

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Maite Murphy, Circuit Court Judge

OTIS MAURICE ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000740

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2011-GS-10-5416

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
) -vs-
) October 28-29, 2013
OTIS ROBINSON,)
) Charleston, South Carolina
) Defendant.)

B E F O R E:

The Honorable R. Knox McMahon, Judge, and a Jury.

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

Stephanie Linder, Assistant Solicitor
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Attorneys for the State

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Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS

Robert Fabian	89	95	168	169

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Sarah Lippe	141	--	--	--

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1 (October 28, 2013.)

2 THE COURT: All right. This is
3 2011-GS-10-5416, the State versus Otis Maurice Robinson.

4 Mr. Robinson is present along with his
5 attorney, Mr. Locklair?

6 MR. LOCKLAIR: Yes, sir, Your Honor.

7 THE COURT: And Mr. Locklair, do you have a
8 motion or does Mr. -- I know you have other motions, but
9 do you have a motion concerning the attorney issue or
10 does Mr. Robinson?

11 MR. LOCKLAIR: Mr. Robinson filed that pro
12 se, Your Honor.

13 THE COURT: All right. Is it written? I
14 don't have a copy of it. Do you have a copy --

15 MR. LOCKLAIR: It was written. He e-mailed
16 it to the clerk.

17 THE COURT: I'll be glad to speak with you in
18 a moment, Mr. Robinson.

19 MR. LOCKLAIR: I actually didn't bring a copy
20 of the written motion, Your Honor. I thought it would be
21 in the clerk's file. If you need me to summarize, I can
22 summarize for you.

23 THE COURT: Do we have the clerk's file?
24 Mr. Robinson, you filed a motion?

25 THE DEFENDANT: I filed seven motions, Your

1 Honor.

2 THE COURT: Did you file a motion concerning
3 your attorney?

4 THE DEFENDANT: Yeah. I did file another
5 motion too dealing with my kids.

6 THE COURT: I can only hear one at a time.

7 THE DEFENDANT: That's understandable, but I
8 put that motion in before I put this motion in, and --
9 I'm just getting railroaded.

10 THE COURT: What is the motion you filed
11 concerning your attorney, Mr. Robinson?

12 THE DEFENDANT: Counsel be relieved of my
13 case for being ineffective.

14 THE COURT: And can you give me a little bit
15 more than being ineffective? Can you share more
16 information with me? Now, you realize the State's in
17 here, so don't say anything about the case or anything
18 having to do with attorney-client privilege. Do you
19 understand?

20 THE DEFENDANT: It's just dealing with the
21 law.

22 THE COURT: How old are you, Mr. Robinson?

23 THE DEFENDANT: I just turned 40. My
24 birthday is today.

25 THE COURT: Happy birthday.

1 THE DEFENDANT: Thank you.

2 THE COURT: How much education do you have?

3 THE DEFENDANT: Tenth grade, GED.

4 THE COURT: And you read and write?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And what kind of work do you do?

7 THE DEFENDANT: Drywall, and I draw
8 portraits.

9 THE COURT: And portraits?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You walk around on those stilts
12 when you do drywall?

13 THE DEFENDANT: I do.

14 THE COURT: That's amazing to me. I couldn't
15 walk across the room on those things. Tell me about
16 ineffectiveness.

17 THE DEFENDANT: Well, I talked to him about a
18 preliminary hearing I was supposed to have, July 6, 2011,
19 and my constitutional rights tell me I have a right for a
20 preliminary hearing. My lawyer -- first, they told me
21 that they had it, and I asked him about the transcript.
22 And he didn't put it on the record, and they didn't --
23 you know, it wasn't transcribed, and that's crazy. If
24 you had a preliminary hearing, it got to be on the
25 record.

1 And he came back. Next day I put in a
2 another request form, and he tell me, well, blah, blah,
3 blah, blah. He didn't ask none of it, and then come this
4 here, he going to tell me that I waived it? I said
5 that's impossible. I didn't waive anything, no written
6 or anything. I didn't tell him nothing like that.

7 I mean, that's my rights, man, you know?
8 That's my constitution, and I got it right here. I got a
9 preliminary hearing date and everything. I requested it
10 and everything, and right here it says, right here,
11 request a preliminary examination. It says right here,
12 states that the preliminary hearing should not be held if
13 the defendant is indicted by the grand jury or waives
14 indictment before the preliminary hearing is held.

15 In this case, I've been indicted. It's
16 tolled. It wasn't July 6. That's a total violation of
17 my constitutional rights, and he tell me, oh, well, you
18 got to go to a PCR. He's telling me --

19 THE COURT: So your first issue on
20 ineffective assistance has to do with your preliminary
21 hearing or not having a preliminary hearing?

22 THE DEFENDANT: He wasn't my lawyer at the
23 time.

24 THE COURT: He wasn't your lawyer at the
25 time?

1 THE DEFENDANT: Jason King was, and I fired
2 him for the same reason.

3 THE COURT: This is another lawyer?

4 THE DEFENDANT: Yes, sir.

5 MS. LINDER: Judge, just to clarify that,
6 Jason King was appointed to this case as a public
7 defender shortly after the arrest. The prelim was
8 scheduled. Mr. King, acting on behalf of the defendant,
9 waived that preliminary hearing, and later the State
10 indicted it in the September 2011 grand jury.

11 Mr. Locklair wasn't appointed to this case
12 until 2013, so he was not the attorney during that time,
13 but it was waived by Mr. Robinson's counsel.

14 THE DEFENDANT: It was not, Your Honor. I
15 did not waive -- nothing signed, I didn't give no
16 permission for anything. Where is the documentation to
17 show this?

18 THE COURT: Tell me what your issues are on
19 ineffective assistance of counsel with Mr. Locklair.

20 THE DEFENDANT: Because he wouldn't do what I
21 told him to do.

22 MR. LOCKLAIR: Your Honor, if I may, I can
23 clarify it. Correct me if I'm wrong. His main concern
24 is I have not filed a motion to dismiss this case for a
25 violation of his constitutional rights because his prior

1 lawyer waived his preliminary hearing.

2 I advised him that lawyers can act in a
3 certain capacity, and if his lawyer waived this and was
4 wrong, the only remedy at this point would be, if he were
5 to be convicted, to file a post-conviction relief against
6 that attorney.

7 But at this point, because he's been
8 indicted, the grand jury found probable cause for his
9 case, which is the sole purpose for a prelim. In
10 addition, I explained to him there was an identification.
11 There were fingerprints at the scene. There was
12 DNA evidence at the scene. Even if he had had a
13 preliminary hearing, there is, in my 15 years of
14 practice, no chance whatsoever that a magistrate judge
15 would not have bound this over for a grand jury.

16 So at this point, he can only go forward with
17 a plea or a trial, and that has to be reviewed at another
18 date, but it's not the time or place to resolve that
19 issue.

20 THE COURT: Thank you, Mr. Locklair.

21 THE DEFENDANT: Okay. Also, I told him, I
22 said -- and Stephanie heard about the situation that,
23 okay, the preliminary hearing -- it's good in my case
24 because I'm trying to get these people on perjury because
25 they lied, and the things he said happened did not

1 happen. That's what I'm saying. This preliminary
2 hearing, you know what I'm saying, regardless if it's
3 bound over to court, I want to get those statements on
4 board so if I do get convicted, I have more evidence to
5 deal with, if I do have to go on a PCR. That's why I
6 needed it in my case, because they lying.

7 THE COURT: Do you have other issues about
8 ineffective assistance of counsel besides a preliminary
9 hearing?

10 THE DEFENDANT: Yeah. We can't --

11 THE COURT: Do you have other issues besides
12 the preliminary hearing issue concerning ineffective
13 assistance of counsel?

14 THE DEFENDANT: He won't do what I tell him
15 to do, Your Honor.

16 THE COURT: And that's filing a motion?

17 THE DEFENDANT: Filing a motion, and he ain't
18 tell me what he going to do.

19 THE COURT: And the motion concerning the
20 preliminary hearing?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And what are you asking me to do?
23 What are you asking me to do? Either you're going to
24 have Mr. Locklair as your lawyer, or are you asking me
25 that you want to represent yourself?

1 THE DEFENDANT: No. I got access to law
2 books and stuff.

3 THE COURT: You can either have Mr. Locklair
4 or you can represent yourself. If I find your conduct
5 is --

6 THE DEFENDANT: I thought the constitutional
7 rights say if you can't afford one, a lawyer can be
8 appointed to me.

9 THE COURT: You have a very good trial lawyer
10 sitting at the table with you.

11 THE DEFENDANT: He doesn't file a motion. He
12 doesn't put in a motion for me. That's the way he's
13 supposed to represent me.

14 THE COURT: I deny your motion on the
15 preliminary hearing under State vs. Flood. Preliminary
16 hearing is not a discovery proceeding, number one.

17 Number two is Mr. Locklair correctly stated
18 it can be waived by the attorney.

19 THE DEFENDANT: But he --

20 THE COURT: Don't interrupt me. I'll let you
21 answer all you want to. We can't both talk at the same
22 time.

23 Number three: He's been indicted by the
24 grand jury, and that's the same standards, as far as the
25 probable cause, before the grand jury appears, before the

1 magistrate, so I deny your motion as far as relieving
2 Mr. Locklair from representing you.

3 Do you have any other issues you want me to
4 address as far as Mr. Locklair's representation?

5 THE DEFENDANT: Just tell me if -- there is
6 nothing I can do, you're telling me?

7 THE COURT: I'm not relieving Mr. Locklair.

8 THE DEFENDANT: That's the process of law,
9 Your Honor. It's been violated. The law has been
10 violated.

11 THE COURT: I told you, you have two choices:
12 Either Mr. Locklair, or I'll be glad to question you
13 concerning your rights under Faretta.

14 THE DEFENDANT: Can you show it to me in
15 writing where my counsel can waive my rights without my
16 consent?

17 THE COURT: I'm not going to show you.

18 THE DEFENDANT: Can you show it to me in
19 writing?

20 THE COURT: No. I'm not going to show it to
21 you in writing, no, sir.

22 THE DEFENDANT: I guess I got to pay a
23 lawyer. Unfair, man.

24 MS. LINDER: Judge, as far as the notice for
25 trial that was sent to the defense attorney, Mr. Locklair

1 was actually appointed in May of this year when
2 Mr. Robinson -- when we were about to call a case for
3 trial when Jason King represented him. Ended up,
4 ultimately, Jason King was relieved, and Mr. Locklair was
5 appointed.

6 Since that time, I have noticed -- notice was
7 sent. I have had many conversations on the phone and
8 also via e-mail with Mr. Locklair as recently as
9 yesterday. He is prepared to go forward. The State's
10 prepared to go forward.

11 He had discussed with me -- he told me about
12 how he had gone to jail to visit his client, of course
13 not telling me the content of their discussion. We have
14 had intelligent discussions about the content of this
15 case, the different reports in this case, and
16 Mr. Locklair has filed many motions that are absolutely
17 appropriate for this case.

18 So the notice was given, and there have been
19 many conversations that have convinced me that he is
20 prepared to go forward with Mr. Robinson's case today.

21 THE COURT: Anything you would like to add to
22 that, Mr. Locklair?

23 MR. LOCKLAIR: No, sir. I've been out to see
24 him numerous times. I did not go see him prior to this
25 court date. I did send a letter out in the mail because

1 basically every time I have gone to see him -- I won't
2 insult the Court with what he said, but basically F you,
3 mother-Fer, calling me homosexual, called me racial
4 names --

5 THE DEFENDANT: What did you call me?

6 MR. LOCKLAIR: I didn't do anything, ever.

7 THE COURT: Don't -- I'm here all week. I'll
8 listen to you all week.

9 THE DEFENDANT: I'm not being treated fair,
10 man.

11 THE COURT: You don't have to interrupt.

12 MR. LOCKLAIR: Back in, I think it was, July
13 29th, we actually showed up to pick another jury in the
14 case, went through jury qualifications, met with him
15 downstairs, and I was fully prepared to go forward.

16 I know the case backwards and forwards. It's
17 a very serious case as far as consequence and punishment,
18 but it's not an extraordinarily complicated case as far
19 as facts go.

20 THE COURT: Thank you, Mr. Locklair.

21 MR. LOCKLAIR: Thank you, Your Honor.

22 THE DEFENDANT: I need to get a paid lawyer.

23 THE COURT: All right. With nothing further,
24 sheriff, do you all have clothing?

25 MR. LOCKLAIR: We'll have an investigator

1 bring some from the public defender's office.

2 THE COURT: If y'all will dress him out, and
3 when he's ready, we'll bring the jury upstairs.

4 THE DEFENDANT: Sir, I need to get in touch
5 with my family --

6 THE COURT: We're going to trial,
7 Mr. Robinson.

8 THE DEFENDANT: I'm not ready to go to trial.

9 THE COURT: Sheriff, if y'all have him
10 dressed.

11 (Recess taken.)

12 THE COURT: All right. We're going on the
13 record in State versus Otis Robinson.

14 Mr. Robinson is back, present in the
15 courtroom, appears to be in the same attire that he was
16 in when he left the courtroom.

17 Mr. Robinson, would you be more comfortable
18 changing clothes?

19 THE DEFENDANT: I know I don't have no
20 rights, so why should I change clothes?

21 THE COURT: So you don't think it would be in
22 your best interest to be in civilian clothes as opposed
23 to being in a striped jumpsuit?

24 THE DEFENDANT: I mean, what's the
25 difference? What I'm trying to get done here, it

1 wouldn't be done anyway. My rights are being violated,
2 so what is the difference, Your Honor?

3 THE COURT: All right. Well, then I'm going
4 to send for the jury, and they're going to select a jury.
5 We can't talk back and forth. It's very
6 difficult for the court reporter.

7 THE DEFENDANT: I apologize.

8 THE COURT: You know, it gives a certain
9 impression to the jury if you're dressed in a striped
10 jumpsuit as opposed to being in civilian clothes.

11 THE DEFENDANT: At the same time, Your Honor,
12 I don't have anything pertaining to my case. I need that
13 to go forward with the trial.

14 THE COURT: I'm going to send for the jury.

15 THE DEFENDANT: I'm asking time for a
16 continuance.

17 THE COURT: I'm denying the motion --

18 THE DEFENDANT: I need stuff for my case if
19 I'm going to represent myself.

20 THE COURT: No, sir. When you left, when you
21 walked out of the courtroom, you didn't want to represent
22 yourself.

23 THE DEFENDANT: If you're trying to force me,
24 I might as well represent myself. He already said that I
25 do this and do that. What is the purpose of him

1 representing me now?

2 THE COURT: You want to represent yourself?

3 THE DEFENDANT: I have no choice.

4 THE COURT: Yes, you have a choice. You have
5 a lawyer --

6 THE DEFENDANT: You want to appoint an
7 attorney to represent me?

8 THE COURT: I'm not going to appoint you
9 another attorney.

10 THE DEFENDANT: That's not fair, Your Honor.

11 THE COURT: I'm not going to appoint you
12 another attorney. You have a very good trial lawyer.
13 He's filed --

14 THE DEFENDANT: I can't tell --

15 THE COURT: Mr. Robinson, I'm not going to
16 allow you to continue to disrupt this proceeding.

17 THE DEFENDANT: I'm not trying to disrupt it.
18 My life is at stake, Your Honor.

19 THE COURT: You have a very good trial
20 lawyer. He filed some very substantive and procedural
21 motions that need to be heard.

22 THE DEFENDANT: But we can't communicate,
23 Your Honor.

24 THE COURT: The case is going to trial, and
25 you either have Mr. Locklair or I'll be glad to interview

1 you --

2 THE DEFENDANT: I am asking for a continuance
3 if I'm going to represent myself.

4 THE COURT: I'm not going to appoint you
5 another lawyer, number one. Number two: If you want to
6 represent yourself, I'll interview you concerning your
7 rights under Faretta. Is that what you want me to do?

8 THE DEFENDANT: I didn't understand what you
9 said.

10 THE COURT: If you want to represent
11 yourself, I have to interview you concerning your rights
12 under the Faretta case to see if you're competent to
13 represent yourself. Do you want me to do that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Give me just one
18 moment.

19 THE DEFENDANT: Can I ask you a question?

20 THE COURT: Yes, sir.

21 THE DEFENDANT: I don't have everything
22 pertaining to my case, Your Honor.

23 THE COURT: I denied your motion to continue
24 the case, so we've already addressed that motion,
25 Mr. Robinson.

1 THE DEFENDANT: That's crazy, man. How could
2 I possibly represent myself when I don't have everything
3 on my case, Your Honor?

4 THE COURT: I believe you've already told me
5 you have a tenth grade education. Stand up for me,
6 please. You have a tenth grade education, you can read
7 and write, and you have your GED; is that correct? Is
8 that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What are you charged with,
11 Mr. Robinson?

12 THE DEFENDANT: First degree burglary.

13 THE COURT: What is the potential sentence
14 you could receive if you were found guilty of first
15 degree burglary?

16 THE DEFENDANT: It's 15 to life.

17 THE COURT: Fifteen to life? Have they also
18 put you on notice that you could receive life without
19 parole?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And that notice has already been
22 served on you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you appeared in criminal
25 court in cases in the past?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And what type of charges?

3 THE DEFENDANT: Well, last time I went to
4 trial, I went to trial for -- I assaulted a police
5 officer and got 20 years, and I got six years out of it,
6 but -- they ain't have no in evidence that.

7 THE COURT: When was that? When was that?

8 THE DEFENDANT: Back in '02, '03. They had
9 no evidence.

10 THE COURT: You had a jury trial?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did have you an attorney?

13 THE DEFENDANT: Yeah.

14 THE COURT: The attorney represented you?

15 THE DEFENDANT: Michelle Rivers.

16 THE COURT: And you did not represent
17 yourself?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you ever had any trials in
20 which you represented yourself?

21 THE DEFENDANT: No, sir.

22 THE COURT: You've always -- have you had
23 other jury trials besides that?

24 THE DEFENDANT: That's the only trial I had.

25 THE COURT: Have you had appearances in

1 criminal court where you entered guilty pleas?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: On how many different occasions?

4 THE DEFENDANT: A few times.

5 THE COURT: Did you have attorneys to
6 represent you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Were they of assistance to you?

9 THE DEFENDANT: Somewhat.

10 THE COURT: Somewhat? I mean, did they
11 present evidence to the Court? For example, in your jury
12 trial, did they present a defense?

13 THE DEFENDANT: Not really.

14 THE COURT: How about in your guilty plea?
15 Did they present any evidence of mitigation; in other
16 words, anything to try to lessen the sentence a judge
17 might give you?

18 THE DEFENDANT: Some.

19 THE COURT: Some? You're familiar with the
20 criminal court?

21 THE DEFENDANT: To a certain extent.

22 THE COURT: Well, explain to me what you mean
23 by that. Explain what to a certain extent means.

24 THE DEFENDANT: Because I don't have any
25 access to a law library to study a case or anything like

1 that, that's how you are supposed -- you are only doing
2 what they want.

3 THE COURT: You understand you have a right
4 to a jury trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand you have a
7 right to an appointed lawyer?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you've been appointed a
10 lawyer?

11 THE DEFENDANT: Yeah.

12 THE COURT: And I have said that we'll go
13 forward with the trial with Mr. Locklair, and you said,
14 No. I want to represent myself.

15 THE DEFENDANT: I mean, I would rather have
16 an attorney, but you wouldn't appoint me another
17 attorney.

18 THE COURT: So, what, you're not going
19 forward with Mr. Locklair?

20 THE DEFENDANT: No, sir.

21 THE COURT: But you're going forward
22 representing yourself?

23 THE DEFENDANT: At the same time, I'm going
24 to need some more time.

25 THE COURT: I've already visited that issue.

1 You're not going to get any more time, Mr. Robinson.

2 THE DEFENDANT: I'm going to have to in order
3 to study my case. If I have to represent myself --

4 THE COURT: Mr. Robinson, you don't control
5 that --

6 THE DEFENDANT: I know. I'm asking.

7 THE COURT: I've denied your motion for a
8 continuance. You understand that a lawyer can be of a
9 great deal of assistance to you in the trial of this
10 case?

11 THE DEFENDANT: So this is what I'm going to
12 ask you: How could I represent myself if I don't know
13 what's going on with my case, Your Honor?

14 THE COURT: You've had two years to know your
15 case.

16 THE DEFENDANT: Exactly, but I haven't
17 received anything from my lawyers.

18 THE COURT: We're going forward.

19 THE DEFENDANT: I haven't received anything
20 from my lawyers.

21 THE COURT: We're going forward,
22 Mr. Robinson, and --

23 THE DEFENDANT: It's unjust. It's unjust.

24 THE COURT: You decide if you want to defend
25 yourself or whether you want Mr. Locklair.

1 THE DEFENDANT: It's not fair, Your Honor.

2 THE COURT: Don't keep repeating that,
3 Mr. Robinson. I've made that decision.

4 THE DEFENDANT: Because it's not.

5 THE COURT: Do you want to represent
6 yourself?

7 THE DEFENDANT: It ain't right, man.

8 THE COURT: Sir?

9 THE DEFENDANT: It don't have anything to do
10 with my case, Your Honor. How can I represent myself?

11 THE COURT: You want to go forward with
12 Mr. Locklair? Those are your two choices. There's not
13 another choice.

14 THE DEFENDANT: I don't know, man. I haven't
15 decided -- I haven't made that decision yet.

16 THE COURT: All right. Well, I'm going to
17 bring the jury up. If you don't want to change clothes,
18 I'm going to leave that up to you. I'll going to give
19 you one more opportunity to change clothes.

20 THE DEFENDANT: Whatever.

21 THE COURT: Not whatever.

22 THE DEFENDANT: You say -- you the boss.
23 Ain't nothing I can do. I tell you what I need, but I've
24 done everything I'm trying to do. It ain't right, man,
25 and you know it ain't right, man.

1 THE COURT: The answer is either yes, I want
2 to go change clothes; or, no, sir, I don't. Which do you
3 prefer, Mr. Robinson?

4 THE DEFENDANT: I already give you an answer.
5 I told you no.

6 THE COURT: No?

7 THE DEFENDANT: I told you that three times
8 already.

9 THE COURT: If you have any disruptive
10 behavior in front of this jury, I'm going to have a
11 contempt hearing on you.

12 THE DEFENDANT: You're going to do what you
13 got to do anyway. It wouldn't matter anyway. You're the
14 judge, you know what I'm saying?

15 THE COURT: I just want you to understand
16 that.

17 THE DEFENDANT: What you're doing is unjust.

18 THE COURT: If I have to, I'll have you
19 shackled to the chair. I'll have you bound and gagged.
20 I'll have the chair shackled to the floor.

