that Judge Young had mandated that the
17 trial go forward on July 28th?

18 A. That's correct. I mean, and that's why I told him,
19 I said, in my conversation with Mr. Boling when he first came
20 to see me was that he had -- and I spoke to him in colloquial
21 terms, that he had really messed himself up. Because -- and
22 after talking with him, he was nice fellow, I'm sure he still
23 is a nice fellow, but that he had gotten himself in a real
24 jamb, because he couldn't just walk into a courtroom and
25 figure out what was going on.

1 He had been a carpenter. He did skill trades and
2 what have you. And he had nothing -- he had no experience of
3 any kind representing himself.

4 Q. And you had no control over the fact that the trial
5 was going to go forward on July 28th regardless?

6 A. I beg your pardon?

7 Q. Did you have any control over the fact that the
8 trial was scheduled to go forward on July 28th?

9 A. Absolutely not. As a matter of fact, either myself
10 or someone in my staff, I've got two ladies who run my life,
11 and I think someone, one of them, may have called the judge's
12 office to see if that whole thing had taken place about
13 mandating it. And I think we were told something to the
14 effect, don't come asking the judge for a continuance,
15 because if you get into it, you are into it.

16 And, yes, I went into it with my eyes wide open. I
17 wasn't suckered into it. I knew that we were going to have
18 to try the case on July 28th.

19 Q. And you stated that you reviewed the discovery. You
20 reviewed the discovery with him, discussed his side of the
21 story. And then you went to the scene to figure out
22 physical --

23 A. I don't think it was in that order. I think in
24 between reviewing discovery, I went to the scene, met the
25 goat and all that sort of stuff, and talked to him, someone

1 on the telephone. He came by the office I don't know how
2 many times. Of course, the problem with it was that -- and
3 this factored in later on about whether or not he would
4 testify, because I knew Emmanuel had this memorandum in
5 which -- these notes he said on 6/16 that he didn't remember
6 anything. He was drugged up and drunked up. So that was
7 figured in.

8 So we had -- we knew kind of where we were trying to
9 head. And, of course, the final argument strategy was there,
10 that he was advised of that. But his decision not to testify
11 was his decision.

12 Q. So you discussed with him your theory, your trial
13 strategy for a new trial?

14 A. Such as it was, yes, ma'am.

15 Q. And did you make a motion for directed verdict in
16 this case?

17 A. I think the record shows I made the motion for
18 directed verdict --

19 Q. And that --

20 A. -- at the close of the State's case and after we
21 rested. I think I asked the judge to accept the motion to be
22 noted in the record, to be noted as they were made at both
23 appropriate times, but I stand to be corrected by the record.

24 Q. Do you recall if part of that argument or one of the
25 main bases of the argument was that there was no proof

1 presented that he had any intent to commit a crime inside the
2 house?

3 A. Well, frankly, that there was no proof that either
4 one of them had intent to commit a crime, because he went
5 over to get Mr. Russell's cell phone. Even Mr. Owens
6 testified about the cell phone. And when they came in, I
7 believe the gentleman was sitting there on the couch with the
8 cell phone on his lap, as I recall. I don't think there's
9 another cell phone case.

10 Q. And you stated that you had off-record conversations
11 concerning this plea offer for the burglary second, violent?

12 A. Yes.

13 Q. And in your conversations with Mr. Boling about that
14 offer, do you recall what your advice was to him about
15 whether to accept the offer or go forward with the trial?

16 A. Well, the underlying advice to him is that it's his
17 decision, not mine. And I think in this case, I don't
18 remember the exact words, but I'm sure I said something about
19 the fact that you've gotten us into this and it's your
20 decision as to where we head from here.

21 And, of course, all of this colloquy going back and
22 forth between 85 percent or 65 percent parole time and all
23 that other good stuff, I know I told him, you can't rely on
24 that, because once you get to the Department of Corrections,
25 they make the rules. And then you have to -- then if they

1 are not following the rules correctly, there's an
2 administrative action you have to take before you get into a
3 PCR situation.

4 Q. And you stated that the offer was contingent on his
5 willingness to testify that Russell had a gun?

6 A. Emmanuel said that it would be contingent upon his
7 testifying, being available to testify truthfully as a
8 witness. Of course, once he pled, I said, well, there's no
9 way to guarantee that he would testify if he enters a plea in
10 his sentence. And they said, well, we can subpoena him. And
11 I said, I don't know, if you subpoena him, that's your
12 business, you are the solicitor, you know, that's your
13 decision to make.

14 And I don't know whether there was a conversation
15 about accepting the plea and deferring sentence until after
16 Russell was tried or not. I can't recall on that. I have no
17 recollection of that.

18 Q. Did Mr. Boling indicate to you that he wished to
19 accept the plea instead of proceed to trial?

20 A. I'm sure that Mr. Boling would have accepted a plea
21 if it was not such an extensive period of time. But -- and
22 to a certain extent, I understood him. I understood what his
23 position was. Look, all I did was ride over there with
24 Russell. I was drunk. I was high on drugs. I didn't intend
25 to do anything. And Russell didn't intend to do anything.

1 Why should I look at 10 to 15 years in a penitentiary? You
2 know, but it was his decision not to accept the plea.

3 Q. And you discussed with him what evidence the State
4 was going to present against him at trial?

5 A. Yes, I did. Not only that, but he knew what the
6 evidence was before he even came to my office. As a matter
7 of fact, he knew more about these people -- I mean, like Mr.
8 Owens, even in transport, Mr. Owens said he knew Mr. Boling,
9 his family, for years and all that sort of stuff. And
10 Mr. Boling is the one that told me to check on the woman's
11 record, because he thought she had a record. And turned out
12 she did. And she didn't show up to the courthouse because
13 she had that outstanding warrant.

14 And there was also that last-ditch thing that Mr.
15 Owens might not show up to the courthouse if the case was to
16 be called for trial. I wasn't holding out that kind of hope,
17 but because Mr. Owens' past or his activities were not
18 exactly -- he wasn't the president of the local bank. Let me
19 put it that way.

20 Q. Did you develop an opinion regarding the State's
21 ability to prove Mr. Boling guilty at trial beyond a
22 reasonable doubt?

23 A. Yeah. The State could have proven -- you know, you
24 try these cases and you never know, based upon who is sitting
25 in those chairs, what they are going to accept. But could

1 the State prove a burglary case despite my legal valuation
2 that it is not good? Sure, they can do that. And a jury
3 might conclude that. And I explained that to Mr. Boling.
4 They might not take the argument this is not really a
5 burglary case.

6 And I honestly think, had the alleged shooting
7 incident at the deputy not been involved in this case, this
8 case never would have gone forward as a burglary case.

9 Q. And you stated that your decision not to make a
10 request for lesser-included offenses, which would be burglary
11 second or burglary third, was part of an all-or-nothing
12 strategy?

13 A. Yes, ma'am. As a practical matter -- and the jury
14 has spoken. I don't argue with jury verdicts. And I don't
15 argue with judge's decisions. If I want to argue with the
16 judge's decision, I can go to the Court of Appeals. But
17 simple fact is, and I still to this day think this is a very
18 crummy burglary first case. It was a very crummy burglary
19 case, any burglary. It's an aggravated trespass and an
20 aggravated assault case, is what it really was, a bunch of
21 people on drugs, on liquor, who got into fight over a darn
22 cell phone.

23 MS. OLIVE: Thank you. That's all the questions I
24 have.

25 THE COURT: Anything further?

1 MR. FALK: No redirect?

2 THE COURT: You may step down. Any other witnesses?

3 MR. FALK: I call my client, Mr. Boling, to the
4 stand.

5 CHRISTOPHER BOLING,

6 having been duly sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. FALK:

9 Q. Mr. Boling, when you first contacted Mr. Runyon to
10 represent you in this case, had a plea offer been made?

11 A. No, sir.

12 Q. Do you recall when the plea offer was made in this
13 case?

14 A. Day of trial.

15 Q. Okay.

16 A. They offered me to plead guilty to a burglary second
17 and we wouldn't have to go to trial.

18 Q. Okay. And can you tell me what conversations you
19 had with Mr. Runyon about that offer?

20 A. I can't recall whether I had one with him. He told
21 me that -- to go to trial because the State didn't have
22 enough evidence to prove that I was guilty of burglary first
23 beyond a reasonable doubt.

24 Q. Okay. Is that what he just explained to you was his
25 trial strategy?

1 A. Yes, sir.

2 Q. But did he tell you whether or not you should have
3 accepted the burglary second offer?

4 A. No. He told me to turn down the burglary second
5 offer because it was violent and I still had to serve 85
6 percent.

7 Q. Was any part of that conversation -- did any part of
8 that conversation have to do with whether or not you would
9 have to testify in Mr. Russell's case?

10 A. No, sir.

11 Q. Did he ever -- did you have any conversations with
12 him about the possibility of having to testify in Mr.
13 Russell's case?

14 A. No, sir.

15 Q. Was there ever any conversation that Mr. Russell
16 would be available to testify in your case?

17 A. No, sir.

18 Q. So when the judge asked you whether or not you had
19 changed your mind about the offer, and Mr. Runyon, I guess,
20 responded for you saying that he had, that is because his
21 advice was to keep going forward?