21 THE DEFENDANT: So that's a threat?

22 THE COURT: I'll expect you to treat this
23 Court with respect and with the appropriate demeanor.

24 THE DEFENDANT: Exactly, but I ain't getting
25 no respect.

1 THE COURT: Yes, sir, you are.

2 THE DEFENDANT: No, you ain't.

3 THE COURT: One final time: Do you want to
4 change clothes?

5 THE DEFENDANT: No.

6 THE COURT: Thank you. Bring us our jury,
7 please.

8 MR. LOCKLAIR: Your Honor, if I may, probably
9 against my better judgment, I would make a motion to have
10 him change and the shackles taken off of him so it's not
11 prejudicial, even though he's advised he wants to wear
12 that outfit.

13 THE COURT: The problem with that is
14 Mr. Robinson knows how to behave. I'm not going to
15 submit Charleston County sheriff's deputies to take a
16 41 -- is that what you said, 41?

17 MR. LOCKLAIR: Forty-four, I think 44 today.

18 THE COURT: -- a 44-year-old man to get him
19 to change clothes. I have asked him and asked him and
20 asked him, and I'll give him an opportunity to change
21 clothes. It's not in his best interest.

22 MR. LOCKLAIR: I know he wants to stay in his
23 clothes. I was saying, if we could remove his shackles
24 and leg irons so it's not so prejudicial.

25 THE COURT: You stand up if you talk to me.

1 THE DEFENDANT: So it's not in my best
2 interest to change clothes. Why is it in my best
3 interest to go forward?

4 THE COURT: It is in your best interest to
5 change clothes.

6 THE DEFENDANT: What do clothes have to do
7 with it if I can't present my case, Your Honor?

8 THE COURT: Do y'all have any position as far
9 as the shackling?

10 THE DEPUTY SHERIFF: It's up to you.

11 THE COURT: If I have you unshackled,
12 Mr. Robinson, you're going to maintain proper decorum?

13 THE DEFENDANT: I'm straight as I can.

14 THE COURT: I can't understand you.

15 THE DEFENDANT: I'm good, man.

16 THE DEPUTY SHERIFF: He said he's good.

17 THE COURT: What does that mean?

18 THE DEFENDANT: I'm straight. Ain't nothing
19 wrong with me.

20 THE COURT: I don't know what that means.

21 THE DEFENDANT: I ain't looking for no
22 trouble, man. I'm just trying to go about things the
23 right way, by the law, man.

24 THE COURT: So if I have you unshackled --

25 THE DEFENDANT: I ain't doing nothing to

1 myself to get in no trouble, man.

2 THE COURT: All right. Sheriff, take his
3 shackles off.

4 MR. LOCKLAIR: Thank you, Your Honor.

5 THE COURT: All right. Anything from the
6 State before we bring in the jury in?

7 MS. LINDER: Nothing, Your Honor.

8 THE COURT: From the defense?

9 MR. LOCKLAIR: No, sir, Your Honor.

10 THE COURT: All right. Bring us our jury
11 panel, please.

12 THE DEFENDANT: Can I ask you one question?
13 If I represent myself, can I still appeal?

14 THE COURT: You might not have to. You could
15 be found not guilty. If you're found guilty --

16 THE DEFENDANT: But the way he's been
17 talking, like, you know, I wish we had a tape recorder to
18 record this and see -- you can see that what I'm saying
19 is true. It was totally different of how he presented
20 stuff to me.

21 I'm going to leave it at that. But could I
22 still appeal if I get convicted?

23 THE COURT: Is that it, Mr. Bailiff?

24 All right. Thank you very much.

25 (In open court, jury panel present.)

1 THE COURT: All right. Solicitor, if you
2 would, call your first case for trial, please.

3 MS. LINDER: The first case is the State
4 verus Otis Maurice Robinson.

5 THE COURT: Ladies and gentlemen of the jury
6 panel: If you would please give me your complete and
7 undivided attention, we're fixing to go through a
8 procedure whereby we select a trial jury for the trial of
9 the case that had been called by the solicitor.

10 As a result of that, I will ask you certain
11 questions concerning your qualifications and eligibility
12 to serve as jurors in this particular case. I know you
13 have already been generally qualified and gone through an
14 exemption process, and now you have made your way to
15 courtroom 3 Bravo to be a fair and impartial juror for
16 trial in this particular case.

17 As part of those questions, I will publish or
18 read to you the indictment. The indictment is not
19 evidence. The indictment is the formal charging document
20 by which an individual is placed on notice of charges
21 that have been brought against him or her. It's the
22 document that brings the case before the Court. It
23 contains mere allegations and is in no way evidence of
24 the allegations contained therein.

25 This indictment is 2011-GS-10-0505416. It

1 reads that in Charleston County, on or about May 31,
2 2011, the defendant, Otis Maurice Robinson, did enter the
3 dwelling of James Fabian located at [REDACTED] St. Andrews
4 Boulevard without consent and with the intent to commit a
5 crime therein in violation of a statute, 16-11-311, of
6 the South Carolina code of laws 1976 as amended. That is
7 an indictment to for burglary in the first degree.

8 As an initial matter, ladies and gentlemen, I
9 will momentarily introduce to you Mr. Robinson.
10 Mr. Robinson at this point is dressed in a jumpsuit that
11 is black and white striped. You're to take no inference
12 from that whatsoever. We were unable to have him dressed
13 out in civilian clothes prior to your arrival.

14 If anyone feels like because of his or
15 anyone's manner of dress you could not be a fair and
16 impartial juror, I would ask you to please stand at this
17 time. That should not be an inference of guilt in any
18 manner. In fact, a criminal defendant in South Carolina,
19 regardless of the seriousness of the charge, is always
20 presumed to be innocent. The State has the burden of
21 proving its case beyond a reasonable doubt. A person
22 does not have to prove himself or herself innocent.

23 The presumption of innocence is not just a
24 legal phrase. It's not just legal theory. It's a
25 substantial right to which each and every defendant is

1 entitled to unless and until a jury finds a defendant
2 guilty by proof offered by the State beyond a reasonable
3 doubt.

4 The State is represented by the solicitor's
5 office. If you would, please stand and introduce
6 yourselves to the jury panel.

7 MS. LINDER: My name is Stephanie Linder, and
8 I work with the solicitor's office. Assisting me with
9 this trial is Lindsey Byrd also of the solicitor's
10 office.

11 THE COURT: Thank you. Thank you very much,
12 Solicitor Linder and Byrd. The defendant is represented
13 by Mr. Locklair. If you please, stand, introduce
14 yourself to the jury and your client.

15 MR. LOCKLAIR: My name is Wesley Locklair,
16 and this is Mr. Otis Robinson.

17 THE COURT: Thank you very much,
18 Mr. Robinson. Thank you, Mr. Robinson.

19 Any member of the jury panel related by blood
20 or marriage, close personal friend, have any social,
21 business, professional relationship with either Assistant
22 Solicitor Linder or Byrd or Mr. Locklair? If so, please
23 stand.

24 Is any member of the jury panel related by
25 blood or marriage, close personal friend, have any

1 business, social, or professional relationship with
2 Mr. Otis Maurice Robinson who stood before and was
3 introduced to you? If so, please stand.

4 Has any member of the jury panel or any
5 member of your immediate family ever been represented by
6 either Ms. Linder or Ms. Byrd or Mr. Locklair or the
7 reverse, have they ever represented a party on the other
8 side of a lawsuit that you were a party to? If so,
9 please stand.

10 The indictment which I read to you alleges an
11 incident that occurred May 31 of 2011 at a dwelling
12 allegedly of James Fabian, [REDACTED] St. Andrews Boulevard in
13 Charleston County. Any member of the jury panel have any
14 knowledge about the case from any source whatsoever? If
15 so, please stand.

16 Any member of the jury panel have any bias or
17 prejudice toward the party, that either being
18 Mr. Robinson or towards the State? If so, please stand.
19 Any member of the jury panel heard, know anything about
20 the case from any source whatsoever? If so, please
21 stand.

22 I'm going to call a list of names and
23 potential witnesses in the trial of this case, ladies and
24 gentlemen. I would ask if any of the witnesses are
25 present, when your names are called, if you please stand

1 and face the jury panel. I would advise the jury panel
2 that generally there will be many more names called than
3 would be present. The witnesses do not have to be
4 present at this time; therefore, you will hear names
5 called and no one stands.

6 The question, of course, is any members of
7 the jury panel related by blood or marriage, close
8 personal friends, have any social, business, or
9 professional relationship with any of these individuals
10 whose names I call and/or who stand before you? If so,
11 please stand.

12 James Elrod, CPD? I assume that's Charleston
13 Police Department.

14 MS. LINDER: Yes, Judge.

15 THE COURT: Rachel Sanders, CPD? Robert
16 Keller, FBI? Richard -- I can't pronounce it any better
17 than I can spell.

18 MS. LINDER: Wiersma.

19 THE COURT: Wiersma, CPD crime scene? Harry
20 Mills, CPD? The next five, Jason Curry, Justin Nease,
21 Ron Hull, Dustin Thompson, Ashley Dougherty, CPD, and it
22 looks like Mr. Hull is retired CPD.

23 The next five, Mary Phillips, CPD crime
24 scene? Nada Kerstein, CPD analyst? George Dubrow, Amy
25 Stephens, and Patricia Crooks with SLED?

1 A PROSPECTIVE JUROR: I work for the city of
2 Charleston. So not in the police department, but I know
3 some of the names just because I work --

4 THE COURT: And what do you with the city?

5 A PROSPECTIVE JUROR: Human resources.

6 THE COURT: Given the fact you just know some
7 of the names, could you still be a fair and impartial
8 juror in the trial of this case for both Mr. Robinson and
9 the State?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: And tell me your number?

12 A PROSPECTIVE JUROR: My last name is Mise
13 186.

14 THE COURT: Thank you. Thank you very much.
15 I believe you can stay with us. Thank you.

16 The next five names: Catherine Leisy with
17 SLED; Seraphim Haftoglou with SLED; Lori Rowe, CPD; Linda
18 Wilson, CPD; Brian Hinton, CPD.

19 The next three names: Sarah Lippe, Clerk of
20 Court; James Fabian, alleged victim in the indictment;
21 and Robert John Fabian.

22 Again, is any member of the jury panel
23 related by blood or marriage, close personal friends,
24 have any social, business, or professional relationship
25 with any of those individuals whose names I call and/or

1 who stood before you? If so, please stand.

2 Any member of the jury panel or a member of
3 your immediate family ever been prosecuted by or
4 represented by the Ninth Circuit solicitor's office?
5 That includes the Charleston and Berkeley County
6 solicitor's office. If so, please stand.

7 Yes, sir, your number and name?

8 A PROSPECTIVE JUROR: Number 203, John
9 Norkett.

10 My son-in-law was convicted of a crime, first
11 degree burglary.

12 THE COURT: All right. And about when was
13 it?

14 A PROSPECTIVE JUROR: This year.

15 THE COURT: In Charleston County?

16 A PROSPECTIVE JUROR: In Charleston County.
17 He's already been sentenced and he got probation.

18 THE COURT: All right. Given that fact, can
19 you still be a fair and impartial juror, both for the
20 State and Mr. Robinson?

21 A PROSPECTIVE JUROR: I believe so.

22 THE COURT: When you say I believe so, you've
23 never served on a jury before?

24 A PROSPECTIVE JUROR: No, sir.

25 THE COURT: Can you set aside the fact your

1 son-in-law has a conviction and base a decision on what
2 you hear in this case?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Thank you very much. I believe
5 you can stay with us. Thank you.

6 Any others? Yes, ma'am. Your number and
7 name, please?

8 A PROSPECTIVE JUROR: Daena Simmons, 241.

9 THE COURT: Good morning.

10 A PROSPECTIVE JUROR: This office represented
11 us in 2009 when my nephew was murdered.

12 THE COURT: Okay. So the solicitor's office
13 prosecuted the case?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: When your nephew was the victim;
16 is that right?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: That was about four years ago?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Given that fact, could you still
21 be a fair and impartial juror in this case both for
22 Mr. Robinson and for the State?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Let me ask you, was it either one
25 of these solicitors?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: All right. Thank you. I believe
3 you can stay with us. Thank you. Thank you very much.

4 Any others? Any member of the jury panel or
5 member of your immediate family been represented by or
6 the opposing parties ever been represented by
7 Mr. Locklair? If so, please stand.

8 Has any member of the jury panel ever been a
9 witness in a civil or a criminal trial, excluding Family
10 Court? If so, please stand.

11 Yes, sir, your number and name?

12 A PROSPECTIVE JUROR: 65, Legrand Elebash.

13 THE COURT: Civil or criminal?

14 A PROSPECTIVE JUROR: Civil.

15 THE COURT: Can you give me the general type
16 of case?

17 A PROSPECTIVE JUROR: It was an arbitration
18 between investors at a real estate partnership.

19 THE COURT: About when was that?

20 A PROSPECTIVE JUROR: It was in June of this
21 year.

22 THE COURT: Given that fact, would you still
23 be a fair and impartial juror in the trial of this case
24 for both Mr. Robinson and the State?

25 A PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Thank you. Thank you very much.
2 Any others?

3 Has any member of the jury panel or any
4 member of your immediate family ever been a victim of or
5 accused of a crime of violence? If so, please stand.

6 All right. And I believe you mentioned that
7 up here previously. This is 241, Ms. Simmons?

8 A PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: All right. Thank you. I believe
10 you can stay with us.

11 Any others? And this is Ms. Mise, 186? Step
12 up here. Yes, ma'am?

13 A PROSPECTIVE JUROR: My niece was killed in
14 Summerville at the end of September.

15 THE COURT: And that's your niece in
16 Summerville?

17 A PROSPECTIVE JUROR: Yeah.

18 THE COURT: And given that fact, could you
19 still be a fair and impartial juror in the trial of this
20 case, for both the State and Mr. Robinson?

21 A PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you. Thank you very much.
23 I believe you can step down. Your number and name?

24 A PROSPECTIVE JUROR: 286. Would that
25 include criminal domestic violence?

1 THE COURT: Yes, ma'am.

2 A PROSPECTIVE JUROR: My daughter was accused
3 before her divorce by her husband.

4 THE COURT: And what time frame are we
5 talking about?

6 A PROSPECTIVE JUROR: It's been about four
7 years.

8 THE COURT: Given that fact, could you still
9 be a fair and impartial juror for both the State and the
10 defendant?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: Tell me your name?

13 A PROSPECTIVE JUROR: Glennis West.

14 THE COURT: All right. I believe she can
15 remain with us. Yes, sir?

16 THE BAILIFF: Juror number 61.

17 THE COURT: Good morning. Tell me your name.

18 A PROSPECTIVE JUROR: I'm Alex Dubberke.

19 THE COURT: Tell me your situation.

20 THE DEFENDANT: I was charged with criminal
21 domestic violence in January and February.

22 THE COURT: Of this year?

23 A PROSPECTIVE JUROR: Yeah, and the case is
24 done and I think it was basically CDV one.

25 THE COURT: In magistrate's court?

1 A PROSPECTIVE JUROR: Yeah.

2 THE COURT: Given that fact, could you be a
3 fair and impartial juror to the State and Mr. Robinson?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you. I believe he can stay
6 with us.

7 Any others? Yes, sir. Good afternoon. Tell
8 me your number and name.

9 A PROSPECTIVE JUROR: My name is Matt Winter.
10 I got sister who is a victim of domestic violence, and
11 her ex-husband is in jail right now for child abuse.

12 THE COURT: Given those facts, can you be a
13 fair and impartial juror in the trial of this case for
14 both Mr. Robinson and the State?

15 A PROSPECTIVE JUROR: Yeah.

16 THE COURT: Thank you so much. He can stay
17 with us.

18 Has any member of the jury panel or a member
19 of your immediate family ever been employed by or
20 arrested by the Charleston County police department? If
21 so, please stand. All right. This is 203?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: And this is what we talked about
24 briefly?

25 A PROSPECTIVE JUROR: Yes.

1 THE COURT: Given that fact, would you still
2 be a fair and impartial juror for the trial in this case
3 to both the parties?

4 A PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you. You may be seated.
6 This is 61? Same thing we talked about previously?

7 A PROSPECTIVE JUROR: Yes.

8 THE COURT: Given that fact, could you be a
9 fair and impartial juror in the trial of this case, both
10 for Mr. Robinson and the State?

11 A PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Yes, ma'am, your number and name?

13 A PROSPECTIVE JUROR: Tamesha Greenesimmons,
14 101.

15 THE COURT: Step up here for me, if you will.
16 Come up to the center aisle, and I'll speak with you
17 momentarily.

18 Tell me your number again?

19 A PROSPECTIVE JUROR: It's 101.

20 THE COURT: Last name?

21 A PROSPECTIVE JUROR: S-i-m-m-o-n-s.

22 THE COURT: Do you know the other Ms.
23 Simmons?

24 A PROSPECTIVE JUROR: No.

25 THE COURT: Tell me your situation.

1 A PROSPECTIVE JUROR: My spouse was arrested,
2 I guess, 18 years ago.

3 THE COURT: Your spouse?

4 A PROSPECTIVE JUROR: Yeah.

5 THE COURT: What was he charged with?

6 A PROSPECTIVE JUROR: Drug related.

7 THE COURT: Drugs, did you say? Given that
8 fact, could you still be a fair and impartial juror in
9 the trial of this case to both Mr. Robinson and the
10 State?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: I believe you can stay with us.
13 Thank you.

14 THE BAILIFF: Juror number 298.

15 THE COURT: Good morning, and tell me your
16 name.

17 A PROSPECTIVE JUROR: De Vias Wright.

18 THE COURT: Tell me your situation.

19 A PROSPECTIVE JUROR: My cousin was arrested
20 by the Charleston County police this year.

21 THE COURT: And what charge?

22 A PROSPECTIVE JUROR: It was something with
23 her tags on her car.

24 THE COURT: Tags on her car. Given that
25 fact, could you be a fair and impartial juror both for

1 Mr. Robinson and the State?

2 A PROSPECTIVE JUROR: Yes, sir.

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

4 THE BAILIFF: Juror number 286.

5 THE COURT: All right. And, yes, ma'am,
6 refresh my memory.

7 A PROSPECTIVE JUROR: Very similar to the
8 other, but both my daughters have been arrested for
9 harassment and threats and things like that.

10 No, it would not.

11 THE COURT: It would not affect your ability
12 to be a fair and impartial juror for either the State or
13 Mr. Robinson?

14 A PROSPECTIVE JUROR: No, it would not.

15 THE COURT: Thank you. You may step down.

16 THE BAILIFF: Juror number 25.

17 THE COURT: Good morning. Tell me your last
18 name?

19 A PROSPECTIVE JUROR: Blackmon.

20 THE COURT: And tell me your situation.

21 A PROSPECTIVE JUROR: Over three years ago, I
22 was arrested for a DUI. It was disposed of as a DUAC.

23 THE COURT: Given that fact, can you be a
24 fair and impartial juror, for both the State and
25 Mr. Robinson?

1 A PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: All right. Thank you. You may
3 step down.

4 THE BAILIFF: Juror number 141.

5 THE COURT: Good morning. Tell me your name.

6 A PROSPECTIVE JUROR: Doris Johnson.

7 THE COURT: Tell me your situation?

8 A PROSPECTIVE JUROR: My husband was arrested
9 several -- maybe ten, twenty years ago? I can't remember
10 how long, and I have a brother-in-law who is always being
11 arrested.

12 THE COURT: Your husband, what was he charged
13 with?

14 A PROSPECTIVE JUROR: It was drinking and
15 driving.

16 THE COURT: And how about your brother --

17 A PROSPECTIVE JUROR: Anything he could do.
18 He's not a good boy.

19 THE COURT: Given -- I'm not laughing. Given
20 that fact, can you still be a fair and impartial juror?

21 A PROSPECTIVE JUROR: Sure, sure.

22 THE COURT: I believe you can stay.

23 THE BAILIFF: Juror number -- don't know the
24 number, Kabiera Boone, juror number 30.

25 THE COURT: Good morning. Tell me your

1 situation.

2 A PROSPECTIVE JUROR: I think you mentioned
3 it earlier, but Ms. Linder, she has been against my
4 boyfriend, Gregory Singleton.

5 THE COURT: So Gregory is your boyfriend?

6 A PROSPECTIVE JUROR: Yeah.

7 THE COURT: And he's been arrested and
8 prosecuted by the solicitor's office?

9 A PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Given that fact, can you still be
11 a fair and impartial juror in the trial of this case?

12 A PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: For both the State and
14 Mr. Robinson?

15 A PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Thank you. I believe you can
17 stay with us. Any others? All right.

18 Any member of the jury panel or any member of
19 your immediate family ever been employed by or arrested
20 by State Law Enforcement Division or the FBI? If so,
21 please stand.

22 Any member of the jury panel a member of or
23 contributor to any civic group such as Mothers Against
24 Drunk Driving, MADD; People Against Rape, PAR; Citizens
25 Advocating Decency and Return of Ethics; or Parents

1 Empowered to Save Teens, PEST; Citizens Against Violent
2 Crime? If you are a member or contributor to any of
3 those organizations, please stand.

4 Any additional voir dire questions requested
5 from the State?

6 MS. LINDER: Nothing, Your Honor.

7 THE COURT: From the defense?

8 MR. LOCKLAIR: No, sir, Your Honor.

9 THE COURT: Finally, ladies and gentlemen,
10 you've heard the allegations in the complaint, the
11 allegations of the burglary in the first degree that
12 occurred back in May 31, 2011, St. Andrews, residence of
13 Mr. Fabian. You've been introduced to Mr. Robinson, the
14 parties, heard the list of witnesses' names, and gone
15 through these questions.

16 So, finally, you know yourselves best. Does
17 any member of the jury panel know of any reason
18 whatsoever why you feel like you could not be a fair and
19 impartial juror in the trial of this case for both
20 Mr. Robinson and the State? If so, please stand.

21 All right. No one stands.

22 Madame clerk, if you give us a panel, please,
23 the strikes are --

24 MR. LOCKLAIR: I believe it's ten and five,
25 Your Honor.

1 THE COURT: Thank you very much. Strikes are
2 ten and five.

3 THE CLERK: Ladies and gentlemen: When I
4 call your juror number and name, if you could, please
5 come to the front, stand here at the podium, and face the
6 attorneys. Collect your belongings and bring them with
7 you as well.

8 Juror number 216, Lynette Seegers.

9 (The juror, a white female, approaches.)

10 What say you for the State?

11 MS. LINDER: Please present the juror.

12 THE CLERK: What say you for the defendant?

13 MR. LOCKLAIR: Please seat the juror.

14 THE CLERK: Please have a seat in the jury
15 box. Next juror, juror 103, Philip Gunnells.

16 (The juror, a white male, approaches.)

17 What say you for the State?

18 MS. LINDER: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. LOCKLAIR: May we approach, Your Honor?

21 THE COURT: Yes, sir.

22 (Discussion held at sidebar.)