22 A. Yes, sir.

23 Q. What did he tell you about your liability as far as
24 "hand of one is the hand of all"?

25 A. He never explained nothing to me about "the hand of

1 one is the hand of all".

2 Q. Was it always clear to you that the solicitor had
3 greater interest in Mr. Russell than in you?

4 A. Yes, sir.

5 Q. Is that your recollection, that there was a concern
6 about whether or not Mr. Russell had fired a shot at the
7 police officer? Was there some discussion about a gun?

8 A. Yes, sir, there was.

9 Q. Did you ever have any conversations with the
10 solicitors about whether or not you would be able to testify
11 about Mr. Russell?

12 A. I told them I would testify to the best of my
13 ability, but we didn't have no gun.

14 Q. Okay.

15 A. And they wanted me to say that Mr. Russell had a
16 gun. That's why they wouldn't give me no plea offer when I
17 had Megan for my lawyer.

18 Q. That's Megan Ehrlich?

19 A. Yes, sir.

20 Q. When was she relieved from representing you?

21 A. I think it was around the end of June, beginning of
22 July.

23 Q. Why was she relieved?

24 A. Because she just wasn't telling me what I wanted to
25 hear. She wasn't getting me no plea offer and didn't seem

1 like she was working for me.

2 Q. So you had requested?

3 A. Sir?

4 Q. You requested for a new lawyer?

5 A. Yes, sir.

6 Q. Because there was some discussion that you were
7 going before Judge Young without a lawyer.

8 A. No, I didn't know nothing about going in front of
9 Judge Young until me and Mr. Runyon was there and he told us
10 we had to have the case ready by July 30th or I was going to
11 be tried without a lawyer. And that's when I retained
12 Mr. Runyon.

13 Q. Do you recall being in court prior to that?

14 A. No, sir. I never had a court date or nothing. I
15 never had no plea offers, none of it.

16 Q. Was there any discussion with you about trial
17 strategy and maybe asking the jury -- giving the jury an
18 opportunity to convict you of a lesser-included offense?

19 A. No, sir.

20 Q. Did he suggest he was sort of going on an
21 all-or-nothing strategy?

22 A. No, sir. I mean, I met with him two or three times
23 before court. I was giving him money most of the time. I
24 talked to him a couple of times on the phone. And then I met
25 him at the courthouse on July 26th at nine o'clock, because

1 he had a federal case that was supposed to be tried that
2 morning. So they pushed it off to the next day, I believe it
3 was, or something to that matter.

4 Q. One moment, Your Honor. Again, so it's your
5 testimony that you turned down the burglary second offer
6 because your lawyer told you to go forward?

7 A. Yes, sir, told me to turn it down because it was
8 still violent and I would have to serve 85 percent. But the
9 State didn't have enough evidence to prove that I committed
10 burglary first.

11 MR. FALK: No further questions.

12 THE COURT: Anything from the State?

13 MS. OLIVE: Just briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. OLIVE:

16 Q. Did your attorney tell you you had to turn down the
17 burglary second offer?

18 A. No, but he advised me to, to trust him.

19 Q. But the offer was for 15 years, right?

20 A. Yes, ma'am. The day of trial, it was burglary
21 second, 15, violent.

22 Q. Okay. And you received a 15-year sentence?

23 A. Yes, ma'am.

24 Q. Okay.

25 A. But the violent took the burglary second. Violent

1 took burglary second. I would have served that at 65 percent
2 instead of 85 percent.

3 Q. But going to trial, there was a chance you wouldn't
4 get convicted at all, right?

5 A. Yes, ma'am.

6 Q. So wouldn't you have rather not gotten convicted?

7 A. Yes, ma'am.

8 Q. So that's the risk that you took by going to
9 trial?

10 A. I took that risk with his advice.

11 Q. But he told you -- he never told you he could
12 guarantee that you were going -- that you weren't going to be
13 convicted, did he?

14 A. He told me the State didn't have enough evidence to
15 prove I committed burglary first. If I went on that, being
16 he's been a lawyer for 20, 30, 40 years, I never been in a
17 courtroom, going to trial myself, so I knew only what he was
18 telling me..

19 Q. But you knew that going to trial was a risk?

20 A. Yes, ma'am. I went to trial with his advice.

21 MS. OLIVE: Okay. That's all the questions I have.
22 Thank you.

23 MR. FALK: I have no redirect. Would you allow me
24 to re-call Mr. Runyon for five questions?

25 THE COURT: That would be fine. You may step down.

1 WILLIAM RUNYON,
2 having been previously sworn, testifies as follows:
3 REDIRECT EXAMINATION
4 BY MR. FALK:
5 Q. You had testified earlier Chris told you that he was
6 just sort of along for the ride that night and they were
7 going back to recover Russell's cell phone; is that correct?
8 A. That was my understanding. And I think that that's
9 what -- you know, even Mr. Owens talked about the cell phone,
10 yes, sir.
11 Q. Did you consider whether or not you would object to
12 the State's charging on the "hand of one is the hand of
13 all"?
14 A. Well, we didn't have any evidence -- I don't think
15 we had any evidence in the record that he was just along for
16 the ride. If you looked at the record as a whole, he went
17 into the house, the mobile home, with Mr. Russell. There was
18 arguably questions about whether or not he participated in
19 the fracas, if you want to put it that way. And so I made
20 the decision, you know, that I couldn't ask for that. I
21 usually like to ask the Court to consider charging something
22 that maybe the Court will do versus just making it for the
23 record. That's not necessarily the best strategy at all
24 times. But, I mean, if you make motions for the judge just
25 for the sake of making motions, sometimes they will miss the

1 ones they really should grant for you.

2 MR. FALK: No further questions.

3 THE COURT: All right. Ms. Olive?

4 MS. OLIVE: No questions, Your Honor.

5 THE COURT: You may step down. Thank you. All
6 right. Any other witnesses?

7 MR. FALK: We have no further witnesses.

8 THE COURT: Anything from the State?

9 MS. OLIVE: Nothing from the State, Your Honor.

10 THE COURT: I will take it under advisement and let
11 you know this week. Thank you.

12 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

cc.
AG,
AF
ES
SOL

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Christopher Boling, SCDC No. 360859,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-4672

ORDER OF DISMISSAL

FILED
2017 SEP 29 PM 3:49
JULIE J. ANDERSON
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed August 21, 2015, by Christopher Boling (Applicant), alleging ineffective assistance of counsel. Respondent made its Return on June 2, 2016, requesting an evidentiary hearing be held. Thereafter, on January 4, 2017, Applicant, through counsel, filed an amended application for post-conviction relief alleging four specific grounds of ineffective assistance of counsel. An evidentiary hearing into the matter was convened January 11, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During it April 2011 term, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2011-GS-10-2405).

On July 28, 2014, Applicant proceeded to a jury trial before the Honorable Deadra L. Jefferson. William Runyon, Esquire, represented Applicant. The case was prosecuted by Assistant Solicitors Emmanuel Ferguson and Jennifer Shealy. The jury convicted Applicant as indicted. Judge Jefferson sentenced Applicant to fifteen years imprisonment.

Applicant filed a timely notice of appeal and Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense—Division of Appellate Defense represented him on appeal. Following the submission of an Anders¹ brief, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Christopher Boling, Op. No. 1025-UP-374 (Ct. App. filed July 29, 2015). The Remittitur was returned to the circuit court on August 14, 2015.

FACTUAL HISTORY

This case arose from a home invasion and assault that occurred on the early morning hours of January 1, 2011, on Johns Island in Charleston County. Joseph Owens was at his home with his common law wife when Tad Dempsey came to his home asking if Owens wanted to buy a cell phone. (Trial Tr. 80-81). Owens declined to purchase the cell phone. (Trial Tr. 81). Shortly thereafter, while Dempsey was still present, Applicant and Kevin Russell kicked open the door to Owens home, causing damage to the doorframe, and began assaulting Dempsey. (Trial Tr. 81-82). During the fracas, Owens, his wife, and Dempsey were all assaulted and the home was damaged. (Trial Tr. 86-88). Owens eventually got all three of the men out of his home and the fight continued outside. (Trial Tr. 87-88). Owens's wife went to a neighbor's home and asked her to call the police. (PCR Tr. 88-89).

¹ Anders v. California, 386 U.S. 738 (1967).

A few minutes later, Dempsey came back and Owens informed him the police had been called. (Trial Tr. 89). Dempsey asked to borrow Owens truck to leave and Owens refused. (Trial Tr. 89). Upon Owens's refusal, Dempsey used a two-by-four piece of wood to smash all the windows and lights in Owens's truck. (Trial Tr. 89-91).

Applicant and Russell then returned to Owens's home and again busted through the front door without permission. (Trial Tr. 91). Owens's wife was hit several times. (Trial Tr. 91). Russell walked up to Owens with a chrome revolver, placed the weapon to Owens's head, and said, "I'm going to fuck you up." (Trial Tr. 91-92). Applicant was standing directly behind Russell and encouraged Russell, stating "Go ahead and do him; fuck him up." (Trial Tr. 92). Applicant and Russell then exited the house and Owens followed behind him. (Trial Tr. 92).