23 THE COURT: Sheriff, step up here, please.

24 I understood, before we brought the jury
25 panel in, that you did not want to represent yourself?

1 THE DEFENDANT: No, I said I want to
2 represent myself. I've said I don't want him to
3 represent me. That's what I said.

4 THE COURT: That's not what you said.

5 THE DEFENDANT: You got it on tape. Is that
6 correct?

7 MR. LOCKLAIR: My impression was he said --
8 denying his continuance, he said, rather than going
9 forward with me, he would represent himself.

10 THE DEFENDANT: No, I didn't. I don't want
11 that juror. I don't want that juror there.

12 THE COURT: All you got to do --

13 THE DEFENDANT: But if he's represent me --

14 MR. LOCKLAIR: I asked you right before jury
15 selection.

16 THE DEFENDANT: You did not ask me nothing,
17 man. You're not representing me.

18 THE COURT: Mr. Robinson, you're making --

19 THE DEFENDANT: You got it all on record.

20 THE COURT: Do you understand the dangers of
21 self-representation?

22 THE DEFENDANT: I can't get appointed a
23 lawyer, so I might as well represent myself.

24 THE COURT: He's filed excellent motions.

25 THE DEFENDANT: No, he's not. He ain't did

1 nothing that I tell him to do.

2 THE COURT: I don't know what that is. I
3 don't know what you're telling me.

4 THE DEFENDANT: I don't want him representing
5 me. I don't want him. I can't got nothing fair, man.

6 THE COURT: Do you realize you could get life
7 without parole?

8 THE DEFENDANT: Trust me, I know. I can't
9 get anybody to represent me. Ain't nobody doing
10 something by law, so what am I supposed to do, represent
11 myself?

12 THE COURT: Do you understand I will hold you
13 to the same standard that I would hold an attorney as far
14 as making motions, making objections? You have to comply
15 with the rules of evidence. Do you understand that?

16 THE DEFENDANT: If you tell me -- you're
17 speaking about the law. The law also says that I got the
18 right to have access to law books in order to go proceed.
19 The law say that too.

20 THE COURT: What law books do you want?

21 THE DEFENDANT: Huh?

22 THE COURT: What law books do you want?

23 THE DEFENDANT: Fourteenth Amendment.

24 Whatever that says that's dealing with the law, equal
25 protection of the law, due process of law that's being.

1 violated.

2 THE COURT: So you want the Fourteenth
3 Amendment?

4 THE DEFENDANT: Yeah.

5 THE COURT: What other law do you want?

6 THE DEFENDANT: Also, I want to ask about the
7 fact that my lawyer is being relieved. This is a lie,
8 Your Honor. Conflict of interest.

9 THE COURT: Let's get refocussed,
10 Mr. Robinson. What other law do you want? I'm going to
11 give you my rule book in a minute, but what other law do
12 you want?

13 THE DEFENDANT: (Handing.)

14 THE COURT: You're handing me Court orders
15 from Chief Justice Toal.

16 THE DEFENDANT: But that's the constitution.

17 THE COURT: You want a copy of Article 5,
18 Section 4 of the South Carolina constitution?

19 THE DEFENDANT: I want to find out what law
20 book that's in so I can read what's more than in it.

21 THE COURT: This is no more than
22 administrative law right here. That's why I'm telling
23 you, a lawyer can be of assistance to you. This is an
24 administrative order.

25 THE DEFENDANT: That's what I'm saying. I

1 brought that to his attention, but he's not doing
2 nothing.

3 THE COURT: I'll make a copy of it. Make a
4 copy of it.

5 MR. LOCKLAIR: Just for the record, I have
6 explained administrative orders to him.

7 THE DEFENDANT: It also says you have to have
8 a written order to have an extension on my case, Your
9 Honor, and you don't have nothing in that file.

10 THE COURT: All right. Do you want to
11 represent yourself?

12 THE DEFENDANT: I don't have no choice.

13 THE COURT: No, sir. You do have a choice.

14 THE DEFENDANT: I'm not really ready for
15 this, is what I'm telling you.

16 THE COURT: I already ruled on the
17 continuance. Do you want to represent yourself?

18 THE DEFENDANT: I'm not prepared.

19 THE COURT: That's not a choice.

20 THE DEFENDANT: I want to represent myself,
21 but I'm not prepared to represent myself.

22 THE COURT: That's not a choice. Do you want
23 to represent yourself or do you want Mr. Locklair?

24 THE DEFENDANT: I'll represent myself. Yeah,
25 yeah.

1 THE COURT: And you understand the dangers of
2 self-representation?

3 THE DEFENDANT: No, I don't. I'm just saying
4 I'll represent myself.

5 THE COURT: The dangers are, you may not know
6 what motions to make. You may not know the evidentiary
7 rules. You're facing a life sentence. If you tell me
8 you do not know the dangers of specifically
9 self-representation, I'm not going to allow you to
10 represent yourself.

11 THE DEFENDANT: Say that again?

12 THE COURT: If you say you do not know the
13 dangers of self-representation, I'm not going to allow
14 you to represent yourself.

15 THE DEFENDANT: What's the dangers?

16 THE COURT: Life without parole. Having
17 to -- having to know the rules of evidence like an
18 attorney. I'm going to hold you to the same standard
19 that I would an attorney.

20 THE DEFENDANT: Okay, man. That's no
21 problem. If I have to go through it, I'll go through it.
22 No problem.

23 THE COURT: That's what you want to do?

24 THE DEFENDANT: I don't have no choice.

25 THE COURT: Yes, sir. You have a choice.

1 THE DEFENDANT: You're giving me something I
2 want, so what choice do I have?

3 THE COURT: You have a choice, Mr. Robinson.

4 THE DEFENDANT: No, that ain't fair, man.
5 That ain't right.

6 THE COURT: I can't understand you.

7 THE DEFENDANT: You know that ain't right,
8 man. I'm getting railroaded.

9 THE COURT: All right. So you want to
10 represent yourself?

11 THE DEFENDANT: I'll say it again: If I
12 can't get another attorney, I'm going to represent
13 myself.

14 THE COURT: I'm not relieving Mr. Locklair.
15 You either get Mr. Locklair or yourself.

16 THE DEFENDANT: But the constitution say I
17 got a right to an attorney if I can't afford one, Your
18 Honor.

19 THE COURT: You want to represent yourself?
20 You have an attorney.

21 THE DEFENDANT: That's not an attorney.

22 THE COURT: Yes or no.

23 THE DEFENDANT: Whatever.

24 THE COURT: Sir?

25 THE DEFENDANT: Whatever, man.

1 THE COURT: No, sir, that's not a choice.

2 THE DEFENDANT: I'm saying whatever, man.

3 You make the decision. You ain't going by the law.

4 THE COURT: Would y'all have this juror --
5 please have her sequestered in the jury room, and I would
6 ask the other panel to step outside momentarily, please.
7 Do not discuss this case during this brief recess.

8 (In open court, jury panel not present.)

9 THE COURT: All right. All the jurors appear
10 to have exited the courtroom. Mr. Robinson, you have a
11 motion?

12 THE DEFENDANT: I have all kind of motions,
13 Your Honor.

14 THE COURT: Mr. Robinson, please.

15 THE DEFENDANT: Ask me a question, and I'll
16 give you an answer.

17 THE COURT: Mr. Robinson, why did you come up
18 here to the court reporter? Why did you walk up here?
19 What did you discuss about that?

20 THE DEFENDANT: About representing myself.

21 THE COURT: Do you have that motion or not?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you making a motion to
24 represent yourself?

25 THE DEFENDANT: Can I ask you a question

1 before I say anything?

2 THE COURT: Are you making the motion to
3 represent yourself?

4 THE DEFENDANT: No.

5 THE COURT: You're not. So you do not want
6 me to hear a motion for you to represent yourself.

7 THE DEFENDANT: Yeah, yes, sir -- I don't
8 understand what you're saying. Motion to represent
9 myself? Yeah, I want to represent myself, but I still
10 need time to study and see what's going on with the case,
11 Your Honor.

12 THE COURT: Do you understand the dangers --

13 THE DEFENDANT: I'm saying --

14 THE COURT: Mr. Robinson, I'll have you bound
15 and shackled.

16 THE DEFENDANT: Whatever, man.

17 THE COURT: Sir?

18 THE DEFENDANT: I can't get nothing fair,
19 man. It's unjust.

20 THE COURT: You understand the dangers of
21 self-representation?

22 THE DEFENDANT: I don't understand nothing
23 going on here.

24 THE COURT: You don't understand nothing? If
25 you don't understand nothing --

1 THE DEFENDANT: What I do understand, I'm
2 getting railroaded. I understand that.

3 THE COURT: If you don't understand nothing,
4 then you will have to proceed with an attorney.

5 THE DEFENDANT: I feel like a slave in here.
6 I feel like I get hanged, and it's not right, man. You
7 know this as well as I do. You violated my
8 constitutional right, and there's nothing I could do
9 about it.

10 That's not right. You shouldn't have me
11 waive something. They had a preliminary hearing, and
12 then why did he lie to me if he waived it? Why did he
13 lie to me then? That is why he should be filing.

14 The reason why they filed is conflict between
15 myself and another client in my case. How can they
16 relieve him for another client case? That's another lie,
17 man. That ain't right, man. I got no rights at all.

18 It's crazy, man. Detective set me up. I can
19 prove that. That's the bad part of it, because I can't
20 get a fair trial. I know I won't get a fair trial. I'm
21 being assassinated. That's how I feel, assassinated. I
22 have no rights.

23 THE COURT: It's my understanding that you
24 told the Court that Mr. Locklair did not do what you
25 asked him to do; is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: As far as the management of the
3 defense of your case; is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And result of that, you have a
6 disagreement with Mr. Locklair between the handling of
7 your defense?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And the way you would handle your
10 defense?

11 THE DEFENDANT: Somebody to represent me like
12 he's supposed to --

13 THE COURT: I'm not appointing you another
14 attorney.

15 THE DEFENDANT: I'm just saying. That's a
16 right that I have, Your Honor.

17 THE COURT: That's been resolved. You're on
18 your second attorney. You had Mr. King, and now you have
19 Mr. Locklair. I'm not appointing you another attorney.

20 THE DEFENDANT: But King lied to me.

21 THE COURT: That's been resolved. The
22 question is if you want Mr. Locklair, or do you want to
23 represent yourself? So what's the answer, Mr. Robinson?

24 THE DEFENDANT: I don't know. You're the
25 judge, man.

1 THE COURT: I'm not giving the answer for
2 you.

3 THE DEFENDANT: Do whatever you want to do,
4 man.

5 THE COURT: I'm not going to do whatever I
6 want to do.

7 THE DEFENDANT: That's what you're doing
8 anyway.

9 THE COURT: Do you want Mr. Locklair --

10 THE DEFENDANT: My due process of law is
11 being violated, Your Honor.

12 THE COURT: Do you want Mr. Locklair or do
13 you want to represent yourself?

14 THE DEFENDANT: I can't represent myself.
15 Everything changes in my case, Your Honor.

16 THE COURT: So now you're telling me what you
17 said you didn't tell me before. What did you tell me
18 before, that you do not want to represent yourself?

19 THE DEFENDANT: Because I don't have
20 everything in my case. How can I represent myself?

21 THE COURT: So you're not prepared to
22 represent yourself.

23 THE DEFENDANT: I'm not prepared. How could
24 I be prepared, Your Honor?

25 THE COURT: All right. Mr. Locklair is your

1 attorney.

2 THE DEFENDANT: No, he's not.

3 THE COURT: Yes, sir, he is.

4 THE DEFENDANT: No, he's not. He's not
5 representing me..

6 THE COURT: Then do you want to represent
7 yourself?

8 THE DEFENDANT: Let God represent me, Jesus
9 represent me.

10 THE COURT: All right. That's a fine
11 attorney there. Is that what you want?

12 THE DEFENDANT: Might as well. Ain't nobody
13 else -- I'm getting railroaded. I got railroaded last
14 time. I didn't get a fair trial.

15 THE COURT: You're going to represent
16 yourself?

17 THE DEFENDANT: I still need to find out more
18 about my case.

19 THE COURT: Are you going to represent
20 yourself?

21 THE DEFENDANT: Yes, sir. I'm going to
22 represent myself, but I still got to find out my case.

23 THE COURT: You understand the dangers of
24 self-representation?

25 THE DEFENDANT: I don't care about the

1 danger. I'm saying I still need more time to find out
2 more about my case.

3 THE COURT: I've denied your motion.

4 THE DEFENDANT: How you can you deny my
5 motion when I'm representing myself?

6 THE COURT: All right. Anything else?

7 Anything else, Mr. Robinson? Anything further
8 Mr. Robinson? Anything further, Mr. Robinson?

9 All right. Then if silence is any response,
10 there is nothing further. He can represent himself.
11 Mr. Locklair, you're standby counsel. You're standby
12 counsel as appointed by the Court.

13 Ready for the jury, Mr. Robinson? Well, I'll
14 take silence -- bring in the jury. Bring us this juror
15 back.

16 MR. LOCKLAIR: Would Your Honor prefer me to
17 sit at counsel table, behind counsel table?

18 THE COURT: Behind.

19 MR. LOCKLAIR: Behind?

20 THE COURT: Yes, sir. Does he have a strike
21 list, Mr. Locklair?

22 MR. LOCKLAIR: I left him with my master
23 list. They didn't give us a strike list.

24 THE COURT: That's what I meant.

25 (Brief recess.)

1 (In open court, jury panel present.)

2 THE COURT: Step up here, sir. Step up,
3 Mr. Robinson.

4 (Juror number 195 at sidebar.)

5 THE COURT: All right. Now, tell what you
6 were going to tell me.

7 A PROSPECTIVE JUROR: Over the break, I saw
8 the guy I knew, and that was the victim.

9 THE COURT: So you didn't recognize the name.
10 All right. So you know Mr. Fabian, the alleged victim?

11 A PROSPECTIVE JUROR: Yeah.

12 THE COURT: And you walked outside and saw
13 him?

14 A PROSPECTIVE JUROR: And he was sitting
15 there.

16 THE COURT: Given that fact, could you be a
17 fair and impartial juror, both to Mr. Robinson and to the
18 State? Don't make any head movements whatsoever.

19 A PROSPECTIVE JUROR: I don't think, no.

20 THE COURT: All right. That's fine. I'm
21 going to set you aside. Please do not say anything to
22 your fellow jurors. All right? Just go back and have a
23 seat.

24 THE DEFENDANT: Can I ask you a question?

25 THE COURT: You can return to your seat.

1 THE DEFENDANT: This is bullshit, man.

2 THE COURT: All right. This is juror number
3 103, and I have set 195 aside. All right.

4 (The juror, a white male, approaches.)

5 MS. LINDER: Please present this juror.

6 THE DEFENDANT: No.

7 THE COURT: You want him set aside?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. You may return to
10 your seat. Thank you very much.

11 THE CLERK: Juror number 176, Daryn McCoy.

12 (The juror, a black male, approaches.)

13 What say you for the State?

14 MS. LINDER: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 THE DEFENDANT: Present this juror.

17 THE CLERK: Juror number 117, Shawn Pyatt.

18 (The juror, a black male, approaches.)

19 What say you for the State?

20 MS. LINDER: Please excuse the juror.

21 THE CLERK: Mr. Pyatt, if you could, have a
22 seat back in the gallery. Thank you.

23 Juror number 125, Chad Herrera.

24 (The juror, a Hispanic male, approaches.)

25 What say you for the State?

1 MS. LINDER: Please present the juror.

2 THE CLERK: What say you for the defense?

3 THE DEFENDANT: Present the juror.

4 THE CLERK: Have a seat in the jury box,
5 please.

6 Juror number 141, Doris Johnson?

7 (The juror, a black female, approaches.)

8 What say you for the State?

9 MS. LINDER: Please excuse this juror.

10 THE CLERK: If you could, have a seat back in
11 the gallery. Juror number 211, Jennifer Poon.

12 (The juror, an Asian female, approaches.)

13 THE CLERK: What say you for the State?

14 MS. LINDER: Please present the juror.

15 THE CLERK: What say you for the defendant?

16 THE DEFENDANT: Excuse the juror.

17 THE CLERK: Have a seat back in the gallery.
18 You're excused from this trial.

19 Juror number 89, Brenda Gist.

20 (The juror, a white female, approaches.)

21 What say you for the State?

22 MS. LINDER: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 THE DEFENDANT: Excuse.

25 THE CLERK: Ms. Gist, if you would, have a

1 seat back in the gallery.

2 Juror number 245, Samuel Singleton?

3 (The juror, a black male, approaches.)

4 What say you for the State?

5 MS. LINDER: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 THE DEFENDANT: Excuse the juror.

8 THE CLERK: Mr. Singleton, if you would, have
9 a seat back in the audience.

10 Juror number 17, Deborah Bedell.

11 (The juror, a white female, approaches.)

12 What say you for the State?

13 MS. LINDER: Please present this juror.

14 THE CLERK: What say you for the defendant?

15 THE DEFENDANT: Excuse.

16 THE CLERK: Have a seat back in the gallery.

17 Defendant has used five of the ten strikes.

18 Juror number 96, Larry Grant.

19 (The juror, a white male, approaches.)

20 What say you for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 THE DEFENDANT: Excuse.

24 THE CLERK: Mr. Grant, have a seat back in
25 the gallery, please.

1 Juror number 223, Merri Ridenour.

2 (The juror, a white female, approaches.)

3 What say you for the State?

4 MS. LINDER: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 THE DEFENDANT: Excuse.

7 THE CLERK: Ms. Ridenour, if you would, have
8 a seat back in the gallery. Okay. Seven strikes for the
9 defendant.

10 Juror number 276, John Villa.

11 (The juror, a white male, approaches.)

12 What say you for the State?

13 MS. LINDER: Please present this juror.

14 THE CLERK: What say you for the defendant?

15 THE DEFENDANT: Excuse.

16 THE CLERK: Mr. Villa, if you would, have a
17 seat back in the galley, please.

18 Juror number 150, Timothy Keisler.

19 (The juror, a white male, approaches.)

20 What say you for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 THE DEFENDANT: Excuse.

24 THE CLERK: That's the ninth strike for the
25 defense. Juror number 65, Legrand Elebash.

1 (The juror, a white male, approaches.)

2 MS. LINDER: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 THE DEFENDANT: Present.

5 THE CLERK: Mr. Elebash, if you could, please
6 have a seat in the jury box. Thank you.

7 Number 286, Glennis West.

8 (The juror, a white female, approaches.)

9 THE COURT: What say you for the defendant?

10 MS. LINDER: Please present this juror.

11 THE CLERK: What say you for the defendant?

12 THE DEFENDANT: Excuse.

13 THE CLERK: Please have a seat back in the
14 gallery. This is the last strike for the defense.

15 Juror number 238, Petra Shaeffer.

16 (The juror, a white female, approaches.)

17 What say you for the State?

18 MS. LINDER: Please present this juror.

19 THE CLERK: Is there any challenge from the
20 defendant?

21 THE DEFENDANT: Present.

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

24 Juror number 229, Bryan Rumph.

25 (The juror, a white male, approaches.)

1 What say you for the State?

2 MS. LINDER: Please present this juror.

3 THE CLERK: Is there any challenge from the
4 defendant?

5 THE DEFENDANT: Present.

6 THE CLERK: Please have a seat in the jury
7 box, Mr. Rumph. You've been selected for the trial of
8 this case.

9 Juror number 241, Daena Simmons.

10 (The juror, a black female, approaches.)

11 What say you for the State?

12 MS. LINDER: Please present this juror.

13 THE CLERK: Is there any challenge from the
14 defendant?

15 THE DEFENDANT: Present.

16 THE CLERK: Ms. Simmons, if you could, have a
17 seat in the jury box. You've been selected for this
18 jury.

19 Juror number 25, Kristen Blackmon.

20 (The juror, a white female, approaches.)

21 What say you for the State?

22 MS. LINDER: Please present this juror.

23 THE CLERK: Any challenges from the
24 defendant?

25 THE DEFENDANT: Excuse.

1 THE CLERK: Just one moment, ma'am.

2 THE COURT: You don't have any more strikes?

3 THE CLERK: No, Your Honor.

4 THE COURT: Mr. Robinson, do you have any
5 challenge for cause?

6 THE DEFENDANT: I don't know what you're
7 talking about.

8 THE COURT: Excuse me?

9 THE DEFENDANT: I don't even know what you're
10 talking about.

11 THE COURT: Step up here, please. I couldn't
12 quite hear you.

13 (The following discussion was held at
14 sidebar.)

15 THE DEFENDANT: I said I don't even know what
16 you're talking about.

17 THE COURT: You're out of strikes.

18 THE DEFENDANT: I know what strike is.

19 THE COURT: And so you can have challenge for
20 cause. In other words, if you think there is some cause
21 to strike this juror that you want me to consider, I
22 could set that juror on the side.

23 THE DEFENDANT: Okay. Yes.

24 THE COURT: So you have to tell me -- what is
25 the cause?

1 THE DEFENDANT: Just not feeling like
2 she's -- I'm looking at them -- I don't think she --

3 THE COURT: Well, that's not sufficient.

4 THE DEFENDANT: I know that's not sufficient,
5 but I'm just saying -- there's a word for it. I just
6 can't think of the word for it. I don't think she really
7 would make the right decision.

8 THE COURT: And why do you say that?

9 THE DEFENDANT: Because the way she look at
10 me.

11 THE COURT: Well, that is not sufficient
12 cause. All right? All right. Thank you. Thank you
13 very much.

14 (End of sidebar.)

15 THE COURT: All right. I have denied a
16 challenge for cause.

17 THE CLERK: Ms. Blackmon, have a seat in the
18 jury box. You've been selected for the trial of this
19 jury.

20 Juror number 99, Sonya Green.

21 (The juror, a black female, approaches.)

22 What say you for the State?

23 MS. LINDER: Please present this juror.

24 THE CLERK: Any challenges from the
25 defendant?

1 THE DEFENDANT: No, ma'am.

2 THE CLERK: Ms. Green, if you have a seat in
3 the jury box, you've been selection for this jury.

4 Juror number 97, Ervin Green.

5 (The juror, a black male, approaches.)

6 THE CLERK: What say you for the State?

7 MS. LINDER: Please present this juror.

8 THE CLERK: And challenge from the defendant?

9 THE DEFENDANT: No, ma'am.

10 THE CLERK: Mr. Green, please have a seat in
11 the jury box. You've been selected for this jury.

12 Juror number 41, Sarah Savage.

13 (The juror, a white female, approaches.)

14 What say you for the State?

15 MS. LINDER: May we approach real quick?

16 (The following discussion was held at
17 sidebar.)

18 MS. LINDER: I'm sorry, Judge. I just wanted
19 to disclose that she is the wife of someone who used to
20 work in our office and is a friend of mine. I did
21 mention that previously, and she did bring that up in
22 jury qualifications downstairs.