Deputy Michael Buenting with the Charleston County Sheriff's Office arrived on scene and saw Applicant and Russell fleeing Owens's property. (Trial Tr. 130-135). Deputy Buenting announced himself as law enforcement and was greeted by two gunshots from Applicant and Russell. (Trial Tr. 136-138). After a chase, Deputy Buenting was able to apprehend Applicant. (Trial Tr. 138). Russell was apprehended later hiding naked in the closet of a neighboring trailer. (Trial Tr. 141).

At trial, Applicant argued he had not come to Owens's home with any intent to commit a crime, but merely to assist Russell in retrieving Russell's phone that Dempsey had stolen. Applicant argued Owens, who managed a pawn shop, was a "fence" who routinely purchased stolen items. (Trial Tr. 238-248).

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on

allegations of ineffective assistance of counsel. In his amended application, he asserted the following specific allegations:

1. Trial counsel failed to call witnesses whose testimony would have exculpated Applicant, namely Samantha Keith, Thomas Dempsey, and or Nick Chavis.
2. Trial counsel failed to advise applicant of his potential exposure under the "hand of one hand of all jury charge" thereby misadvising him whether he should reject the state's plea offer.
3. Trial counsel failed to object to the "hand of one hand of all" jury charge.
4. Trial counsel failed to seek a charge to a lesser included offense.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant called counsel to testify. Counsel testified he has been practicing law since 1967 and approximately half of his practice is criminal defense. (PCR Tr. 24). Counsel testified he was retained by Applicant in early July and knew Applicant's case was "mandated" to proceed forward on July 28th. (PCR Tr. 4, 24, 26-28). Despite being retained a short time before trial, counsel testified he was prepared for trial. (PCR Tr. 27). Counsel testified he told Applicant he needed to think hard about what he wanted to do because he was in "serious trouble" and might want to consider taking a plea offer if available. (PCR Tr. 4). He testified he filed a discovery motion once retained and the assistant solicitor promptly provided him with discovery. (PCR Tr. 4-5, 25). He testified he sat down with Applicant and went over everything Applicant could remember about the incident, which was limited because Applicant "had a lot of drugs and alcohol in him that day." (PCR Tr. 5-6, 29). Counsel testified he personally visited the scene to familiarize himself with the physical layout. (PCR Tr. 5-6, 10, 28). He testified he also interviewed potential witnesses, including Owens's wife, whom he discovered had pending warrants and likely would not (and ultimately did not) show up at trial.

(PCR Tr. 10, 32). He testified Applicant had previously provided a statement to law enforcement on June 16, 2014, and stated he was certain he never saw Russell with a gun. (PCR Tr. 6, 9). Applicant also insisted to counsel that he and Russell were let into the house voluntarily to retrieve Russell's phone, but had no intention to commit a crime. (PCR Tr. 6-7).

Counsel testified the crux of the case, and the reason the State was intent on proceeding forward with a first-degree burglary charge, was because of the allegation that Applicant and Russell shot at a deputy. (PCR Tr. 7-8, 32-33). He testified this was why the State was intent on only offering Applicant a favorable plea deal if he testified Russell had a gun. (PCR Tr. 8, 10, 11-12, 20). He testified based on his review of the evidence, he thought Applicant should have been charged with aggravated trespass and/or aggravated assault, but not first-degree burglary. (PCR Tr. 11, 33).

Counsel testified Judge Young had ordered Applicant's trial would begin in July 28th with or without counsel after the court and solicitor's office became frustrated with Applicant switching counsel. (PCR Tr. 8-9, 26-27). Counsel testified he talked with Russell's attorney, who assured him Russell would not be testifying against Applicant. (PCR Tr. 9).

Counsel testified a plea offer to second-degree burglary (violent) was extended to Applicant immediately prior to trial. (PCR Tr. 11-14). He testified there was a discussion on the record about whether the sentence would require Applicant to serve 65% or 85% of a sentence for second-degree burglary (violent) and the solicitor called the Department of Corrections to try to resolve the issue. (PCR Tr. 14-15). Counsel testified he advised Applicant he could not assure Applicant of any particular sentence he would be required to serve because those computations are made by the Department of Corrections. (PCR Tr. 30).