23 THE COURT: Okay.

24 MS. LINDER: I do not intend to strike her,
25 but I wanted to make the Court aware so if he decided to

1 strike her, or attempt to strike her.

2 THE COURT: He doesn't have any strikes.

3 MS. LINDER: I just wanted the Court to be
4 aware.

5 THE COURT: Do you want me to set her aside?

6 THE DEFENDANT: I don't want none of these
7 jurors.

8 THE COURT: Do you want me to set her aside?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Thank you. All
11 right.

12 (End of sidebar.)

13 I'm going to set Ms. Savage aside from the
14 trial of this case. Thank you. Thank you very much, Ms.
15 Savage.

16 THE CLERK: Juror number 271, Alexandra
17 Toregas.

18 (The juror, a white female, approaches.)

19 MS. LINDER: Please seat the juror.

20 THE CLERK: Any challenges ?

21 THE DEFENDANT: No, ma'am.

22 THE CLERK: If you could, have a seat.

23 Juror number 27, Rebecca Blanton.

24 (The juror, a white female, approaches.)

25 What say you for the State?

1 MS. LINDER: Please present this juror.

2 THE COURT: Any challenge from the defendant?

3 THE DEFENDANT: No.

4 THE CLERK: If you could, have a seat in the
5 jury box. You've been selected for this jury.

6 Your Honor, would you like to choose an
7 alternate?

8 THE COURT: Yes, ma'am.

9 THE CLERK: One or two?

10 THE COURT: Two.

11 Mr. Robinson, on the alternates you have two
12 strikes, per alternate. The State has one, but not
13 cumulative. All right?

14 THE CLERK: Choosing our first alternate,
15 juror number 287, Roxanne Westdyk.

16 (The juror, a white female, approaches.)

17 What say you for the defendant?

18 MS. LINDER: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 THE DEFENDANT: Excuse.

21 THE CLERK: Juror number 107, Claudette
22 Hannah.

23 (The juror, a white female, approaches.)

24 What say you for the State?

25 MS. LINDER: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 THE DEFENDANT: Present.

3 THE CLERK: If you have a seat in the jury
4 box, you've been selected as our first alternate.

5 Juror number 272, Elizabeth Vansaun?

6 (The juror, a white female, approaches.)

7 THE CLERK: What say you for the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK: What say you for the defendant,
10 seat or excused?

11 THE DEFENDANT: Excused.

12 THE CLERK: If you would have a seat back in
13 the gallery, thank you.

14 Juror number 145, Edward Jordan.

15 (The juror, a white male, approaches.)

16 What say you for the State?

17 MS. LINDER: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 THE DEFENDANT: Present.

20 THE CLERK: If you have a seat in the jury
21 box, you've been selected as our second alternate.

22 The jury has been seated, Your Honor.

23 THE COURT: Thank you. Thank you very much.
24 Any motions regarding jury selection process?

25 MS. LINDER: None from the State, Your Honor.

1 THE COURT: From the defense, Mr. Robinson?

2 THE DEFENDANT: No, sir. Could I come up?

3 THE COURT: Yes, sir. Step up.

4 (The following discussion was held at
5 sidebar.)

6 Yes, sir?

7 THE DEFENDANT: Can I get some help from
8 counsel? I need to ask him about doing this stuff --

9 THE COURT: Need help from where?

10 THE DEFENDANT: Wesley Locklair?

11 THE COURT: Yeah, he's -- Mr. Locklair is
12 standby counsel.

13 THE DEFENDANT: If I could talk to him for a
14 minute.

15 THE COURT: Yes, sir. You can talk to him,
16 and I'll get you some books from public defender's
17 office.

18 What I'm going to do is I'm going to excuse
19 this panel. Then I'm going to give them some
20 instructions and probably bring them back. We have to
21 figure out how long it will take for motions and all.
22 All right?

23 (End of sidebar.)

24 All right. Ladies and gentlemen: You were
25 just selected for the trial of this case. Momentarily

1 I'm going to ask you to step to your new temporary home,
2 the jury room. I have to give some instructions to your
3 fellow jurors concerning your service for the remainder
4 of the week.

5 During this -- I realize the hour is late,
6 and it's going to get later, but given that, do not
7 discuss the case during this brief recess. I'll bring
8 you out and give you further instructions, but do not
9 discuss this case during the brief recess. You may now
10 go with the bailiff.

11 Ladies and gentlemen of the jury: If you
12 were not selected as a member of the jury, momentarily
13 I'm going to release you for your jury service for the
14 remainder of the day. The clerk informs me you're to
15 call your juror information hotline.

16 (In open court, jury not present.)

17 THE COURT: All right. Solicitor,
18 Mr. Robinson, there are a number of motions that have
19 been filed, some of which would require testimony, I
20 believe.

21 How long, Solicitor, do you think these
22 motions will take to hear?

23 MS. LINDER: Your Honor, I think it's best if
24 we kind of go through them briefly. I think some of them
25 will not be necessary.

1 THE COURT: All right.

2 MS. LINDER: If you would like, the first one
3 I have in front of me --

4 THE COURT: Do you have a copy of these
5 motions, Mr. Robinson?

6 THE DEFENDANT: Yes, sir.

7 MS. LINDER: The first motion, the motion to
8 disclose juror information, prior to jury selection, I
9 gave a summary chart, which is what we have in the
10 solicitor's office, to the defense. So they have that,
11 so I do not believe we need to be heard.

12 There is a motion to suppress statement. The
13 State is not planning to introduce any statement given by
14 the defendant, so I don't believe that's necessary for us
15 to have.

16 The motion to sequester witnesses, Your
17 Honor, as long as the lead detective can sit at the table
18 with us, which is Robert Keller who is currently at the
19 table with us, the State consents to sequester the rest
20 of the witnesses.

21 As far as motions for all SLED agents and
22 laboratory workers, this was always -- I've contacted
23 everyone. Certain SLED people did have lab notes, and
24 those were all turned over back in July, and as far as
25 the city, I've talked to all the city people who are

1 involved and there were no other notes, investigation
2 notes or otherwise; therefore, there is nothing to turn
3 over regarding that one.

4 As far as the motion hearing, the State's use
5 of defendant's prior bad acts or convictions, Your Honor,
6 the State intends only to introduce the two prior
7 burglary convictions during the case in chief because
8 that is an element of why this is a burglary in the first
9 degree.

10 We do not plan on mentioning any more than
11 two prior burglary convictions since that is an element
12 to where the burden is on the State to prove those, and I
13 also believe that the defendant at this point does not
14 intend to testify. If he does, I believe you can take
15 that up at the appropriate time, but the State would only
16 be seeking to introduce any impeachable convictions
17 unless the door were to be opened.

18 THE COURT: All right. Do you have one about
19 eyewitness identification?

20 MS. LINDER: Yes, Judge. We do need a Neil
21 vs. Biggers hearing. There was a show-up identification
22 done in this case. The State plans to call two
23 witnesses, the lead detective who is present, and also
24 the victim in this case, who was also present, and he is
25 seated outside of the courtroom. He has not been privy

1 to any of this.

2 For that hearing, the State has two
3 witnesses. I believe my portion for both witnesses would
4 be half an hour, max, and then the final motion is with
5 regards to scientific evidence. We are going to declare
6 someone as an expert and we intend to introduce that.

7 We have two individuals that we intend to ask
8 the Court to declare expert after laying the appropriate
9 foundation. That is Nada Kerstein, who is present
10 outside. She did fingerprint comparison from prints
11 found on the scene with this defendant. She is prepared
12 to go forward in pretrial since they are requesting that;
13 however, we do have her CV that we are more than happy to
14 furnish to the Court if that would suffice.

15 The next individual who we would seek to
16 declare an expert would be Catherine Leisy. She is a DNA
17 blood expert from SLED. She is in Columbia. Prior to
18 what happened in this half hour or so, I have discussed
19 with defense since she's in Columbia, I have discussed
20 with Mr. Locklair when he was representing Mr. Robinson
21 that instead of having that motion pretrial -- instead of
22 having that motion pretrial and having her drive down
23 twice, the State would agree to not mention DNA in
24 opening, merely that there were clippings with something
25 that field tested, but the State is happy to not mention

1 that, and then prior to her testifying, she will be our
2 last witness, have a hearing with her to discuss that
3 further.

4 I believe that covers everything that the
5 defense has filed. The State does not have any
6 additional pretrial motions.

7 THE COURT: So how long do you think it will
8 take?

9 MS. LINDER: The Neil v. Biggers hearing, I
10 believe it will take -- both witnesses would be about 30
11 minutes, and if Your Honor would like testimony to, more
12 or less, put on the record the CV of Nada Kerstein, then
13 I believe that would take maybe ten to fifteen minutes;
14 otherwise, we do have a CV if the Court would like it as
15 an exhibit, and I believe that's already been furnished
16 to the defense.

17 THE COURT: Do you have any motions,
18 Mr. Robinson?

19 THE DEFENDANT: I'm going to ask you
20 something. She said it was -- hold on a minute. The
21 detectives in this case -- I want to find out who took
22 the pictures in this case because once he stopped moving
23 around -- that's why we need these pictures, to show it
24 was attempted, because I never made it in the house.

25 The fingerprints they got was of the DVDs I

1 had in my possession, not that I got in the house. I
2 don't believe I have the paper that the detectives had on
3 this case. I need to ask Mr. -- we got the papers? She
4 said one of the witnesses, he is no longer a detective.
5 I want him subpoenaed to court because he's my case. I
6 would issue -- he was the detective that did my DNA.

7 THE COURT: I don't know who -- there is one
8 on the witness list that says retired.

9 THE DEFENDANT: That's who I'm talking about.

10 THE COURT: Is he subpoenaed, Solicitor?
11 Hull, is that his name?

12 MS. LINDER: I'm not certain if he has
13 received his subpoena or not, as I did not -- I was never
14 intending to call him as a witness. He didn't write any
15 sort of supplemental. He didn't interview anyone, take
16 any photos. He didn't do anything.

17 THE COURT: That's who you're referring to,
18 detective --

19 THE DEFENDANT: He was the detective on the
20 scene, right?

21 THE COURT: Ron Hull? I don't know the
22 answer to the question.

23 THE DEFENDANT: The testimony, he was the
24 detective on the scene.

25 THE COURT: I don't know the answer, is all

1 I'm saying. I don't know. Do you know that answer,
2 Solicitor?

3 MS. LINDER: What was the question?

4 THE COURT: Was he the detective on the
5 scene?

6 MS. LINDER: The lead detective is sitting
7 right here, two down from me, Rob Keller. He was the
8 lead detective on the scene, and he wrote a supplemental
9 report.

10 THE COURT: Does that answer your question,
11 Mr. Robinson?

12 THE DEFENDANT: Yeah -- okay.

13 THE COURT: Sir?

14 THE DEFENDANT: Answers one question. So
15 he's the only detective that's going to be representing
16 this case?

17 THE COURT: I don't know the answer to that
18 question.

19 THE DEFENDANT: Because I want who was taking
20 pictures of house. They did nothing in my case. I asked
21 my lawyer, Jason King, and all this.

22 MS. LINDER: Your Honor, the crime scene
23 technician, Richard Wiersma, was the individual that took
24 the photo. He will be testifying. I believe he's either
25 the fifth or sixth witness. That is who I intend to

1 introduce them through; however, I do intend to use those
2 pictures as State's exhibits for identification with
3 other witnesses who are prior to him.

4 THE DEFENDANT: That is the person I want
5 because he had a lot to do with the type of evidence,
6 with the attempted evidence.

7 THE COURT: That's your defense?

8 THE DEFENDANT: It was attempted because I
9 never made it in the house.

10 THE COURT: I got you. I understand.

11 THE DEFENDANT: I got set up.

12 THE COURT: All right. Well, I'm going to
13 release our jury until after lunch, and I'll tell them to
14 come back about -- I'll tell them to come back about
15 3:00. We'll come back at 2:30.

16 THE DEFENDANT: Can I talk to Mr. Locklair?

17 THE COURT: Yes, sir. I'm going to release
18 the jury, though. You just have a seat until I release
19 the jury.

20 MS. LINDER: If I may quickly approach, I
21 just made another copy of the CD and also for the Court's
22 exhibit.

23 (In open court, jury present.)

24 THE COURT: Thank you. Thank you very much.

25 Ladies and gentlemen of the jury:

1 Momentarily I'm going to release you for your late
2 luncheon recess, but I must give you some instructions
3 prior to doing that.

4 While you're serving on this jury, you may
5 not discuss this case with others. That includes your
6 fellow jurors, lunch mates, family, friends, or anyone
7 else. You may not read, watch, or listen to any news
8 reports about the case, should there be any. You may not
9 use your computer, cellular phone, or any other
10 electronic device with communication capabilities while
11 in attendance at trial or during deliberations.

12 You may, of course, use these devices during
13 lunch breaks, but you may not use them to obtain or
14 disclose information, which is prohibited under our
15 rules.

16 Information which is prohibited includes but
17 is not limited to the following: Information about a
18 party, a witness, an attorney, or a court officer. News
19 accounts of the case, current or in the past, should
20 there have been any. Information collected through juror
21 research on any topics raised or testimony offered by any
22 witness, or information collected through juror research
23 on any other topic that the juror might think would be
24 helpful in deciding the case.

25 You decide the case based on the evidence and

1 the testimony presented to you from the witnesses
2 testifying under oath from the witness stand, any
3 exhibits that are presented into evidence, and the
4 reasonable inferences that you, the jury, draw there
5 from.

6 Do not begin any deliberations until you've
7 heard all the evidence, all the testimony, closing
8 arguments by the parties, instruction on the law by the
9 Court, until directed by the Court to begin deliberations
10 with your fellow jurors in your jury room.

11 Ladies and gentlemen: I'm going to ask you
12 to please be back promptly at 3:00. I realize that's a
13 little bit of an extended luncheon recess. The parties
14 will be back at 2:30. I have some pretrial matters to
15 take up with them, so rather than hold you captive any
16 longer than necessary, I'll try to get those heard before
17 your return at 3:00.

18 The bailiffs will certainly show you how to
19 exit and reenter the courthouse. With that being said,
20 you're released until 3 p.m. I hope you have a pleasant
21 lunch.

22 Thank you. Thank you very much.

23 (In open court, jury not present.)

24 THE COURT: Any objections to anything I told
25 the jury, from the State?

1 MS. LINDER: From the State, no.

2 THE COURT: From the defense, Mr. Robinson?

3 THE DEFENDANT: I really don't know what's
4 going on, to tell you the truth.

5 THE COURT: I just asked you if you have any
6 objections to anything I just told the jury.

7 THE DEFENDANT: No.

8 THE COURT: All right. And what's going on
9 is, when we come back at 2:30, the State is going to
10 present evidence and testimony concerning -- according to
11 the motions Mr. Locklair filed concerning eyewitness
12 identification.

13 THE DEFENDANT: That's the pretrial?

14 THE COURT: That's pretrial.

15 THE DEFENDANT: Does that mean I can present
16 motions?

17 THE COURT: Do you have any motions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I'll be glad to hear your
20 motions. All right? We'll be in recess until 2:30.

21 (Recess taken.)

22 A F T E R N O O N S E S S I O N

23 THE COURT: Mr. Robinson is also present,
24 along with his standby counsel.

25 MR. LOCKLAIR: Your Honor, would it be

1 possible for me to beg my client's indulgence for us to
2 have a couple minutes to talk, briefly?

3 THE COURT: Yes, sir.

4 MR. LOCKLAIR: Okay. Your Honor?

5 THE COURT: Yes, sir.

6 MR. LOCKLAIR: At this time I think my client
7 would like me to reinstate as full counsel, and I have
8 absolutely no problem with that. Would love to go
9 forward, Your Honor.

10 I think he has realized the gravity of his
11 situation and his lack of legal knowledge would be
12 detrimental to him, and I agree with him. I think the
13 wisest course of action would be for him to have counsel.

14 THE COURT: Mr. Robinson, would you please
15 stand.

16 (Defendant duly sworn.)

17 All right. Mr. Robinson, you heard what
18 Mr. Locklair told me. Do you agree with that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You want him to represent you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Understanding you have a right to
23 represent yourself, if you wanted to.

24 THE DEFENDANT: Yes.

25 THE COURT: You want not to represent

1 yourself, you want Mr. Locklair to represent you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That's your decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Freely and voluntarily made?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Any questions you would like to
8 ask me about that decision, Mr. Robinson?

9 THE DEFENDANT: All I want is a fair trial.

10 THE COURT: All right. Thank you. I will
11 allow that, Mr. Robinson.

12 Let me ask you, Mr. Locklair, do you want me
13 to -- do you suggest I say anything to the jury panel
14 about you being reinstated?

15 MR. LOCKLAIR: I was hoping the solicitor
16 wouldn't object and give me some leeway, but I was going
17 to say in my opening that I've been appointed as his
18 lawyer. I was just going to say he is under a lot of
19 stress, but at this point I'm going forward as his
20 lawyer. Please don't hold it against him.

21 THE COURT: In other words, you don't want
22 it --

23 MR. LOCKLAIR: It might be best coming from
24 you, Your Honor.

25 THE COURT: That's why I was asking if you

1 wanted me to say something, that I see he's attired
2 differently now, in civilian clothes. I may say
3 something to them along some line.

4 MR. LOCKLAIR: Yes, sir. I appreciate that,
5 Your Honor.

6 THE COURT: Thank you. Thank you very much.
7 I believe the first motion is on the eyewitness; is that
8 correct?

9 MS. LINDER: Yes, Judge.

10 THE COURT: You may call your first witness.

11 MS. LINDER: The State calls Robert Fabian.

12 THE COURT: All right. Mr. Fabian, if you
13 would, come around and be sworn for us.

14 ROBERT FABIAN,
15 having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. LINDER:

19 Q. Mr. Fabian, when did you first know that you were
20 the victim of a potential crime back on May 31st of 2011?

21 A. When I walked into my back yard to go into my
22 house. My plate glass window next to the door was
23 broken.

24 Q. And about what time was that?

25 A. I believe it was, like, early afternoon, from what

1 I can remember.

2 Q. And how was that lighting early afternoon in late
3 May?

4 A. It was --

5 Q. Was it dark? Was it daylight?

6 A. No, it wasn't dark. It was daylight.

7 Q. And when you noticed that, what did you do next?
8 Did you stand still or, what did you do next?

9 A. I asked, you know, who's there, was my initial
10 reaction.

11 Q. And what kind of response, if any, did you
12 receive?

13 A. I got, It's me, it's me.

14 Q. What did you do next, after hearing that?

15 A. Well, I was under the impression that it might
16 have been somebody that I knew, so I unlocked the door
17 and proceeded into the house.

18 Q. And did you see someone inside?

19 A. I didn't see anybody inside, but I heard him
20 exiting back through the window that he had broken.

21 Q. And how did you hear him exiting?

22 A. I mean, I heard footsteps running through the
23 house, and I heard the clatter of the window because
24 there was just glass everywhere.

25 Q. And did you ever see that individual?

1 A. Yes, when -- as he was going out the window, I had
2 turned around and gone out the back door, and I saw him
3 in my back yard and I tried to catch him right there.

4 Q. And were you -- do you normally wear any kind of
5 glasses or contacts?

6 A. Yeah. I wear contacts.

7 Q. Were you wearing them that day?

8 A. Yeah.

9 Q. And as you saw this individual, can you describe
10 what you saw as he was exiting, what movements you saw?

11 A. It looks like he had dropped some stuff that he
12 was picking back up, and, like I say, I had a fence right
13 next to my back -- you know, back door, and he was here,
14 in front of me. And, like I said, I ran towards him and
15 he had, you know, turned around and ran out my side gate.

16 Q. And how far away -- when you were near the person
17 who was inside of your home, what was the closest you
18 ever got to them?

19 A. I'd say, like, approximately maybe five feet.

20 Q. And that day, were you under the influence of any
21 sort of drugs or alcohol?

22 A. No, ma'am. I had just returned from work, I
23 believe.

24 Q. And what did you do upon seeing this?

25 A. Like I say, as he ran, I'm not the fastest

1 individual. I proceeded to chase him and I got in my
2 Jeep, and it looked like he had crossed the highway from
3 my house. My house is right on the highway.

4 I got in the Jeep and I went in the general
5 direction that he went to, cause there was a neighborhood
6 across the way, and I didn't see him in that
7 neighborhood, and that's when I proceeded to call 911.

8 Q. And when you called 911, did you give a physical
9 description of the individual you saw jumping out the
10 window of your house and then running out of your yard?

11 A. Yes, ma'am.

12 Q. And what was that description?

13 A. It was an African American male, kind of stocky
14 build. He didn't have a shirt on when he, I guess,
15 jumped through the window, whatnot, in my back yard.
16 When I went inside, I noticed there was blood all over
17 the place, so I'm sure that he was cut, coming into that
18 window, and he probably got cut going out of that window.

19 Q. And did the police come to your home?

20 A. Yes, ma'am.

21 Q. And did you tell any police officers a physical
22 description of the individual whom you saw jumping out
23 from your home and then fleeing?

24 A. Yeah, yeah.

25 Q. And were you ever asked to leave the house with a

1 police officer?

2 A. Yeah, to go identify the man they had picked up
3 with the description I had given them.

4 Q. And do you recall who that detective was?

5 A. I don't remember his name. Like I say, I believe,
6 you know, couldn't have sworn it, but I can't recall his
7 name. It was so long ago.

8 Q. And how did you arrive to the location of the
9 identification?

10 A. I was in the police car with the detective, and I
11 guess he was detained by other officers, and I pointed
12 him out from inside the police vehicle.

13 Q. And on your right over to the identification
14 location, did that detective say to you, Hey, we got the
15 guy? You just need to ID him?

16 A. No.

17 Q. Did he tell you that they found someone matching
18 it and that you really should ID him?

19 A. What they had told me was they had just found a
20 man fitting the description. They would like me to come
21 see, basically.

22 Q. And how far away did you ride from your home to
23 make this identification?

24 A. Not even a minute away. It was right there on St.
25 Andrews Boulevard, on the same side of the highway that

1 my house is on.

2 Q. Would it be fair to say that it was a few houses
3 down, a few miles down?

4 A. I'd say maybe a quarter of a mile.

5 Q. And when you drove up to the identification, what
6 did you see?

7 A. I saw the man fitting the description and the
8 other officers with him, and I saw -- it looked like his
9 shirt balled up with DVDs in it, and he was cut and
10 bleeding.

11 Q. Did you recognize anyone when you pulled up to the
12 identification location?

13 A. I recognized the guy that broke into my house.

14 Q. How quickly did you recognize him?

15 A. I mean, it was pretty much instantaneous.

16 Q. How confident were you then that that was the guy
17 who you saw jumping out of your house and fleeing your
18 yard?

19 A. It was pretty much 100 percent.

20 Q. And after you indicated that you recognized him to
21 the detective in the car, did that detective tell you,
22 Hey, right answer?

23 A. No.

24 Q. Did that detective, you know, wink at you and say,
25 Good job?

1 A. No.

2 Q. And how long between seeing the guy jump out of
3 the window and run out of your yard did this
4 identification take place?

5 A. I mean, I would maybe say ten to fifteen minutes
6 tops, would be fair.

7 MS. LINDER: I beg the Court's indulgence.

8 I have no further questions at this time.

9 Please answer any questions the defense may have.

10 THE COURT: Thank you. Mr. Locklair?

11 MR. LOCKLAIR: May it please the Court, Your
12 Honor.

13 CROSS-EXAMINATION

14 BY MR. LOCKLAIR:

15 Q. Good afternoon, Mr. Fabian. I've got a few
16 questions for you.

17 When you first went in the house, you said, Who is
18 there, before you went in the house?

19 A. Yes, sir.

20 Q. When you went in the house, you said you could
21 tell he went out the window because you heard noise,
22 footsteps and noises?

23 A. Yeah.

24 Q. Did you physically see him go out the window?

25 A. No. Like I said, I was right in my kitchen which

1 my back door leads into, and I turned around. You know,
2 I heard him outside the house at that point and saw him
3 out my back door.

4 Q. Okay. So at any point when he went out the
5 window, did you run to the window, look out, and observe
6 him?

7 A. No. I ran back out the door as I saw him outside.

8 Q. Okay. So when he first went out the window, is it
9 fair to say you also didn't run over and look at blood on
10 the curtain when he ran outside?

11 A. Yeah. He evidently went inside the kitchen to
12 wash the blood off, and it was pretty much on the wall
13 and curtains. And when I approached the house, I saw
14 blood on the curtains of the broken window as well.

15 Q. When he exited the house, though, you didn't run
16 to the window at that point and notice there was blood
17 smeared on the window?

18 A. No, sir. I didn't make it out of my kitchen.

19 Q. And when he left, you attempted to pursue after
20 him; is that correct?

21 A. Yes, sir.

22 Q. Did you run down St. Andrews Boulevard after him?

23 A. I ran to about the sidewalk a little bit past my
24 house.

25 Q. When you first noticed him out of the house, were

1 you able to see what kind of clothing he was wearing?

2 A. Yes, sir.

3 Q. What was that?

4 A. He didn't have a shirt on, and I believe he had
5 black pants on at the time.

6 Q. Okay. At any point did you peek out of the window
7 and see him crouched down below the window?

8 A. No.

9 Q. When you were chasing him down the road, did you
10 see any other police cars at that time?

11 A. No, not at that time.

12 Q. When was the last time you were able to observe
13 the defendant while you were pursuing him?

14 A. Like I say, as soon as I got to the sidewalk out
15 in front of my house, it looked like he was going across
16 the street, and that's when I turned around and got in my
17 car.

18 Q. Okay. At any point when you called 911, did you
19 tell them you thought the suspect might be wearing a dark
20 in color shirt?

21 A. No, no.

22 Q. You don't recall telling anybody that around 1:35
23 when 911 called?

24 A. No. Like I said, I didn't believe he had a shirt
25 on when he was leaving my house.

ROBERT FABIAN - CROSS BY MR. LOCKLAIR

1 Q. Okay. You say when you first pulled up to where
2 they came for the ID, you said there was a man fitting
3 the description.

4 A. Yes, sir.

5 Q. Where was he when you first pulled up?

6 A. He was near the sidewalk. Like I said, maybe
7 about a quarter mile away from my house, standing there
8 with the officers.

9 Q. Was he standing outside the police vehicle when
10 you first saw him?

11 A. No. From what I recall, he was actually still on
12 the sidewalk itself.

13 Q. Okay. How many officers would you say were around
14 him at the time?

15 A. Like, maybe four, five maybe.

16 Q. Was he in handcuffs?

17 A. From what I can recall, yes.

18 Q. Were there any other people at the scene who were
19 not police officers that were standing around?

20 A. Not that I observed.

21 Q. Okay. So there wouldn't have been any other black
22 men in their 30's or 40's unless they were in a uniform,
23 police uniform?

24 A. No, sir.

25 Q. So they didn't give you a choice of who it was,

1 they just took you up to one person?

2 A. Yes, sir.

3 Q. And that was a black male in handcuffs with three
4 to four police officers standing around him?

5 A. Yeah, from what I can recall from that date.

6 Q. Do you remember telling the 911 operator that the
7 person that broke into your house had a low haircut and
8 muscular build?

9 A. Yes, sir..

10 Q. Beg Court's indulgence for one minute please, Your
11 Honor..

12 When you called 911 initially, did you tell them
13 someone had tried to break into your residence about ten
14 minutes ago?

15 A. From what I believe I said, I said somebody was
16 inside my house.

17 Q. Okay. So you actually told them that you saw
18 somebody in there? You didn't say somebody was
19 attempting to break in?

20 A. No, no.

21 Q. Okay.

22 MR. LOCKLAIR: That's all I have, Your Honor.

23 THE COURT: Thank you, Mr. Locklair.

24 Redirect, Solicitor?

25 MS. LINDER: No redirect, Your Honor.

ROBERT KELLER - DIRECT BY MS. LINDER

1 THE COURT: Thank you. Thank you very much,
2 Mr. Fabian. You may step down.

3 All right. Solicitor --

4 MS. LINDER: State calls Detective Robert
5 Keller.

6 ROBERT KELLER,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: Robert Keller, K-e-l-l-e-r.

11 BY MS. LINDER:

12 Q. Good afternoon. When you were called to a
13 burglary in progress at a house, what description were
14 you given?

15 A. I was given it was a black male, no shirt, dark
16 pants, and possibly bleeding.

17 Q. And when you arrived on scene, did you speak with
18 the victim in the case?

19 A. Yes, ma'am.

20 Q. And did he give you a description?

21 A. He gave me the same description.

22 Q. Did you ever do an identification in this case?

23 A. Yes.

24 Q. And how long after you arrived at the house did
25 that identification procedure occur?

1 A. Approximately ten minutes, at the most.

2 Q. And was the witness taken to the suspect or the
3 suspect taken to the witness?

4 A. The witness was taken to the suspect.

5 Q. Where did the show-up take place?

6 A. Approximately a quarter of a mile down St. Andrews
7 Boulevard.

8 Q. Who was present?

9 A. Myself, the victim, and other officers. I don't
10 remember their names, but I know they were on scene, as
11 was the defendant.

12 Q. And how did the victim and yourself arrive at that
13 location for the show-up ID?

14 A. I put him in my car, and we drove down there
15 together.

16 Q. And what did you say to the witness before,
17 during, and after the ID?

18 A. I advised him that the units had stopped somebody
19 matching that description and asked him if he thought he
20 would be able to identify the person. He said yes, and
21 we got into the car. It's a very short drive. He didn't
22 say anything, and when we got there, I asked him, Is that
23 the person you saw fleeing your residence?

24 He said yes, instantaneously, and I advised
25 the units affirmative over the radio.

ROBERT KELLER - DIRECT BY MS. LINDER

1 Q. Did anyone influence or suggest to the witness
2 that he should pick and should identify the defendant in
3 this case?

4 A. No.

5 Q. And what was the condition of the defendant at the
6 time of the show-up ID? Was he handcuffed, not
7 handcuffed?

8 A. I don't recall if he was handcuffed or not.

9 Q. Was he inside the police car, outside the police
10 car?

11 A. He was outside.

12 Q. And how certain was the witness of his
13 identification?

14 A. Very certain.

15 Q. And how long did it take for him to make this
16 identification?

17 A. It was instantly.

18 Q. And did you indicate to the witness before,
19 during, or after that he had made the correct selection?

20 A. No.

21 Q. I beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 MS. LINDER: Nothing further. Please answer
24 any questions the defense may have.

25 THE COURT: Thank you. Mr. Locklair?

1 MR. LOCKLAIR: Thank you, Your Honor. May it
2 please the Court:

3 CROSS-EXAMINATION

4 BY MR. LOCKLAIR:

5 Q. Good afternoon, Detective Keller. How are you?

6 A. Good. How are you?

7 Q. When did you first observe the defendant?

8 A. When I saw him running down the driveway before
9 the call was ever put out, but at the time I didn't know
10 he was a suspect of any kind, and it wasn't until the
11 line-up, or the show-up, was the next time I saw him.

12 Q. So you actually saw him while you were driving
13 before the 911 call came?

14 A. Yes.

15 Q. What did you see him doing as he ran down the
16 driveway?

17 A. He was jogging down the driveway, appeared to have
18 dropped something. He bent over and picked something up,
19 and, obviously, I was flowing with traffic, and I kept
20 going, and I observed him through my rear-view mirror,
21 and he continued following north on St. Andrews
22 Boulevard.

23 Q. Where was he when he dropped something and picked
24 it up?

25 A. He was still in the driveway, towards the

1 sidewalk.

2 Q. How long did you have to observe him in the
3 driveway?

4 A. A couple seconds.

5 Q. Did you notice anybody behind him?

6 A. Not at the time.

7 Q. Did you ever at any point?

8 A. No, no.

9 Q. So at this point did you see Robert Fabian chasing
10 him down the driveway? How far was the driveway?

11 A. From --

12 Q. From the road back to where the house was.

13 A. Driveway is all the way to the road. I saw him
14 very close to the -- on the driveway, very close to the
15 road.

16 Q. I guess I'm saying, how far from the roadway to
17 the house is the driveway?

18 A. It's a pretty long driveway.

19 Q. Like 30 feet, 100 feet, a half mile?

20 A. No, not a half mile. I would say it's 30 to 40-
21 feet maybe.

22 Q. What's the landscaping around the driveway and the
23 road? Is there a lot of trees?

24 A. I know there are lots of trees and bushes. It
25 doesn't obstruct the driveway.

1 Q. Obviously you must have had a pretty clear view if
2 you saw somebody on the driveway. Is it fair to say?

3 A. Yes, yes.

4 Q. When you observed him in your rear-view mirror,
5 did you see anybody running behind him then?

6 A. No.

7 Q. So at no point did you see Mr. Fabian running
8 after him?

9 A. No.

10 Q. The description you received from the suspect, did
11 that come through the dispatcher at 911?

12 A. I got -- that first description was from the
13 dispatcher, and then I arrived on the scene immediately
14 and spoke with Mr. Fabian. He gave me a very similar
15 description.

16 Q. Do you recall what dispatch told you the
17 description was?

18 A. Black male, approximately mid 30's, no shirt, and
19 I believe dark pants.

20 Q. Okay. Do you recall when you were dispatched, was
21 it for a burglary or attempted burglary?

22 A. Burglary in progress.

23 Q. Burglary in progress. When was the first time you
24 saw Mr. Fabian?

25 A. When I responded to the house, shortly after the

ROBERT KELLER - CROSS BY MR. LOCKLAIR

1 call went out.

2 Q. And what description did he give you at that
3 point?

4 A. It was a black male wearing no shirt, possibly
5 bleeding, and dark pants, and he was approximately in his
6 30's, heavysset.

7 Q. Was he able to tell you at that point when he was
8 able to observe the defendant?

9 A. We didn't get into it right away. I put it right
10 out over the radio to let the officers know the
11 description was pretty much the same as what they got
12 over dispatch.

13 MR. LOCKLAIR: Okay. Beg the Court's
14 indulgence for one moment, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. LOCKLAIR:

17 Q. Just one more question.

18 When you saw Mr. Robinson, or whoever you might
19 have saw in that driveway, reach down and pick something
20 up, how long did they pick something up for?

21 A. A second. I don't know if he dropped something.
22 He bent over, and it appeared something dropped because
23 he had something white in his hands.

24 Q. Did he come to a complete stop and bend over and
25 pick something up, or did it look like he was rolling

1 something along the driveway?

2 A. I think he stopped. It wasn't a running motion.

3 MR. LOCKLAIR: Thank you. That's all I have,
4 Your Honor.

5 THE COURT: Redirect?

6 MS. LINDER: No redirect, Your Honor.

7 THE COURT: Thank you. Thank you very much,
8 Officer.

9 MS. LINDER: We have no more witnesses for
10 this hearing.

11 THE COURT: All right. Any evidence or
12 testimony from the defense, Mr. Locklair?

13 MR. LOCKLAIR: No, sir, Your Honor.

14 THE COURT: All right. This is your motion,
15 Mr. Locklair?

16 MR. LOCKLAIR: Yes, sir, Your Honor.

17 THE COURT: We'll be glad to hear from you.

18 MR. LOCKLAIR: Just briefly, we would ask the
19 Court to exclude any further in-court identification that
20 has been painted by the out-of-court identification. We
21 feel the witness did not have a good opportunity to view
22 the suspect at the time of the incident. He said he only
23 observed him briefly outside. His degree of attention
24 wasn't that much. Obviously, from the first time he went
25 in the house, he admitted he hadn't even suspected

1 anything was wrong when he heard, This is me. That's why
2 he unlocked the door and went in.

3 He said he only heard the suspect exit. He
4 claims he chased the victim down the driveway, but when
5 the officer observed him in the driveway, there was
6 nobody else there, so the 30 and 40 foot driveway from
7 the time the defendant was outside the door running away
8 from him for 30 to 40 feet was the most time that he had
9 to observe this person.

10 Basically, when he said he went out the door
11 after Mr. Robinson went out the window, Mr. Robinson is
12 running away from him for less than 30 or 40 yards, and
13 that is the only ability he had to see him. The accuracy
14 of the witness's prior description was very vague.

15 Obviously our Courts in State v. Whaley and
16 other cases have said it's proper to consider the race of
17 a witness and suspects because the error rate for cross
18 racial identification is higher than the error rate of
19 same race identification. You often hear, Some black
20 guy, some black guy, some black guy, and that's kind of
21 what this came to.

22 He said he's in his 30's. He's 44, so there
23 is a big difference in the age. According to 911, he
24 said he had short hair, but he's bald. Furthermore, Your
25 Honor, that while the length of time was short, it was

1 only ten minutes, we think that other factors override it
2 and that the out-of-court identification, one person
3 show-up, they're frowned upon. They could have waited
4 and done an identification lineup later, and we just
5 think the out-of-court identification has tainted any
6 in-court ID. So we would ask the Court to exclude any
7 in-court identification of the defendant in this case by
8 Mr. Fabian.

9 THE COURT: Thank you. Thank you very much.
10 Solicitor?

11 MS. LINDER: Thank you, Your Honor. May it
12 please the Court: The State would submit that the
13 factors determined about the identification, whether it's
14 reliable to Neil v. Biggers, you have to look at the
15 witness's opportunity to view the criminal at the time of
16 the crime. The State would submit he did have the
17 opportunity to view it.

18 He told you he was wearing corrective lenses.
19 He did not have any drugs or alcohol, and when he
20 approached, he heard sounds. He saw him go through the
21 back window again, saw him bend over. He bent over,
22 picked up items in the back yard, and then took off. He
23 said he had the opportunity to see him run through the
24 back yard and on the driveway.

25 Also, look at the witness's degree of

1 attention, Your Honor. I would submit that the witness
2 was paying attention during this. His degree of
3 attention was optimum. He heard the noise. He was aware
4 something may have been going on, and then he saw the
5 individual go through -- and then, also looking at the
6 accuracy of the prior description, black male, stocky,
7 black pants, no shirt, and he gave an age range.

8 Your Honor, Judge, that is what he looked
9 like when he was arrested that day, black male, stocky.
10 He had black pants on. He had no shirt on. He also
11 had -- as the witness described, he had something on his
12 arm, whether he was bleeding from his arm.

13 As far as the age, Mr. Robinson was 40 at the
14 time of this, I believe, or 41 at the time of this
15 incident. Your Honor, I do not believe that 30's versus
16 41 is that great of a distinction. So the level of
17 certainty at the time of confrontation, both the witness
18 said and the officer said that he was absolutely certain
19 and he was confident.

20 The length of the time between the crime and
21 the confrontation, this is about ten minutes from when he
22 was calling 911, speaking with law enforcement and when
23 the show-up occurred.

24 It also occurred very near the scene of the
25 crime. It was less than a quarter of a mile away,

1 literally down the street. The witness's memory was
2 still fresh. It also has been shown to be proper when a
3 suspect did not have time to alter looks or dispose of
4 evidence. This is what occurred in this case.

5 Also, it's shown to be proper in the past
6 if -- it may expedite the release of innocent suspects or
7 to aid the police to know that they have to keep
8 searching for someone. That occurred in this situation.

9 There were ten minutes in between. The
10 witness was brought to the individual who was on the
11 street further down from where the house was, and at that
12 time, he was able to make an identification. The entire
13 drive there and afterwards you heard from both the
14 witness and the officer that there was no indication of a
15 right answer. There was no indication that it's the guy
16 who broke into the house. There was no indication of
17 that given to either of them.

18 Your Honor, for those reasons we ask that the
19 out-of-court identification is allowed in.

20 THE COURT: Anything in reply, Mr. Locklair?

21 MR. LOCKLAIR: No, sir, Your Honor.

22 THE COURT: All right. Well, as you all
23 know, both the State and federal law, we have the facts
24 where 911 calls are placed to law enforcement about a
25 burglary, and thereafter, within a brief period of time,

1 an individual was detained by law enforcement, it appears
2 when I looked at the factors and looking at State v.
3 Moore S.E. 2d 445, which is not a one-on-one show-up but
4 a one-on-two show-up, that was a split decision in the
5 Court of Appeals, and they ultimately found that -- they
6 suggested that although suggestive, in looking at the
7 Neil vs. Biggers factors, which I would do under the
8 totality of the circumstances, they didn't even remand
9 Moore, they just adopted Chief Judge Howard's consent,
10 and he looked at those five factors which I now look at
11 under Neil vs. Biggers.

12 The interesting thing is, I think, in Moore
13 is that, as I say, it's a one plus one-on-two show-up.
14 The eyewitness in that case wasn't the victim of a crime,
15 number one, so here you have an individual come in his
16 residence during daylight hours, wearing his contacts, he
17 testified, noticing damage to the residence for visible
18 entry, even before he gets to inside his residence. He
19 goes in, and then you would think his attention would be
20 more acute, once, seeing the blood and hearing footfalls
21 within his house and glass kind of crunching and then
22 realizing a person in the house is actually not in the
23 house, the person is exiting the house, he then goes
24 outside and sees an individual running from the
25 residence, bleeding, gives chase, not for a great

1 distance, but gives chase on foot and realizes the
2 individual is crossing a street, again pursues him in his
3 vehicle.

4 He calls 911 and gives a description. That
5 description testimony was consistent with what he gave
6 the detective. It's consistent with what he testified
7 before the Court, and within ten minutes, on Moore it was
8 within one-and-a-half hours, and the Court there said
9 that was a narrow expansion of time. The witness in this
10 case, being the victim of the crime, said it was ten to
11 Fifteen minutes tops, from the time he observed his
12 residence having been broken into to the time he
13 identifies the individual that he consistently gave a
14 description of within a quarter mile of his house.

15 I realize that Mr. Robinson may have been the
16 only African American male -- well, I don't know if he's
17 the only African American male there, but he's clearly
18 the only non-police officer there, and there is a dispute
19 in testimony of whether he was or was not handcuffed, but
20 I didn't give any consideration to was he in handcuffs,
21 narrow span of time, lighting conditions, and the timing
22 and ultimately Mr. Fabian's level of certainty pretty
23 much 100 percent.

24 In Moore, the non-victim basically identifies
25 two individuals, one taller, one shorter, and based on

1 clothing descriptions, a hat, something like this, and
2 she ended up knowing one of them, identified him at the
3 scene initially as being the one that committed the
4 crime.

5 So I think it is reliable, analyzing the Neil
6 vs. Biggers standard. It's not unduly suggestive, and
7 the out-of-court identification is admissible. All
8 right.

9 Other motions, Mr. Locklair?

10 MR. LOCKLAIR: Yes, sir. I think most of
11 them we've covered. Last one that I would have would be
12 a motion to prohibit references to Mr. Fabian and his
13 father as a victim in this case because that is the
14 ultimate decision for the jury to decide, whether he was,
15 in fact, a victim.

16 There would have been no crime committed in
17 this case. He had permission to be in the house. We
18 feel that that goes to the ultimate issue of the jury.
19 Also, we would ask the Court to exclude any references to
20 Mr. Robinson as the suspect in this case.

21 There's a Supreme Court case in our favor
22 that goes toward that, about calling him the main suspect
23 that it could only be unduly prejudicial to the defendant
24 and there really is no probative value that comes about
25 for it; therefore, we would ask the Court to restrict all

1 witnesses from referring to the Fabians as victims and
2 referring to the defendant as a suspect in this case.

3 THE COURT: All right. Solicitor?

4 MS. LINDER: Your Honor, the State would -- I
5 believe that there is a crime that occurred. I believe
6 that all the evidence points to that. I believe Mr.
7 Locklair's argument to exclude both the term victim and
8 the term suspect are not one and the same.

9 I believe someone can be found to be a
10 victim. Even if this defendant is not found ultimately
11 to be guilty of it, I don't believe that using the term
12 victim when, on all accounts -- and I don't believe there
13 is going to be anything presented by the defense that a
14 crime never occurred, that a break-in never occurred.
15 Regardless of who -- you know, if we differ on our
16 beliefs on who is the one that did it, I believe we
17 should be entitled to reference the Fabians as victims as
18 they were the victim of a crime.

19 As far as referencing a defendant as a
20 suspect, Judge, I do not intend to refer to him again and
21 again as a suspect. I believe in general police
22 questioning to ask if a suspect was developed, that's not
23 specifying that Mr. Robinson was the suspect developed,
24 it's just a suspect, as there are suspects in crime. I
25 do not intend to reference Mr. Robinson as the suspect

1 who committed this crime during the case itself.

2 THE COURT: Let's look at State v. Jones,
3 which is -- I think the last time that was tried, I think
4 Judge Jefferson perhaps tried it. It was a barefoot
5 impression case but -- it says, Appellant contends
6 misidentification of him as the immediate suspect in the
7 double homicide constitutes reversible error. We agree.

8 This Court reversed a conviction where there
9 was reference to a police officer receiving tips that the
10 defendant was selling crack cocaine. We held these
11 references were improper comments of the defendant's
12 character and distinguished State v. Brown. Evidence the
13 police began an investigation because of reports of
14 criminal activity are admissible under State v. Brown;
15 however, identification of an individual as the suspect
16 of the criminal investigation, based upon speculation
17 effectively calling into question that individual's
18 character, is not.

19 I think Jones is a different -- I think -- I
20 think what happened in Jones, the victim's stepson
21 discovered these two bodies and remained at the scene
22 until the police arrived, and so when the officer got
23 there, Did you give the police officer a name of the
24 person they should talk to about what happened to the
25 victims?