He explained to Applicant that if he entered a guilty plea prior to his co-defendant's trial, then Applicant could still be subpoenaed to testify for the State. (PCR Tr. 15-16, 31). Counsel testified he advised Applicant he should accept the State's plea offer before "they sobered up" and rescinded the offer. (PCR Tr. 17). Counsel testified an internal memorandum from the Solicitor's office indicated Applicant's co-defendant Russell had been made a advantageous plea offer but Applicant had not received a favorable offer. (PCR Tr. 20).

Counsel testified he explained accomplice liability to Applicant and the impact it would have on his case. (PCR Tr. 18-19). He testified their defense strategy was consensual entry onto the premises without any intention to commit a crime. (PCR Tr. 21). Counsel testified it was on these grounds that he made a directed verdict motion, arguing the State had failed to establish Applicant had any intent to commit a crime when he entered the home. (PCR Tr. 29-30). He testified he did not request jury instructions on any lesser-included offenses as part of a trial strategy of "all-or-nothing" where Applicant would hopefully be acquitted of all charges. (PCR Tr. 22-23, 33). He testified it was Applicant's decision not to testify. (PCR Tr. 29). Counsel testified he did not object the accomplice liability/"hand-of-one, hand-of-all" jury instruction because he thought it was a proper instruction based on the facts presented at trial. (PCR Tr. 40-41).

Applicant testified next. Applicant testified he was originally represented by a public defender, but moved to have her relieved because "she just wasn't telling me what I wanted to hear. She wasn't getting me no plea offer and didn't seem she was working for me." (PCR Tr. 36-37). He denied ever going before Judge Young prior to trial or ever having any court dates. (PCR Tr. 37). He testified he had not received any plea offers when he retained counsel. (PCR

Tr. 34). He testified the only plea offer he received was made the day of trial for second-degree burglary. (PCR Tr. 34). He testified counsel advised him to turn down this offer and proceed to trial because the State would be unable to prove he was guilty of first-degree burglary. (PCR Tr. 34-35, 37-38). Applicant testified he only took the risk of going to trial based on counsel's advice. (PCR Tr. 38-39). However, he testified he ultimately received a fifteen year sentence—the same sentence as the plea offer he now regrets turning down. (PCR Tr. 38-39)

He testified counsel never spoke to him about testifying in his co-defendant's trial or the possibility his co-defendant would testify against him. (PCR Tr. 35). He testified he was aware the State had a greater interest in prosecuting his co-defendant and he offered to testify, but did not ever see a gun. (PCR Tr. 35-36). He testified counsel never explained accomplice liability or "hand-of-one, hand-of-all" to him. (PCR Tr. 36).

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 hearings. 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume 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. 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

Allegation: Failure to call witnesses on Applicant's behalf

Applicant alleges counsel failed to call witnesses whose testimony would have exculpated him, namely Samantha Keith, Thomas Dempsey, and or Nick Chavis. Applicant failed to call any of these witnesses at the evidentiary hearing or failed to otherwise offer

evidence of what their testimony would have been at trial. Therefore, Applicant has failed to meet his requisite burden of proof as to this allegation. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (holding a post-conviction relief applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the post-conviction relief hearing or otherwise offer testimony within the rules of evidence); Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (same). Therefore, this allegation is denied and dismissed with prejudice.

Allegation: Failure to Advise Applicant of Accomplice Liability

Applicant alleges counsel failed to advise him of his potential exposure under the "hand-of-one, hand-of-all" jury charge, thereby misadvising him whether he should reject the State's plea offer. Applicant testified counsel never advised him of accomplice liability or the "hand-of-one, hand-of-all" and also claimed counsel never advised him of a defense nor had any other meaningful conversations with him other than to reject the State's plea offer. In contrast, counsel testified he advised Applicant of accomplice liability, the impact it would have on his case, and how it would impact their overall defense strategy (consensual entry with no intent to commit a crime). Counsel testified he advised Applicant to accept the State's plea offer but that the decision was ultimately up to Applicant.

This Court finds counsel's testimony to be credible as to this issue and finds counsel adequately conferred with Applicant about accomplice liability and whether to accept the State's plea offer. This Court finds Applicant's testimony on this issue to be not credible and find this allegation is without merit. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: Failure to Object to the Accomplice Liability Jury Instruction

Applicant alleges counsel failed to object to the trial court's accomplice liability jury instruction. Counsel testified he believed this charge was proper based on the evidence presented by the State. This Court agrees.

During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). When instructing the jury on the law, the trial judge is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). A trial judge's jury instructions are appropriate if they are substantially correct and adequately cover the law applicable to the particular case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

Here, as counsel noted during the evidentiary hearing, the record supports an accomplice liability charge, as there was evidence presented that Applicant entered the dwelling of another and assaulted numerous people in concert with a co-defendant who, based on testimony from multiple witnesses, was armed with a handgun. The trial court properly instructed the jury. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: Failure to request jury instructions on lesser-included offenses

Applicant alleges counsel was ineffective for failing to request jury instructions on lesser-included offenses and denied counsel ever discussed this with him. Counsel testified he made a strategic decision not to request lesser-included offenses because he did not want to risk the jury

compromising on a lesser-included offense such as second-degree or third degree burglary rather than acquitting Applicant.

This Court finds counsel's reasoning for not requesting jury instructions on lesser-included offenses was a valid trial strategy. "Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Abney v. State, 408 S.C. 41, 46, 757 S.E.2d 544, 546-47 (Ct. App. 2014) (citing Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)). When counsel articulates a strategy, it is measured under an objective standard of reasonableness. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 691. Counsel's decision not to request jury instructions on lesser-included offenses was a valid trial strategy. See Abney, 408 S.C. at 46-47, 757 S.E.2d at 546-47 (recognizing counsel's decision not to request a jury instruction on lesser included offenses can be a valid trial strategy). Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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 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.

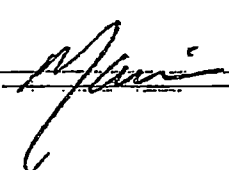
IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 24 day of September, 2017.



WILLIAM H. SEALS, JR.
Presiding Judge
Ninth Judicial Circuit



_____, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Christopher Allen Boling)
Plaintiff(s))

Vs.)

State of South Carolina)
Defendant(s))

IN THE COURT OF (Select one)

☒ COMMON PLEAS ☐ FAMILY COURT

CASE NO: 2015-CP-10-4672

APPOINTMENT OF COUNSEL

☒ ORDER

☐ AMENDED ORDER

FILED
2015 SEP 15 PM 12:49
JULIE J. ARNOLD
CLERK OF COURT

TYPE OF CASE/PROCEEDING: (Check one)

☒ Post-Conviction Relief (PCR)/Habeas Case	☐ Adoption
☐ Sexual Violent Predator Case (SVP)	☐ Custody and/or Visitation
☐ Minor Name Change	☐ Juvenile
☐ Abuse and Neglect	☐ Other

It appears that Christopher Allen Boling who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one)

- ☒ Counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☐ Counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- ☐ Counsel was previously appointed by the court but has indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ Court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other:

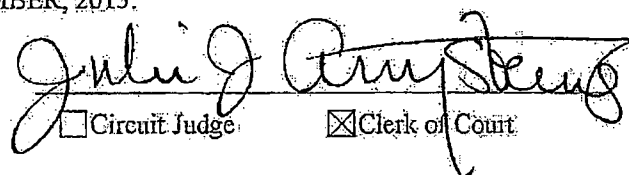
Therefore, it is ordered that James Falk is hereby appointed as: (Select one)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 15th DAY OF SEPTEMBER, 2015.


☐ Circuit Judge ☒ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Christopher Allen Boling, Appellant.

Appellate Case No. 2014-001797

**Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge**

**Unpublished Opinion No. 2015-UP-374
Submitted July 1, 2015 – Filed July 29, 2015**

APPEAL DISMISSED

**Appellate Defender Robert M. Pachak, of Columbia, and
Christopher Allen Boling, pro se, for Appellant.**

**Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.**

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

JKS20110100128

WITNESSES

BUENTING

Charleston County Sheriff

AGENCY CASE NUMBER

2011000008B

ARREST WARRANT NUMBER

K684625

DATE OF ARREST

January 11, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 04 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1002405

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

VS.

CHRISTOPHER ALLEN BOLING

DOB: 1984

W/M

Indictment for

Burglary, 1st Degree

FILED4/15/2011 3:27:13 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Burglary, 1st Degree

That in Charleston County, South Carolina, on or about January 1, 2011, the Defendant CHRISTOPHER ALLEN BOLING, did enter the dwelling of [REDACTED] S, located at [REDACTED] Johns Island, South Carolina, without consent and with the intent to commit a crime therein. That, in addition, entry occurred at night and the defendant was armed with a weapon; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


JENNIFER KNEECE SHREADY
ASSISTANT SOLICITOR

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 010

ARREST WARRANT
K-684625
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of **CHARLESTON**
THE STATE
against **CHRISTOPHER ALLEN BOLING**
Address: [REDACTED]
Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED] DOB: [REDACTED] 1257
DL State: [REDACTED] 100039477
DOB: [REDACTED] Agency ORID: [REDACTED]
Prosecuting Agency: **CCSO**
Prosecuting Officer: **BUENTING**
Offense: **BURGLARY 1ST**
Offense Code: [REDACTED]
Code/Ordinance Sec: **16-11-311**
This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of [REDACTED]. The accused
is to be arrested and brought before me to be
dealt with according to law.
Signature of Judge (L.S.)
Date:
RETURN
A copy of this arrest warrant was delivered to
defendant on [REDACTED]
Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
☐ County/ ☐ Municipality of **CHARLESTON**
Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on **1-1-11** violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of **CHARLESTON**)
in the following particulars:
DESCRIPTION OF OFFENSE:

AFFIDAVIT**DEP. W.M. REED****CHRISTOPHER ALLEN BOLING****BURGLARY 1ST****16-11-311**

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

SEE ATTACHED AFFIDAVIT

Signature of Affiant *William Reed*
STATE OF SOUTH CAROLINA
☐ County/ ☐ Municipality of **CHARLESTON**
Affiant's Address **3505 PINEHAVEN DRIVE**
NORTH CHARLESTON, SC 29405
Affiant's Telephone **843-202-1700**

ARREST WARRANT**TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:**

It appearing from the above affidavit that there are reasonable grounds to believe that
on **1-1-11** defendant **CHRISTOPHER ALLEN BOLING**
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of **CHARLESTON**) as set forth below:
DESCRIPTION OF OFFENSE:

BURGLARY 1ST**16-11-311**

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

Sworn to and subscribed before me
on **January 2, 2011**
Signature of Issuing Judge (L.S.)
Judge Code: **5749/CAP**
ORIGINAL

Judge's Address **3870 LEEDS AVENUE, SUITE 106**
N. CHARLESTON, SC 29405
Judge's Telephone **843-746-9822**
Issuing Court ☐ Magistrate ☐ Municipal ☐ Circuit

BAIL set by
 Judge Bordun
 on 1-2-10
 Type and Amount: NO BOND
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defense Attorney: _____

Decision: _____
 Judge _____
 on _____
 by _____

(Indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

CHECKLIST

M. CRT. CASE # 41 CT. 1
 IV CASE # 21
 REPORT GROUP 2019
 SI CODE 1900

WITNESSES

Name: _____
 Address: 40123 18117
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

AFFIDAVIT

OCA# 2011-00008-B

Personally appeared before me, a magistrate of this County, one Wm. Reed, who, first being duly sworn, deposes and says that

Christopher Allen Boling

did within this County and State on or about the 01st, day of January, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

**DESCRIPTION OF OFFENSE
BURGLARY 1st DEGREE
16-11-311**

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on January 01st, 2011, between the hours of 0100 and 0130, while at [REDACTED] Cane Slash Rd, in the Johns Island, section of the County and State aforesaid, the above named defendant, **Christopher Allen Boling**, did commit the offense of violation section 16-11-311 of the South Carolina State Code of Laws, 1976 as amended; **BURGLARY 1st DEGREE**, in that he did willfully, unlawfully, feloniously, and forcibly enter the above mentioned residential dwelling while occupied and at night, in order to retrieve a cell phone.

Facts to establish the aforesaid are that on January 01st, 2011, at approximately 0100 hours, the defendant entered the residence located at [REDACTED] Cane Slash Rd, at night and occupied by the victim, Joseph Stanley Owens. The defendant along with an accomplice, Kevin Russell, who was armed with a handgun, forced entry into the above residence by kicking the front door several times until the door gave away from its frame and then made entry into the residence occupied by the victim. The victim, Joseph Stanley Owens, stated that "he observed the defendant, along with his accomplice enter his residence and that he also observed Kevin Russell with a Silver Handgun". The defendant did not have permission to enter the above residence, and the victim knows the defendant by name and sight. The defendant was arrested for the above charge.

The above information was revealed through the investigation of Deputy M. Buenting and he, along with the Victims, is witnesses to prove the same against the form of the statute in such case made and provide against the peace and dignity of the state.

Sworn to and Subscribed before me
This 2 day of Jan, 2011



Signature of Judge


Affiant
Charleston County Sheriff's Office
3505 Pinehaven Drive
Charleston Heights, SC 29405
Phone #(843) 202-1700

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Christopher Allen Boling

AKA:

Race: WHITE Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: SC01400359*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: BURGLARY 1ST

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1002405A/W#: K684625Date of Offense: 1/11/2010S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ferguson, Emmanuel71431
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/en	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (If paid in installments)	\$	\$3.90
TOTAL		\$132.90

Clerk of Court/ Deputy Clerk: Samuel C. [Signature]Court Reporter: Jay [Signature]

SCCA/217 (03/2011)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Att if available

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge: [Signature]Judge Code: 2128Sentence Date: 7-30-2014