1 He said, He had asked me if I knew of anyone
2 who might have a grudge against Mr Pipkin.

3 Did you give him a name?

4 Yes, sir.

5 And what name did he give you?

6 Jeff.

7 I think that's very different here, and I
8 think that -- I think it would be different if you were
9 trying to consent for the sake of conduct case where we
10 don't know if the victim is a victim at the point, you
11 know, if you're arguing over consent, so I think those
12 terms may be used properly, not overused.

13 MR. LOCKLAIR: Thank you, Your Honor.

14 THE COURT: Anything further, Mr. Locklair?

15 MR. LOCKLAIR: Nothing from us, Your Honor.

16 THE COURT: Thank you very much.

17 (In open court, jury present.)

18 (Jury duly sworn.)

19 THE COURT: Welcome back, ladies and
20 gentlemen of the jury. I did say 3:25. Isn't that what
21 time I said to be back? I apologize. It had nothing to
22 do with the parties. They were not on time, they were
23 early, so they have been back and working very
24 diligently.

25 Ladies and gentlemen of the jury: I never

1 introduced myself to you. My name is Knox McMahon. I'm
2 from Lexington County Circuit Court. To my left is my
3 law clerk, Justin Hunter. He's from Richland County,
4 also from the Midlands, and he'll be with us this week.
5 It's my pleasure to be in Charleston this week.

6 The case we're about to try is the case of
7 the State versus Otis Maurice Robinson who has been
8 introduced to you earlier, seated to my front left. What
9 I will now say is intended to serve as an introduction to
10 the trial of this case. These remarks are not an
11 instruction or a charge on the law. I'll instruct you on
12 the law that applies to the case during and at the end of
13 the trial before you retire to consider your verdict.

14 This is merely an explanation of the
15 procedures that we will follow in the trial of the case
16 so that you may better understand what may be happening.
17 The defendant is charged by the indictment filed in this
18 court with the crime of burglary in the first degree, the
19 elements of which will be explained to you later.

20 Again, ladies and gentlemen, the indictment
21 is simply the charge by which the case is brought into
22 court, and it is not in any sense evidence of any of the
23 allegations it contains.

24 The defendant has pled not guilty to this
25 indictment. The State therefore has the burden of

1 proving each of the elements of the indictment beyond a
2 reasonable doubt, and it will be your duty, ladies and
3 gentlemen, to determine, to decide whether the State has
4 met its burden.

5 Your purpose as jurors is to find and
6 determine the facts. You are the sole judge of the facts
7 of this case. If at any time I make any comment
8 regarding the facts, you must disregard it. You are to
9 determine the facts from the testimony you hear, from the
10 witness stand, and any other evidence introduced into
11 court.

12 It is also your duty to determine the
13 inferences which you feel may properly be drawn from the
14 evidence. It is especially important that you perform
15 your duty of determining the facts diligently and
16 conscientiously because ordinarily there is no way to
17 correct an erroneous determination of the facts by a
18 jury.

19 On the other hand, and with equal emphasis,
20 the same law that makes you the judges of the facts make
21 me the judge of the law. The law as given by the Court
22 is the only law you may consider. You must accept it,
23 you must follow it, even though you may disagree with it.
24 I cannot tell you what the facts are. You cannot
25 disagree with me about what the law is or should be.

1 Your job is to take the law as I give it to
2 you and apply it to the facts as you find them from the
3 testimony of the witnesses and any other evidence that is
4 introduced. After doing that, you'll render your
5 verdict, a true and just verdict, under the solemn oath
6 that you've just taken as jurors.

7 It is important, ladies and gentlemen, that
8 you keep an open mind and not decide any issue in the
9 case until you've heard all the evidence presented, the
10 parties have made their closing arguments to you, and I
11 have instructed you on the law of the case and then
12 directed you to begin your deliberations with your fellow
13 jurors in your jury room.

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

19 Now, in just a few moments, the solicitor
20 will make what is called an opening statement in which
21 the solicitor will explain to you the issues that are in
22 the case, or at least what the solicitor thinks the
23 issues are in the case.

24 Mr. Locklair, the attorney for the defendant,
25 may also make an opening statement, although he is not

1 required to do so. As you recall, I told you briefly
2 during jury selection a criminal defendant in South
3 Carolina, regardless of the seriousness of the charges
4 brought, is always presumed to be innocent and has no
5 duty to prove himself or herself innocent.

6 Ladies and gentlemen: What the attorneys
7 tell you during the opening statements is not evidence in
8 the case. What the attorneys tell you in their closing
9 arguments is not evidence in the case. The questioning
10 by the attorneys is not evidence in the case. That's the
11 framework by which the evidence is extracted from the
12 witnesses that have been sworn before you to tell the
13 truth.

14 They're not sworn witnesses but, please, what
15 they say is important, and please pay attention to them.
16 The evidence in this case will be presented from the
17 sworn witnesses and by any exhibits that may be
18 introduced. From time to time, if this trial is like
19 most others, you may hear one of the lawyers say
20 something like, Your Honor, I believe we have a question
21 of law or a matter of law to discuss with you, or, Your
22 Honor, may we approach the bench? Or sometimes I myself
23 might find it necessary to exclude you to the jury room
24 for a short while so the attorneys and I can discuss a
25 matter of law.

1 The reason of this is not to hide anything
2 from you, but because you are the judges of the facts in
3 the case, sometimes when I am discussing matters of law
4 with the attorneys, it may be necessary for me to make
5 some comment as to the facts in connection as to ruling
6 whether or not a particular law applies.

7 I am not supposed to tell you what I think
8 the facts are, so I will excuse you from the courtroom
9 while these discussions take place so that in no way will
10 you be influenced by anything that I may say or do in
11 connection with the facts. In determining what the true
12 facts are, ladies and gentlemen, you must decide whether
13 or not the testimony of the witnesses is believable.
14 It's my responsibility to rule as a matter of law as to
15 whether or not it's admissible or not, whether you get to
16 hear it or not, but once the testimony is admitted,
17 whether or not you believe it, is solely for you, the
18 jury, to decide.

19 In deciding whether to believe a witness
20 using your good judgment and your common sense, 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 matters and
24 things about which the witness may testify, and the way
25 the witness acts on the witness stand. You have the

1 right to consider anything that is in the record that
2 will help you evaluate the testimony of the witnesses.

3 That means it will be your duty to pay close
4 attention to these witnesses, to observe, to listen to
5 them, to pay close attention to the attorneys and the
6 Court. Don't let your thoughts wander, but give strict
7 attention to the testimony in this case so that at the
8 end of all the testimony, after the closing arguments by
9 the attorney, the instruction on the law by the Court,
10 you will then be in that position to determine what the
11 true facts are and to apply the law to those facts and
12 thus render a true and just verdict.

13 I'll just tell you a couple of administrative
14 issues, ladies and gentlemen. Number one: As I told you
15 previously, Mr. Robinson did not have appropriate
16 clothing earlier, and I asked the jury panel, when you
17 were all out here, would you not hold that against him or
18 for him, and y'all indicated you wouldn't. So he is now
19 going to have the appropriate clothing presented. Please
20 don't hold that against him in any manner whatsoever.
21 That should not even be discussed in the jury room.

22 Also, based on some rulings of the Court,
23 Mr. Locklair is representing Mr. Robinson. Do not hold
24 either for or against Mr. Robinson the fact that he
25 conducted the jury selection process. Y'all were chosen

1 by both the State and the defense to be fair and
2 impartial jurors, to be a fair and impartial jury, so the
3 fact that that aspect has changed should in no way impact
4 your verdict, one way or the other.

5 A couple of administrative things: If you
6 can't see or hear a witness, something like that, just
7 get my attention. We'll have them speak up. It's been
8 so many years since I tried a case in Charleston County.
9 I don't know -- if they have photographs, sometimes
10 they'll hand it to the foreperson, pass it along members
11 of the jury while you're out here in the jury box. You
12 look at it all you want.

13 If I let an item into evidence, you'll have
14 it with you at the time of your deliberations so it won't
15 be the only time, the only opportunity that you get to
16 view those items. Next, administratively, I'll tell you
17 sometimes you'll see me on the computer. I do a little
18 research. I don't tweet, retweet, Facebook -- I don't
19 anything like that, but these are good trial lawyers and
20 if I see something, legal issue coming around the bend, I
21 might do a little light research, and light is the key
22 word there.

23 Finally, what am I in charge of? I'm in
24 charge of taking breaks, and I have a real simple rule.
25 When I want to take a break, we take a break. Works out

1 great. Ladies and gentlemen: This is an important case.
2 It's important to the State; it's important to
3 Mr. Robinson. If you sit out here too long, mind starts
4 to wander. Please, yours isn't the only one wandering at
5 that time. Raise your hand. Y'all will take y'all's
6 break; we'll take our break. This is not some type of
7 judicial marathon, so please keep that in mind.

8 Okay. Any objection to anything I told the
9 jury from the State, Solicitor?

10 MS. LINDER: Nothing from the State.

11 THE COURT: The defense, Mr. Locklair?

12 MR. LOCKLAIR: No, sir, Your Honor.

13 THE COURT: All right. Thank you.

14 Solicitor, you may address the jury.

15 MS. LINDER: Thank you, Your Honor. May it
16 please the Court:

17 THE COURT: Yes, ma'am.

18 MS. LINDER: Back on May 31 of 2011, after
19 working his shift at the local home improvement store,
20 Robert Fabian, or Robby, as his friends called him,
21 headed home about 2:00 in the afternoon. When Robby was
22 arriving home that day, that was [REDACTED] St. Andrews
23 Boulevard. That is in West Ashley, here in Charleston
24 County. Home was actually a home that his grandfather,
25 James Fabian, had owned for years. As Robby was coming

1 home that day after working, he pulled into the driveway.
2 He went around the rear of the residence and parked his
3 car.

4 As he exited his car and started heading
5 toward the back door, he noticed something. Something
6 was off. A window was busted through. At that time he
7 proceeded with care. He slowly entered his home, and he
8 heard footsteps and someone went past him and he heard
9 someone go back out the broken window. At this point,
10 Robby turned around and he saw a man. He saw a man
11 trying to flee his home, bending down to pick stuff up
12 after jumping out of a window, and then Robby took off
13 after him.

14 He turned around, went out of the house,
15 chased this fellow through the back yard and up toward
16 the front yard of the house. Ultimately, the individual
17 was a little quicker than Robby was and got away, so the
18 next thing Robby did was he called 911. He called 911 to
19 report a crime. He called 911 to report a crime.

20 After he called 911 to report that crime, he
21 just kind of surveyed his ransacked residence, just
22 looked at everything, and he did that until moments later
23 when the police arrived. After the city of Charleston
24 police came on scene, detective Robert Keller went up to
25 the victim, Robby, and interviewed him about what had

1 happened. What did he see?

2 Keller also had Robby go on a walk-through of
3 the house to see if anything had been taken, anything had
4 been stolen, just to go over everything in the scene.

5 Crime scene technician Richard Wiersma also
6 came. He came to the residence. He photographed the
7 scene inside and out. He also processed the scene for
8 any fingerprints for processing. That same crime scene
9 technician was in charge of collecting any evidence,
10 anything that may be of evidentiary value, and he
11 collected items of evidence, including two clippings of a
12 rag and a curtain that had a red substance that field
13 tested presumptive for blood. Other members of the City
14 of Charleston Police Department including, team four
15 officer Rochelle Sanders responded to the call.

16 On her way to the incident location, to [REDACTED]
17 St. Andrews Boulevard, she stopped a couple doors down,
18 just further down the street. She stopped a man who
19 matched the description that was put out over dispatch.
20 The man matched the description of the intruder, the
21 physical description. The man was bleeding from his arm.
22 The man had five DVDs on his person, five DVDs that
23 belonged to Robby Fabian, five DVDs that were inside of
24 [REDACTED] St. Andrews Boulevard.

25 Detective Keller took Robby out there, and

1 Robby identified that man a few doors down from his home
2 that went through the window, chased around his yard, and
3 took off. That man was this defendant, Otis Maurice
4 Robinson.

5 Ladies and gentlemen: I ask that you pay
6 attention during this trial. Listen to the evidence.
7 Listen to the witnesses that you will hear from. Look
8 over the exhibits that you will have back with you in the
9 jury room. Listen that Robby's home was broken into.
10 Listen that items were stolen from Robby, and listen that
11 this man, the defendant, is the one who did it.

12 Thank you.

13 MR. LOCKLAIR: My name is Wesley Locklair,
14 and I represent Otis Robinson in this case.

15 Obviously, you heard the solicitor put up
16 what they believe the facts are going to be. I'm not
17 going to get too much into the facts because the judge
18 told you the evidence is going to come through the
19 witnesses up there on the witness stand, and it's
20 critical that you listen very closely to those witnesses
21 because in cases like these, little facts may make a
22 difference.

23 Mr. Robinson sits over here an innocent man,
24 and that is a hard concept for people to grasp,
25 especially sometimes for people in law enforcement,

1 things like that, because they go, How are you innocent
2 if you're charged with a crime?

3 That's one of the great things about our
4 constitution, is anybody charged with a crime comes in
5 presumed innocent all the way through a trial until and
6 only if all 12 jurors unanimously agree that person is
7 guilty. I'm guilty of this too. I'll see something
8 horrific on TV. My daughter went through stuff when she
9 was five with a niece. I'm like, Fry that person. Get
10 that person, doing the same thing that I try not to do in
11 my job. I'm kind of a hypocrite, because in my personal
12 life, I'll sit there and do that, and that's just human
13 nature.

14 In this courtroom, that's not the case.
15 You're going to hear the State's case, and you'll hear
16 one side of the story first. It certainly sways your
17 opinion as to what your ultimate decision may be, and
18 y'all have to sit through this entire trial with an open
19 mind because you took an oath to do that. That's a
20 difficult thing to do when you hear one side of a story
21 over and over. You're going to hear stories over and
22 over, but the difficult task is, in this instance, you're
23 one of 12. Each of your vote is your vote, and that's a
24 very rare thing, where you're one of 12 people making a
25 decision.

1 Everywhere in America, that matters. In a
2 national election, you're one of tens of millions. Even
3 a local election, you're one of thousands, but here,
4 while you deliberate collectively, discuss the case, each
5 of you has a vote, and it's important that each of you
6 apply your own common sense to come to a decision, not
7 without negating what your other jurors have to say. You
8 have to listen carefully to their arguments too, but it's
9 very important that you stick to your guns and stick to
10 your memory of the case because, as I said, in these
11 cases, the small facts matter, small facts about who saw
12 who at what location.

13 Where did Mr. Robinson or the defendant
14 allegedly go in at a certain time and who saw him where?
15 The police officer's story may be different a little bit
16 from the alleged victim's story, and if something really
17 occurred, why do those facts differ a little?

18 In a case like this, y'all have to find and
19 the judge is going to charge you the standard of proof is
20 beyond a reasonable doubt, and that's something I can't
21 clearly define here for you. It's something that they
22 say would make a reasonable person hesitate to act.

23 I like to tell people, in a civil trial, it's
24 a preponderance of the evidence, which means just if you
25 have two scales of justice and one slightly tips in

1 favor, barely goes in the favor of one party, they win,
2 so like 50.001 percent. So if maybe I get halfway across
3 the room, I'm somewhere around preponderance of the
4 evidence, and this is the standard.

5 Now, to get beyond a reasonable doubt, they
6 got to keep on trucking past here, another level of
7 evidence we have called clear and convincing evidence,
8 and basically they got to get almost all the way over
9 here, not for something so firm that it cannot be
10 anything else, but beyond a reasonable doubt whatsoever
11 that you have.

12 By taking this oath and by agreeing to follow
13 the law as a juror, you've taken the oath that if you
14 do -- after hearing all the evidence and the judge
15 charges the law and gives you permission to start
16 deliberating, if you as an individual juror have a
17 reasonable doubt as to the guilt or innocence of
18 Mr. Robinson, it's your sworn duty to find him not
19 guilty.

20 And the hard thing to remember about that is
21 when you're back there, the whole time you're back there
22 starting your deliberations, he's innocent. So you have
23 to keep that in mind. Have they ripped this cloak of
24 innocence off his shoulders or have they not? And until
25 you decide beyond a reasonable doubt that they have, you

1 must find him not guilty.

2 I think that once you start hearing the
3 evidence you're going to hear some little discrepancies
4 that don't add up, that certain parts of their cases,
5 that certain witnesses, their recollections of events do
6 not coincide with each other, making certain things
7 factually impossible, that one could have happened or the
8 other could have happened, but both could not have
9 happened.

10 So I want you to pay very, very close
11 attention to what every witness says, and I think that
12 once you get all the evidence in this case and the judge
13 charges you on the law, you're going to go back there and
14 deliberate, and you're going to come to a conclusion that
15 the State has failed to meet their burden of proving him
16 guilty beyond a reasonable doubt, and the cloak of
17 innocence will remain with him and you should return a
18 verdict of not guilty.

19 Thank you.

20 THE COURT: Thank you, Mr. Locklair.
21 Solicitor, you may call your first witness.

22 MS. BYRD: Your Honor, the State calls
23 Seraphim Haftoglou.

24 SERAPHIM HAFTOGLOU,
25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. BYRD:

4 Q. Could you tell the jury where you're currently
5 employed?

6 A. I'm currently employ with SLED, South Carolina Law
7 Enforcement Division.

8 Q. How long have you been with SLED?

9 A. I've been here six years.

10 Q. What is your current position at SLED?

11 A. I'm the supervisor of AFIS, which is the automatic
12 fingerprint identification system.

13 Q. Could you explain your official duties in that
14 position, please.

15 A. I'm in charge of all the criminal cards, applicant
16 cards, that come into our system. I'm also known as a
17 records keeper at SLED.

18 Q. And what exactly are those types of cards?

19 A. Criminal ten print cards are cards that are
20 submitted by our jails, mostly done through electronic
21 testing machines. Other ones are mailed to us.

22 Q. And could you please explain what's on those ten
23 print cards.

24 A. On a ten print card is each individual finger, and
25 we also get -- there are slaps of thumbprints, so we get

SERAPHIM HAFTOGLU - DIRECT BY MS. BYRD

1 their fingerprints twice, and also included on there is
2 their name, date of birth, social, and arrest
3 information, whatever charges it was, and place of
4 residence.

5 Q. Would you give us a little information about your
6 educational background, please.

7 A. Yes. I graduated from the University of South
8 Carolina criminal justice. I've been certified by South
9 Carolina Law Enforcement as a ten print examiner. I've
10 done two testimony certification classes as well.

11 Q. Could you give us an approximation of
12 approximately how many of these print comparisons you've
13 done.

14 A. Comparison from central office and ATF agents, I
15 get probably five to ten a month. On the comparison
16 during my daily work, I do probably several hundred a
17 year.

18 Q. And could you explain to us why fingerprints are
19 used as a means of identification?

20 A. Fingerprints cannot change. Each person has their
21 own unique identification with their fingerprints on
22 them. They do not change over time. You may get scars,
23 but your prints tend to stay the same. That's the best
24 way to identify someone.

25 Q. Based on your training and study, is it possible

1 for two people to have the same fingerprints?

2 A. No.

3 Q. Would you explain the method you use in making
4 your comparison of fingerprints.

5 A. Yes. I use the AC method, which is used
6 worldwide, most common way of identifying fingerprints.
7 It basically sets you up with several different levels to
8 identify prints.

9 The first level is you compare the ten prints, all
10 ten fingerprints, to each other. Make sure they're the
11 same. Once you identify these prints are all the same
12 pattern, you go to the next level. You compare one on
13 one print, so you look at the -- on this case, I looked
14 at several different prints but the left thumb. It was
15 identical to each other, so they're both the same
16 pattern. I go to the next step, identifying ridges and
17 points of interest, make sure that is the same person.

18 MS. BYRD: Beg the Court's indulgence. May I
19 approach the witness, please?

20 THE COURT: Yes, ma'am.

21 BY MS. BYRD:

22 Q. I'm going to hand you what has been marked
23 State's 24 for identification purposes.

24 A. Yes.

25 Q. Did you have occasion in your position at SLED to

SERAPHIM HAFTOGLOU - DIRECT BY MS. BYRD

1 make a fingerprint comparison regarding the defendant,
2 Otis Robinson?

3 A. Yes.

4 Q. The exhibit I showed to you, have you seen that
5 before?

6 A. Yes. This is what our office created per your
7 request.

8 Q. Could you please explain to the jury exactly what
9 that exhibit is.

10 A. Yes. I did a comparison on several cards that the
11 agency asked me to request on, and I compared each card
12 to make sure that this is the same person, all prints
13 identify the same person.

14 Q. Could you be more specific about the exact cards
15 that you use in comparison to this case?

16 A. In this case, I used three different cards, dates
17 of arrest of 7/17/1994, 8/23/2006 and May 31, 2011.

18 Q. And through your comparison of those cards, what
19 was your conclusion?

20 A. My conclusion was each card belongs to the same
21 individual.

22 Q. And who was that individual?

23 A. On the card it said Otis Robinson.

24 MS. BYRD: Beg the Court's indulgence.

25 BY MS. BYRD:

1 Q. You mentioned that the card you used came from an
2 arrest. Are you able to tell us what the arrest charge
3 was for each of those cards?

4 A. Yes. The first charge of 7/17/94 --

5 MR. LOCKLAIR: Your Honor, I have an
6 objection. May we approach?

7 THE COURT: Yes, sir.

8 (Discussion held at sidebar.)

9 BY MS. BYRD:

10 Q. If you would, please continue with your
11 explanation of the prior charges.

12 A. First card I received was 7/17/1994 from the
13 Charleston County sheriff's office for a burglary second.
14 The second card I compared was 8/23/2006 from Charleston
15 Police Department on burglary second degree, and the
16 final card was on 5/31/11, Charleston Police Department
17 on a burglary first degree.

18 MS. BYRD: Thank you.

19 THE COURT: Ladies and gentlemen of the jury:
20 As far as the cards are concerned, of course the
21 indictment, which is not evidence, alleges a burglary
22 that occurred on or about 5/31/11. That's the most
23 recent card that's been testified to.

24 The other two, '94 and '06, one of the
25 elements of the burg first is a burglary committed by an

SERAPHIM HAFTOGLOU - DIRECT BY MS. BYRD

1 individual that has two or more prior convictions of
2 burglary or housebreaking, so it only goes to the element
3 of the crime of burglary. It does not go to the issue of
4 prior bad acts, that he may have committed prior bad
5 acts; therefore he committed this bad act, or it does not
6 go to the issue of character.

7 It only goes to the element of an individual
8 that could be guilty of a burglary first degree if that
9 individual commits a burglary and has two or more prior
10 burglary convictions.

11 Thank you. Thank you very much. Solicitor,
12 you may proceed.

13 MS. BYRD: Thank you, Your Honor. At this
14 time the State would move to submit Exhibit 24 into
15 evidence.

16 THE COURT: All right. Mr. Locklair?

17 MR. LOCKLAIR: Without objection, Your Honor.

18 THE COURT: All right. May I see it please,
19 Solicitor?

20 MS. BYRD: Yes, Your Honor.

21 THE COURT: All right. State's 24 is in
22 evidence.

23 (State's Exhibit No. 24 marked for
24 identification and admitted into evidence.)

25 MS. BYRD: Thank you. The State has no

1 further questions for this witness at this time.

2 THE COURT: Thank you. Mr. Locklair?

3 MR. LOCKLAIR: May it please the Court, Your
4 Honor:

5 CROSS-EXAMINATION

6 BY MR. LOCKLAIR:

7 Q. Good afternoon, Special Agent Haftoglou.

8 A. I'm not Special Agent. I'm just supervisor.

9 Q. Am I pronouncing that right, Haftoglou?

10 A. Yes.

11 Q. All you did in this case was compare fingerprints,
12 correct?

13 A. Correct.

14 Q. You didn't have anything to do with the actual
15 crime scene or collecting fingerprints?

16 A. I didn't have anything to do with that.

17 Q. Anything of that nature? Okay. You didn't have
18 anything to do with the training of the Charleston Police
19 Department, how they collect or analyze fingerprints?

20 A. No.

21 Q. Basically, your role was limited to what you
22 testified to, being an AFIS fingerprint examiner at SLED?

23 A. Yes, sir.

24 Q. So the extent of your involvement was the
25 comparison of the fingerprints on those cards?

SERAPHIM HAFTOGLOU - CROSS BY MR. LOCKLAIR

1 A. Yes, sir.

2 Q. When you do these fingerprint things, they only
3 give you cards for people that they suspect, that they
4 have as a suspect, correct?

5 A. Yes, whatever they request us to compare prints
6 to.

7 Q. They don't give you anybody else to compare prints
8 to, correct?

9 A. Correct.

10 MR. LOCKLAIR: Thank you. That's all I have.

11 THE COURT: Anything further, Solicitor?

12 MS. BYRD: Nothing further.

13 THE COURT: Any objection to the witness
14 being excused?

15 MR. LOCKLAIR: No objection.

16 MS. LINDER: Nothing further.

17 MR. LOCKLAIR: My client wanted to know if we
18 could take a short recess for a rest room break.

19 THE COURT: All right. Certainly. Ladies
20 and gentlemen of the jury: If you would step to your
21 jury room, we'll take about a 15-minute recess.

22 Do not discuss the case during the brief
23 recess. Leave your notes upside down on your chair.
24 We're in brief recess.

25 (Recess taken.)

SARAH LIPPE - DIRECT BY MS. BYRD

1 (In open court, jury not present.)

2 THE COURT: All right. Anything before we
3 bring our jury in, from the State?

4 MS. BYRD: Not from the State.

5 THE COURT: From the defense?

6 MR. LOCKLAIR: No, sir, Your Honor.

7 THE COURT: Thank you. Thank you very much.

8 (In open court, jury present.)

9 You may call your next witness.

10 MS. BYRD: The State would call Sarah Clyde.
11 She's listed on the witness slip as Sarah Lippe.

12 THE COURT: All right. If you could come
13 around and be sworn for us, please.

14 SARAH LIPPE,

15 having been first duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. BYRD:

19 Q. Good afternoon. Thank you. Could you please tell
20 us what your occupation is.

21 A. I'm the general sessions case management
22 supervisor.

23 Q. And is that position with Charleston County?

24 A. Yes, the clerk's office.

25 Q. Okay. How long have you been employed with the

SARAH LIPPE - DIRECT BY MS. BYRD

1 clerk's office in Charleston County?

2 A. About five years.

3 Q. Could you tell us a little bit about your
4 responsibilities and duties in the clerk's office.

5 A. Sure. Our office is responsible for the retention
6 and maintenance of criminal records for cases here in
7 Charleston County.

8 THE COURT: Excuse me. Step up here a
9 minute, please, Mr. Locklair and solicitor.

10 (Discussion held at sidebar.)

11 THE COURT: Thank you. Solicitor, you may
12 proceed.

13 BY MS. BYRD:

14 Q. Thank you very much. Would you mind repeating
15 some of your responsibilities and duties?

16 A. Sure. Our office is responsible for the retention
17 and maintenance of criminal records for cases that are
18 heard in Charleston County. My duties would include case
19 audits, docketing, general office management.

20 Q. Are you considered an official custodian of those
21 records?

22 A. Yes.

23 Q. Could you explain more specifically what types of
24 criminal records are maintained in your office.

25 A. We would take in everything for the duration of

1 the case that would include beginning with the arrest
2 warrant affidavit, all motions and orders, everything up
3 until the disposition of the case, which would include
4 indictment, sentencing sheet, some post-dispositions such
5 as probation and appeals.

6 Q. Thank you.

7 MS. BYRD: Your Honor, may I please approach
8 the witness?

9 THE COURT: Yes, ma'am.

10 BY MS. BYRD:

11 Q. I'm going to show you what's been marked as
12 State's Exhibit 25 and 28 for identification purposes.
13 Could you please explain to the jury what those are.

14 A. These are sentencing sheets and indictments.

15 Q. Are you able to tell from the documentation
16 that -- to whom the sentencing sheets and indictments are
17 referred?

18 A. Yes. They both refer to Otis Robinson.

19 Q. And what do the sentencing sheet and the
20 indictments of Otis Robinson indicate?

21 A. The first one, which is dated in 1994, is a
22 sentencing sheet. It was for a burglary second
23 nonviolent charge. The second was for a burglary second
24 degree violent.

25 Q. And can you tell what the date was from that

SARAH LIPPE - DIRECT BY MS. BYRD

1 charge?

2 A. The second was from June of 2007.

3 Q. And those documents, are those certified copies
4 from the clerk's office?

5 A. Yes.

6 Q. And do they indicate a conviction for those
7 charges?

8 A. The -- let me see. They are both guilty pleas.

9 MS. BYRD: Beg the Court's indulgence.

10 Your Honor, at this time the State would move
11 to admit Exhibits 25 and 28 into evidence.

12 THE COURT: All right. Any objection,
13 Mr. Locklair?

14 MR. LOCKLAIR: Without objection. We just
15 ask the Court to give the jury a limiting instruction.

16 THE COURT: May I see them, Madame clerk?

17 All right. Let me ask you something,
18 Mr. Locklair.

19 (Discussion held at sidebar.)

20 All right. State's 25 and 28 are in evidence
21 without objection, again, subject to my previous limiting
22 instructions. Ladies and gentlemen, this goes only to
23 the element of the crime of burglary first, and if an
24 individual commits a burglary and has a prior conviction
25 of two or more burglaries and to that issue alone. Thank

1 you. Thank you very much. You may proceed.

2 (State's Exhibit Nos. 25 and 28 were marked
3 for identification and admitted into evidence.)

4 MS. BYRD: State has no further questions.

5 THE COURT: Mr. Locklair?

6 MR. LOCKLAIR: No questions for this witness.

7 THE COURT: Thank you. Thank you very much,
8 Madame Clerk. You may step down.

9 MR. LOCKLAIR: No objection to her being
10 excused.

11 MS. BYRD: No objection from the State.

12 THE COURT: You may be excused. All right.

13 Solicitor, you may call the next witness.

14 MS. LINDER: State calls Robert Fabian.

15 ROBERT FABIAN,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. LINDER:

20 Q. Good afternoon, Mr. Fabian. Where are you from?

21 A. Right here in Charleston, West Ashley.

22 Q. And how far did you go in school?

23 A. Graduated high school.

24 Q. Where do you currently work?

25 A. Buck Lumber, James Island.

ROBERT FABIAN - DIRECT BY MS. LINDER

1 Q. And where were you working back in 2011?

2 A. I was work working at Lowe's on James Island.

3 Q. Do you know why you're here today?

4 A. For everything that happened at my house.

5 Q. And were you the victim of a crime back on May 31
6 of 2011?

7 A. I was.

8 Q. And where did that happen?

9 A. At my old residence, at [REDACTED] St. Andrews Boulevard.

10 Q. And is that here in Charleston County?

11 A. Yes, ma'am.

12 Q. And is this a home or a business or -- what is
13 this?

14 A. It's a home.

15 Q. And who owns the house, or owned the house?

16 A. My grandmother did.

17 Q. And what were your grandparents' names?

18 A. Eleanor and James Fabian.

19 Q. And did you live at the house?

20 A. Yes.

21 Q. I would like to start earlier that day, back on
22 the 31st. What were you doing that day before you came
23 home?

24 A. I was at work.

25 Q. And where were you working again?

1 A. Lowe's on James Island.

2 Q. And after work, what did you do?

3 A. I came back home to check on things. I think I
4 was going to play my drums for a little while.

5 Q. And when you came back home, were you work
6 walking? Were you riding the bus? Were you driving?

7 A. I was driving.

8 Q. And when you came home, where did you park?

9 A. My front yard, in the driveway.

10 Q. And did you enter the house?

11 A. Yes.

12 Q. How were you going -- or what door were you going
13 to?

14 A. The back door.

15 Q. And as you were going toward the back door, did
16 you notice anything unusual?

17 A. Yeah. When I approached my back steps going in, I
18 have a bay window right next to it. It was broken out.

19 Q. And after you saw the window was broken out, did
20 you get back in your car, or what did you do?

21 A. No, I asked who was inside, who was there.

22 Q. So did you continue to go toward the inside of
23 your home or did you stay outside?

24 A. I continued to go in.

25 Q. And when you went inside, did you see anything?

ROBERT FABIAN - DIRECT BY MS. LINDER

1 A. I saw blood on my counter, and my kitchen had
2 been, like, ransacked.

3 Q. And did you see any person, aside from yourself,
4 in or around your house?

5 A. Not initially when I walked in the house.

6 Q. Can you describe what you saw and when you saw it.

7 A. Like I say, I yelled first who was -- I yelled for
8 who was in the house. He said, It's me, it's me.

9 So I assumed it was somebody that I knew that was
10 messing with my musical equipment or something. So, like
11 I said, I ran in there, and as I was running in there, I
12 heard somebody running out, and he had to go back out
13 that window. So I turned around and saw him in my back
14 yard, through my back door.

15 Q. And what did you see that person doing in your
16 back yard?

17 A. Well, it looks like he had dropped something when
18 he had jumped out the window, so he was picking that back
19 up, and that's when I started running towards him.

20 Q. And how did you get out of the house?

21 A. Through my back door.

22 Q. And after you went out and started running after
23 him, did you catch him?

24 A. No.

25 Q. What did you do after you couldn't catch the guy

1 who was at your house?

2 A. Well, I went as far as I could, you know, trying
3 to catch him, and I saw him going across the highway, so
4 I hopped in my Jeep and proceeded to follow him and
5 couldn't find him, and that's when I proceeded to call
6 911.

7 Q. Okay. You mentioned that you called 911. Have
8 you previously listened to a recording of a 911 call?

9 A. Yes, ma'am.

10 MS. LINDER: May I approach?

11 THE COURT: Yes, ma'am.

12 BY MS. LINDER:

13 Q. At this time I show you what's been marked as
14 State's Exhibit No. 2 for identification purposes. Do
15 you recognize that exhibit at all?

16 A. Yes.

17 Q. How do you recognize it?

18 A. I listened to it earlier.

19 Q. How do you know that's the disk you actually
20 listened to?

21 A. Because my initials are on it.

22 Q. And who wrote your initials on there?

23 A. I did.

24 Q. And when you listened to that disk, did you
25 recognize any of the voices on that disk?

ROBERT FABIAN - DIRECT BY MS. LINDER

1 A. Yeah, it's mine.

2 Q. It's your voice?

3 A. Uh-huh.

4 Q. And when you listened, did it appear to be a fair
5 and accurate recording of what happened?

6 A. Yes, ma'am.

7 Q. If you -- did you notice any alterations or
8 deletions that had been made to that disk?

9 A. No.

10 MS. LINDER: At this time I would move to
11 admit into evidence State's Exhibit No. 2.

12 MR. LOCKLAIR: Without objection, Your Honor.

13 THE COURT: State's 2 is in evidence.

14 (State's Exhibit No. 2 was marked for
15 identification and admitted into evidence.)

16 MS. LINDER: And, Your Honor, at this time I
17 intend to publish that to the jury.

18 THE COURT: Yes, ma'am, you may.

19 (Whereupon, the 911 call was played to the
20 jury.)

21 BY MS. LINDER:

22 Q. After you placed that 911 call to the police,
23 where were you? Did you go somewhere? Did you stay
24 where it was?

25 A. Like I said, when I couldn't find him, I went back

1 to my house and, you know, started checking things out.

2 Q. And did anybody come to your house then?

3 A. Eventually the police did.

4 Q. And when the police came, did you speak with the
5 police?

6 A. Yeah.

7 Q. Did you give them a description of the individual?

8 A. Yes, ma'am.

9 Q. And did you ever -- what else did you do with the
10 police while at the house?

11 A. You know, pretty much showed him -- or showed them
12 where he came inside and the blood and just everything
13 thrown apart.

14 Q. And did you ever -- did you just walk around
15 inside? Did you walk around outside? Where did you show
16 the police?

17 A. Yeah, I walked around inside and outside.

18 Q. And did you ultimately discover that items were
19 missing that belonged to you?

20 A. Pretty much. I mean, it was -- it was a little
21 hard to tell at that point in time, just -- I mean,
22 everything was destroyed.

23 Q. Was there anything outside of your house that
24 should have been inside your house?

25 A. Yes. There was DVDs on the ground, and that was

ROBERT FABIAN - DIRECT BY MS. LINDER

1 about it from inside.

2 Q. At this time I'm going to show you what's been
3 marked as State's Exhibits 8 through 15. Just flip
4 through them and look at them. Do you recognize those?

5 A. Yes, ma'am.

6 Q. How do you recognize them?

7 A. That is the old property that I used to reside at.

8 Q. And what's the address of that location?

9 A. ■■■ St. Andrews Boulevard.

10 Q. I'm also going to show you what's been marked for
11 identification purposes as State's 16 through 23. You
12 can take a look at those. Do you recognize those?

13 A. Yes. It's the inside of the house.

14 Q. Mr. Fabian, I just want to point out some things,
15 if possible.

16 THE COURT: Are those in evidence, or they're
17 supposed to be?

18 MS. LINDER: Your Honor, I would move that
19 these be moved into evidence, 18 through 23.

20 MR. LOCKLAIR: Without objection, Your Honor.

21 THE COURT: 18 through 23?

22 MS. LINDER: I'm sorry, 8 through 23.

23 THE COURT: 8 through 23 are in evidence
24 without objection.

25 (State's Exhibit Nos. 8 through 23 were

1 marked for identification and admitted into evidence.)

2 BY MS. LINDER:

3 Q. We'll go through these quicker than others. This
4 is State's Exhibit 8. Can you please tell us what this
5 is.

6 A. It's the front of the old house.

7 Q. This is 9.

8 A. It's the back yard.

9 Q. 10.

10 A. It's the back yard.

11 Q. Can you see what this item is?

12 A. It looks like a DVD.

13 Q. This is No. 11.

14 A. That's the back yard with a shirt.

15 Q. Was that shirt there before you went to work?

16 A. No, ma'am.

17 Q. Was that DVD there before you went to work?

18 A. No, ma'am.

19 Q. What is this picture?

20 A. A picture of the back door, back yard.

21 Q. And does this picture show the way that you
22 entered the house?

23 A. Yes, ma'am, through that door right there. Yep,
24 and that window to the left of that is where he came in.

25 Q. To the left of it, right here?

ROBERT FABIAN - DIRECT BY MS. LINDER

1 A. Yes, ma'am.

2 Q. State's Exhibit 13, what does this show?

3 A. The back yard, back door.

4 Q. 14?

5 A. The same, back yard, back door and the window.

6 Q. State's Exhibit 15?

7 A. Back door and back window.

8 Q. I don't know if you can see anything here, maybe
9 if I show it to you, but do you notice anything in this
10 area that you can see in the picture?

11 A. The glass is broken.

12 Q. All right. State's Exhibit 16, what is this?

13 A. The kitchen.

14 Q. 17?

15 A. That's a bloody rag and blood in the sink.

16 Q. 18?

17 A. Just a bedroom that got ransacked.

18 Q. State's 19?

19 A. Same thing.

20 Q. Are your dresser drawers typically in this
21 fashion?

22 A. No.

23 Q. 20?

24 A. Same thing.

25 Q. This is 21.

1 A. Same thing.

2 Q. State's Exhibit 22?

3 A. It's more damage inside.

4 Q. Finally, State's 23.

5 A. Same thing.

6 Q. Were you ever asked to make an identification in
7 this case?

8 A. Yes, ma'am.

9 Q. And did the police ask you to see if you
10 recognized someone?

11 A. Yeah. They had ID'd a potential guy down the
12 street from my house.

13 Q. And did you go to make a potential identification?

14 A. Yes, ma'am.

15 Q. And how long after the police arrived did you go
16 for this?

17 A. I'd say maybe ten to fifteen minutes.

18 Q. And how far away from your house was this place
19 where you went?

20 A. I'd say about a quarter mile down St. Andrews
21 Boulevard.

22 Q. How did you arrive? How did you get there? Did
23 you walk?

24 A. No, ma'am. I went with a detective.

25 Q. And as you went down the street with the

ROBERT FABIAN - DIRECT BY MS. LINDER

1 detective, did the detective indicate to you in any way
2 that you really needed to make this identification?

3 A. No.

4 Q. When you arrived there, did you get out of the car
5 or did you stay in the car?

6 A. Stayed inside the car.

7 Q. And did you see an individual when you pulled up?

8 A. Yes, ma'am.

9 Q. And did you recognize that individual?

10 A. Yeah.

11 Q. And what time of day was it when this burglary
12 happened?

13 A. I mean, I would say mid to early afternoon.

14 Q. And were you wearing any glasses or contacts that
15 you normally wear?

16 A. My contacts.

17 Q. Were you under the influence of drugs or alcohol?

18 A. No, ma'am.

19 Q. When you went the quarter mile from your houses,
20 you said -- how quickly did you identify somebody?

21 A. It was pretty instantaneous, really.

22 Q. And how confident were you in that identification?

23 A. I was 100 percent sure.

24 Q. And who was the person you identified?

25 A. Otis Robinson.

1 Q. And is that man a man that you had seen earlier
2 that day?

3 A. Yes, ma'am.

4 Q. And what did you see that man doing earlier that
5 day?

6 A. Fleeing the scene of my house.

7 MS. LINDER: Beg the Court's indulgence.

8 I have no further questions for you,
9 Mr. Fabian, if you can answer any questions the defense
10 attorney may have.

11 THE COURT: Thank you, Mr. Fabian.
12 Mr. Locklair?

13 CROSS-EXAMINATION

14 BY MR. LOCKLAIR:

15 Q. Good afternoon, Mr. Fabian. How long had you been
16 living at this residence?

17 A. It had been on and off for maybe three years.

18 Q. Okay. And who else would live there?

19 A. My uncle was living there before I was, and he had
20 fallen sick and he moved out of there.

21 Q. Who is Mr. James Fabian?

22 A. James Fabian Junior is my uncle, and James Fabian
23 Senior is my grandfather.

24 Q. And do you recall back on May 31 of 2011 telling
25 people that the residence belonged to your grandfather?

ROBERT FABIAN - CROSS BY MR. LOCKLAIR

1 A. Yes, sir.

2 Q. And do you recall telling them that you had come
3 to check on the residence because your grandfather was
4 ill and was not in the residence at the time?

5 A. Yeah.

6 Q. You also recall telling another police officer
7 that you would go to the residence just about every other
8 day to play drums and hang out?

9 A. Yes, sir.

10 Q. Okay. Well, why would you tell the police
11 officers that you went there every other day to play
12 drums and hang out and that your grandfather was not at
13 the residence at the time because he was ill, and now
14 you're telling this jury that you actually lived there?

15 A. At the time I was living there on and off. Like,
16 I was dating a girl and I stayed at her house, and, like
17 I say, I would go back there. I played in a band at the
18 time, and I would go there just about every other day or
19 so.

20 Q. So, technically, what you told the jury earlier
21 that you were living there is not actually true, correct?

22 A. I was living there on and off.

23 Q. And you were living with your girlfriend and you
24 would go over there and play the drums and hang out,
25 right?

1 A. I would stay there some nights.

2 Q. Okay. How many nights would you stay there out of
3 a month?

4 A. I don't know, maybe 15, 20.

5 Q. So if that was your primary residence, why did you
6 tell the officer it was your grandfather's residence and
7 you were checking on the house because he was sick?

8 A. Well, my grandfather owns the house.

9 Q. Right, but if you lived there, you weren't
10 checking the house because he was sick, you were going
11 home, right?

12 A. Yeah.

13 Q. So when you told the officers you were checking on
14 the house because your grandfather was sick, that wasn't
15 completely true, was it?

16 A. I guess not --

17 Q. You were going home where you live, right? You
18 weren't checking on it for your grandfather. You were
19 going home from work. So when you say you were checking
20 on your grandfather at the time, right after the
21 incident, that's not totally correct, is it?

22 A. I guess technically not.

23 Q. Okay. And when you told the other officer that
24 you were going over there to -- let me see, make sure I
25 get it right -- you go to the residence just about every

ROBERT FABIAN - CROSS BY MR. LOCKLAIR

1 day to play drums and hang out, that actually wasn't a
2 true statement either, was it? You weren't going there
3 to play drums and hang out, you're going there because
4 you live there. See what I mean? If an officer asked me
5 why --

6 THE COURT: Let him answer the question. Let
7 him answer the question.

8 THE WITNESS: I mean, like I say, it all
9 depended on where I was going, really. Like, I kept my
10 drums over there because that's the only place I could
11 play, and I kept most of my belongings and everything
12 there. So, I mean, I was going to pretty much get stuff.
13 Like I said, my uncle and my grandfather wasn't really
14 having anything to do at the house at the time.

15 BY MR. LOCKLAIR:

16 Q. What's the girlfriend's name at the time and where
17 does she reside?

18 A. Jennifer Sherlock, and she resides in Columbia.

19 Q. Do you know her address in Columbia?

20 A. No, sir.

21 Q. Where was she living at the time y'all were
22 dating?

23 A. What was it, West Chase?

24 Q. Okay. But I know you said there might be --
25 before I interrupted you earlier, and I apologize, it

1 might be a question of -- I play guitar, so if I'm going
2 to my house, I don't tell somebody, I go hang out here
3 and play guitar. This is where I live.

4 THE COURT: That's not a question. Ask a
5 question.

6 BY MR. LOCKLAIR:

7 Q. So my question to you is, does it seem odd that
8 when the police officers asked you about this, your first
9 response was not, This is my house?

10 MS. LINDER: Judge, objection. I believe
11 asked and answered.

12 THE COURT: I'll let him answer the question.

13 THE WITNESS: Can you repeat that again.

14 BY MR. LOCKLAIR:

15 Q. Don't you think it's kind of strange when the
16 police officers came and said, What connection do you
17 have with the house? the first answer isn't, This is
18 where I live. This is my house, it's, It's my
19 grandfather's house, and he's sick and I'm checking on
20 the residence?

21 A. Well, that was a really funny time in my life. I
22 had just moved back from Montana and that house was in
23 such bad shape that -- like I said, I was trying not to
24 stay there as much as I could, to be brutally honest with
25 you.

1 Q. Okay. Well, if we're brutally honest, let's go
2 back to the 15, 20 days a month you stayed there. Is it
3 fair to say that may be an exaggeration you stayed there
4 15 to 20 days a month?

5 A. Yeah, somewhere about 15. I was kind of couch
6 surfing at the time, if you will.

7 Q. So you were couch surfing, staying at your
8 girlfriend's house, and staying here?

9 A. Yeah.

10 Q. Can you recall some of the people you stayed with
11 when you were couch surfing at the time?

12 A. I stayed with my dad.

13 Q. What's his name?

14 A. Robert Fabian.

15 Q. I assume some other friends or relatives?

16 A. Yeah, some friends, and, like, my aunt and stuff.

17 Q. And what was wrong with the house that you were
18 trying not to stay there?

19 A. It was just old and in disrepair, really.

20 Q. How many bedrooms is the house?

21 A. It was three bedrooms, one bath.

22 Q. Okay. And at the time did your grandfather or
23 uncle still have a bedroom in the house at the time this
24 incident occurred?

25 A. Yes, sir.

1 Q. Did you have a bedroom in the house?

2 A. Yes, sir.

3 Q. You said you came to play your drums. Where were
4 your drums located in the home?

5 A. In the living room.

6 Q. Where in the living room?

7 A. I had another big bay window like that one in the
8 back. I had them set up right in the front room by the
9 window by the fireplace.

10 Q. So they weren't by the window that somebody
11 allegedly came through?

12 A. No, sir.

13 Q. Okay. When you arrived into your house, you never
14 actually saw anybody in the interior of your home; is
15 that correct?

16 A. No, sir.

17 Q. You just heard somebody?

18 A. Yeah.

19 Q. The first time you allege you saw somebody was
20 after you exited the home through the back door?

21 A. Yeah, after I heard glass being broken and
22 footsteps inside the house.

23 Q. And according to those pictures, if you came out
24 of the back door, the bay window you allege somebody
25 broke would be to the right as you're facing the back

1 yard, right?

2 A. Yes, sir.

3 Q. When you came out of that back door, where would
4 you say the defendant was in relation to you, to your
5 left, right, or front of you?

6 A. Pretty much just about in front of me, in front of
7 the back door.

8 Q. Okay. If I exit that back door, is the
9 driveway -- would I go to the right to the driveway or to
10 the left to the driveway?

11 A. If you were exiting, it would be to your left.

12 Q. So what happens after you come out the back door
13 and you see him in front of you? Which direction does he
14 go?

15 A. To the left toward the driveway, out the gate.

16 Q. How quickly after you saw him did he get out the
17 gate? Was it immediate? Did he hang out in your back
18 yard for a while?

19 A. No. It was immediate.

20 Q. And did you at that point, from my understanding,
21 give foot pursuit?

22 A. Yes, sir.

23 Q. How far did you follow them?

24 A. A little bit past the end of my driveway on the
25 sidewalk.

1 Q. How far -- how long is your driveway,
2 approximately?

3 A. Thirty-five feet, something like that.

4 Q. Okay. And how far is your house or your
5 grandfather's house from the road? How far is it set
6 back, about the same distance?

7 A. Yeah, I would say, yeah.

8 Q. When you got down the sidewalk, were you still
9 able to see the person you allege had broken into your
10 home?

11 A. Yes, sir.

12 Q. And what direction were they going?

13 A. It looked like he was crossing the highway.

14 Q. How far behind him were you, do you estimate?

15 A. I mean, by the time I got in my Jeep, I had lost,
16 like, visual sight of him, and I went across the street
17 into the little neighborhood, and I didn't see him and
18 that's when I called 911.

19 Q. Okay. When you were following him on foot, when
20 he reached the sidewalk at the end of your driveway, how
21 far back on foot did you estimate you were behind him?

22 A. Maybe 20 feet or so, 25 feet.

23 Q. Okay. Had you made it to the end of the driveway
24 when he crossed St. Andrews?

25 A. Yes, sir. Like, he was in the middle of the

ROBERT FABIAN - CROSS BY MR. LOCKLAIR

1 highway, pretty much, when I was reaching the sidewalk.

2 Q. Okay. When you first called 911, you said the
3 victim was in his 20's or early 30's?

4 A. Yes, sir.

5 Q. And I believe your only other description of him,
6 other than clothing, was he was a black male with a heavy
7 build.

8 A. Yes, and he had cuts on him.

9 Q. Okay. But you didn't give any actual estimates as
10 to his height or his weight?

11 A. No, sir.

12 Q. Your main descriptive factor, I guess, of him
13 would have been black and male?

14 A. Yeah. Like I said, when I said heavier build,
15 pretty much kind of stocky. Everything that day happened
16 so fast.

17 Q. Did you ever tell the police that when he was in
18 the house, you rounded the doorway into the kitchen and
19 you observed a black male with no shirt jump out of the
20 picture window? Did you ever tell them that?

21 A. I don't believe so.

22 Q. Did you ever tell them you went to window, looked
23 out the window, and saw a black male crouching down?

24 A. No.

25 Q. So you also didn't tell him that when you exited

1 the residence through the back door the suspect was
2 already running towards St. Andrews?

3 A. From what I can remember, it was like he -- I got
4 pretty close to him. I don't know if he was, like,
5 stumbling out, but, yeah, he was pretty much already in
6 motion.

7 Q. When -- the person you saw when they were going
8 across the street, were they running? Were they walking?
9 Were they jogging?

10 A. They were running.

11 Q. Okay. When you saw the person running down your
12 driveway, or jogging down your driveway, did you see them
13 drop anything?

14 A. No.

15 Q. Were you able to observe the person the entire
16 time they were in your driveway -- I assume because you
17 were so close -- let me rephrase that.

18 From the time you saw him out in the back door of
19 the residence until he crossed the road, did you have him
20 in your sight the whole time from there?

21 A. Yeah, yeah.

22 Q. So if he had stopped in your driveway to pick
23 something up, you would have noticed it?

24 A. Yeah, yeah.

25 Q. Did you notice any police officers drive by prior

1 to you calling 911?

2 A. No, sir.

3 Q. Do you know what the speed limit is out there on
4 St. Andrews?

5 A. It's either 40 or 45.

6 Q. Okay.

7 A. I think it's 45.

8 MR. LOCKLAIR: Beg Court's indulgence for one
9 moment, please, Your Honor.

10 That's all the questions I have at this
11 moment.

12 REDIRECT EXAMINATION

13 BY MS. LINDER:

14 Q. Who owns [REDACTED] St. Andrews Boulevard?

15 A. My grandfather.

16 Q. And was it a business or a home?

17 A. It was a home.

18 Q. Did you ever stay there overnight?

19 A. Yeah.

20 Q. Did you have a bedroom there?

21 A. Yes, ma'am.

22 Q. Do you recall telling a 911 operator that, My
23 house was just robbed?

24 A. I can't remember if I did or not.

25 Q. Do you agree that -- earlier did we listen to a

1 911 call?

2 A. Uh-huh.

3 Q. And earlier you said that you had previously
4 listened to that call, and was that a fair and accurate
5 representation of the call?

6 A. Yes, ma'am.

7 Q. And after the defendant went out of your back
8 window to exit, what did you see him doing before he took
9 off running?

10 A. He was picking up, it looked like, his shirt and
11 whatnot, and he set the DVDs on the ground.

12 Q. Would you say that someone doing this motion to
13 pick up the DVDs or shirt could also be considered a
14 crouch?

15 A. Yeah.

16 MS. LINDER: Nothing further.

17 THE COURT: Recross, Mr. Locklair?

18 MR. LOCKLAIR: Just briefly, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. LOCKLAIR:

21 Q. Just one last time to go back to the whole
22 residence thing. Did you consider this the place you
23 lived, or is this a place you crashed occasionally, just
24 like a place you crashed at your father's house?

25 A. At that point in time, pretty much so.

ROBERT FABIAN - RECROSS BY MR. LOCKLAIR

1 Q. Basically, you were transient, moving back from
2 Montana, trying to find a place to live. That is of
3 these places you might stay?

4 A. It's where I lived before I moved to Montana.

5 Q. Okay. And, basically, I guess -- would it be fair
6 to say that it was a good place for you to keep your drum
7 kit, practice, because there was nobody there you would
8 disturb, family members?

9 A. Yeah. It was right on the highway and nobody
10 heard anything there.

11 MR. LOCKLAIR: Okay. That's all I have, Your
12 Honor. Thank you.

13 THE COURT: Thank you. Thank you very much,
14 Mr. Fabian.

15 MR. LOCKLAIR: The defendant has no objection
16 to this witness leaving, Your Honor.

17 THE COURT: All right. Perhaps now would be
18 a good time to take our evening recess.

19 Ladies and gentlemen: I must remind you,
20 during this recess, you're not to discuss this case with
21 anyone, that includes your family members, family,
22 friends, anyone else. Please do not read, watch, or
23 listen to any news reports about the case should there be
24 any. Do not use your computer, cellular phone or other
25 electronic device to obtain or disclose information about

1 the case which is prohibited, which includes, but is not
2 limited to, the following information about a party
3 witness or a party and a court officer, news accounts of
4 the case, information collected through general research
5 on any topic, phrase, or testimony offered by any
6 witness, information collected through juror research or
7 any other topic where a juror might think would be
8 helpful in deciding a case.

9 Remember, you decide a case based on the
10 evidence and testimony that is entered before you in the
11 courtroom and the law as I tell you the law is. Do not
12 do any investigation on the Internet or in person.

13 I will give you your first assignment as a
14 jury, and I ask that the primary jury select one among
15 your number to act as foreperson of this jury. It cannot
16 be -- is it Ms. Hannah? Ms. Hannah, and it cannot be
17 Mr. Jordan. Although I'm sure both Ms. Hannah or
18 Mr. Jordan would make an excellent foreperson, right now
19 they are both serving in the capacity of alternates.

20 When you arrive in the morning, if y'all
21 would just have that election, appoint one among your
22 number. It could be someone that had prior jury
23 experience or whatever criteria you so choose to use, one
24 of the primary 12. Once that election has been conducted
25 and there's a clear winner, you write that name down for

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1 me, knock on the jury room door, and give it to the
2 bailiff.

3 Once I get that, I'll have you back out in
4 the courtroom, if you'll please be back promptly at 9:30
5 in the morning, 9:30 in the morning. Leave your pads.
6 Leave your pads upside down on the chairs this evening.
7 The clerk's office will secure them.

8 Hope y'all have a pleasant evening. See you
9 promptly at 9:30 in the morning.

10 (Recess taken.)

11 (October 29, 2013.) ,

12 (In open court, jury not present.)

13 THE COURT: Anything from the State?

14 MS. LINDER: No, sir, not from us.

15 THE COURT: Anything from the defense?

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

18 (In open court, jury present.)

19 THE COURT: Thank you. Thank you very much.
20 Good morning, ladies and gentlemen of the jury.

21 Now, ladies and gentlemen of the jury, the
22 other members of the jury, you may sit wherever you would
23 like to sit within the jury box. It's been my
24 observation over the years that many jurors are very
25 territorial, that they want to sit in the same place at

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1 the same time, have the same view of the witness stand.

2 If you want to do that, that's certainly
3 fine. You do not have to do that. We need to have the
4 foreperson and two alternates, if you all will remain in
5 those seats and thank you. Thank you very much, sir,
6 number 65. Thank you for agreeing to serve in that very
7 important position.

8 You will be the jury spokesperson in the
9 courtroom and responsible for signing and dating the
10 verdict, and I will give you further instructions at the
11 conclusion of the trial.

12 All right? Ladies and gentlemen: As you
13 recall, we're continuing the trial of the case, the
14 presentation of evidence and testimony by the State in
15 its case in chief. If you would, please continue to give
16 the parties your complete and undivided attention as you
17 have done throughout the trial of this case.

18 Solicitor, you may call your next witness.

19 MS. LINDER: Thank you, Your Honor. May it
20 please the Court: State calls Robert Keller.

21 ROBERT KELLER,

22 having been first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. LINDER:

ROBERT KELLER - DIRECT BY MS. LINDER

1 Q. Good morning.

2 A. Good morning.

3 Q. What is your occupation?

4 A. I'm currently a Special Agent with the FBI.

5 Q. And what were your duties back in May of 2011?

6 A. I was a burglary detective with the Charleston
7 Police Department.

8 Q. And could you tell the jury a little bit about
9 your educational background.

10 A. I received a bachelor in criminal justice from
11 Eastern Kentucky University, attended the South Carolina
12 Criminal Justice Academy. While at the Charleston Police
13 Department, I received numerous trainings in interview,
14 interrogation, investigations, body language,
15 investigations, statement analysis. I was a member of
16 the burglary unit when we won the team of the year for
17 outstanding team. I was on the SWAT team. I attended a
18 40-hour basic SWAT course, was on that for tow years.

19 Prior to leaving the department and joining the
20 FBI, I attended the five-month rigorous FBI academy where
21 we learned even more interview, investigations, ethics,
22 morals, constitutional law.

23 Q. How long were you employed by the City of
24 Charleston Police Department?

25 A. Just seven years.

1 Q. How long have you been with the FBI?

2 A. A little over two years.

3 Q. And what are your duties with the FBI?

4 A. I currently investigate national security matters.

5 Q. And, again, in 2011 when you were with the city,
6 what were your duties?

7 A. Burglary detective.

8 Q. Did you have occasion to be working back on May 31
9 of 2011?

10 A. I did.

11 Q. And did you have occasion to become involved in
12 the investigation in this case in any way back on that
13 day?

14 A. Yes, I did.

15 Q. And how were you first brought into this case and
16 what had happened?

17 A. I was working normal hours, and I was actually
18 driving around West Ashley area when I heard the call go
19 out on the radio that there was a burglary in progress,
20 and upon hearing the call, I immediately responded to the
21 residence where the victim had called, St. Andrews
22 Boulevard.

23 Q. And was that in Charleston County?

24 A. Yes.

25 Q. And what was the address of the incident location?

ROBERT KELLER - DIRECT BY MS. LINDER

1 A. I believe it was ■ St. Andrews Boulevard.

2 MS. LINDER: May I approach?

3 THE COURT: Yes, ma'am.

4 BY MS. LINDER:

5 Q. At this time I show you what has been marked as
6 State's Exhibit 1. Do you recognize this?

7 A. Yes.

8 Q. And how do you recognize it?

9 A. It's St. Andrews Boulevard, and the residence that
10 was burglarized is right there (indicating).

11 Q. And would you say this is a fair and accurate
12 representation of the location back in May of 2011?

13 A. Yes, I would.

14 MS. LINDER: Your Honor, at this time the
15 State seeks to admit Exhibit 1 into evidence.

16 MR. LOCKLAIR: No objection, Your Honor.

17 THE COURT: State's 1 is in evidence without
18 objection.

19 (State's Exhibit No. 1 was marked for
20 identification and admitted into evidence.)

21 MS. LINDER: I would ask permission for the
22 witness to come down in order to show on the map where it
23 was to the jury.

24 THE COURT: You may step down. Just keep
25 your voice up.

1 BY MS. LINDER:

2 Q. If you would, orient the jury to what this is
3 showing.

4 A. This is an aerial view from St. Andrews Boulevard
5 right here. Coming back this way would be downtown.
6 This is ■ St. Andrews Boulevard.

7 Q. Is there another name that St. Andrews Boulevard
8 goes by? Is it ever called a highway number?

9 A. It is. I don't recall. I left the area a few
10 years ago. I can't recall.

11 Q. Do you know what street it is here?

12 A. I don't know the name, but I know it connects over
13 to 17, goes to James Island that way.

14 Q. Can you point out where the burglary occurred?

15 A. That residence right there (indicating).

16 Q. Thank you. What information -- you said you
17 responded to dispatch. What information did dispatch
18 disclose?

19 A. They advised there was a burglary in progress at
20 ■ St. Andrews Boulevard and that the victim was at the
21 residence, and he described a black male subject fleeing
22 the residence wearing dark pants, no shirt, heavier set,
23 and possibly bleeding from the arms, or possibly
24 bleeding, I believe they said, from the arms, or
25 bleeding.

ROBERT KELLER - DIRECT BY MS. LINDER

1 Q. And two and a half years ago, as a burglary
2 detective, when you get a dispatch call about a burglary
3 in progress, what is your typical procedure? What do you
4 do?

5 A. I immediately go to the victim, because patrol
6 units are responsible for looking for the subject. I go
7 to the victims in an attempt to maybe get a better
8 description, more accurate details, find out stuff that
9 dispatch maybe didn't get when they're trying to get the
10 call out as fast as possible.

11 Q. And in this case, what did you do upon hearing
12 there was a burglary in progress?

13 A. I went right to Mr. Fabian's residence and spoke
14 to him immediately.

15 Q. And after speaking with him, did you speak with
16 him about -- what did you do next with him?

17 A. When I got there, I asked him for a description
18 again, which he gave me the same description that he had
19 given our dispatch. I put it back out on his radio, and
20 I asked him step by step what happened from the time he
21 pulled up to the time he called us, and it was he came
22 in, he parked his car, and he noticed the window was
23 broken and that he saw some blood and he called who was
24 there.

25 He heard an unknown voice say, It's me. And then

1 after that, we walked through the residence to do an
2 inventory, basically, of what had been stolen or if
3 anything had been tampered with, and that's when we went
4 room to room, and he shows me rooms ransacked, blood in
5 the kitchen.

6 Q. And did you see anything of note outside the
7 residence?

8 A. Yes. There was some DVDs and a shirt laying
9 outside the residence, which he said was not there when
10 he had left that day but was there when he came home.

11 Q. What did you do after Mr. Fabian, after Robby,
12 gave you a description of the individual he saw?

13 A. Put it out over the radio to let the units know
14 that the description was still the same and that's what
15 they were looking for.

16 Q. And what happened next after you put the
17 description out over the radio?

18 A. I was advised by patrol officers that he had a
19 party stopped that matched that description, and I was
20 asked if Mr. Fabian could identify the person that had
21 stopped, or identify the person that was in his house to
22 see if the person he stopped matched the same person.

23 I told him -- I asked Mr. Fabian. He said yes, I
24 would be able to make an identification. I then put him
25 in my patrol car. We drove up St. Andrews Boulevard,

ROBERT KELLER - DIRECT BY MS. LINDER

1 quarter of a mile at the most, one- or two-minute drive.
2 Upon arriving, we saw the defendant standing, and I asked
3 him, Do you recognize this person?

4 And he said, Yes, that was the person I saw
5 fleeing my residence.

6 Q. So did the victim make an identification in this
7 case?

8 A. Yes, he did.

9 Q. How quickly did he make that identification?

10 A. Instantly.

11 Q. And how confident was he?

12 A. Very confident.

13 Q. And on the ride to the show-up, did you indicate
14 to him that he needed to pick someone?

15 A. No.

16 Q. Did you indicate to him anything else? Just tell
17 me what happened on the ride over.

18 A. The ride, we didn't say anything. It was such a
19 short a ride. When we got there, that's when I said, Is
20 the person you see the person you saw fleeing your
21 residence?

22 He advised that it was. I advised affirmative
23 over the radio and returned to the residence with Mr.
24 Fabian to continue the walk-through to see if anything
25 else was missing.

1 Q. Do you see the individual in court today that was
2 identified that day back on the street?

3 A. Yes.

4 Q. And what is he wearing?

5 A. He's wearing dark pants and a tan shirt.

6 Q. And can you point him out, please.

7 A. He's right there (indicating).

8 Q. Please let the record reflect the witness
9 identified defendant Otis Robinson as the individual that
10 was identified back on May 21 of 2011.

11 Did you ever see this defendant earlier that same
12 day?

13 A. I did. As I was driving down St. Andrews
14 Boulevard, I had been stopped at the light right before
15 Mr. Fabian's residence, and I was proceeding with
16 traffic. After the light had turned green, I noticed the
17 defendant jogging down [REDACTED] St. Andrews Boulevard, the
18 driveway. I saw him for approximately one to two
19 seconds. It kind of caught my eye, somebody jogging down
20 a driveway.

21 He stopped for a split second. He dropped
22 something. He picked it up, and I kept going.
23 Obviously, with the traffic, I looked in my rear-view
24 mirror to see if I could still see him. I saw him for a
25 brief second on St. Andrews Boulevard again, and as the

ROBERT KELLER - DIRECT BY MS. LINDER

1 road curved away from the residence, I lost sight of him
2 and obviously was having to pay attention to traffic.

3 Q. Now, was this before and after?

4 A. This was before the call went out. So at the time
5 I had no reason to suspect foul play, because we hadn't
6 had a call yet.

7 Q. And is it typical for you to just be driving
8 around in that area?

9 A. Yes.

10 Q. And how do you know it's the same guy that later
11 was identified by the victim?

12 A. He had the same physical characteristics. He had
13 no shirt, dark pants, same build.

14 MS. LINDER: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. LINDER: I don't have any further
17 questions for you at this time. Please answer any
18 questions the defense may have.

19 THE COURT: Thank you, Solicitor.

20 Mr. Locklair?

21 MR. LOCKLAIR: Thank you, Your Honor. May it
22 please the Court: Beg the Court's indulgence for just
23 one moment.

24 THE COURT: Certainly.

25 MR. LOCKLAIR: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LOCKLAIR:

Q. Good morning, Special Agent Keller.

A. Good morning, Mr. Locklair.

Q. You said you saw the defendant before the call went out; is that correct?

A. Yes, sir.

Q. How long would you estimate from the time you saw him until you received a call from dispatch?

A. About ten minutes.

Q. And when you say that you saw him in the driveway, how long would you say that driveway is from the road to the home?

A. I probably say between about 40 feet.

Q. And when you saw him, what part of the driveway was he on? Was he closer to the house?

A. He was closer to the road.

Q. Closer to the road? And you say you saw him bend down at some point?

A. Yes, sir.

Q. Where was that at? Was that like towards the road as well?

A. Yes. Pretty much the same spot where I originally saw him.

Q. And did you ever see him go -- is there a sidewalk

ROBERT KELLER - CROSS BY MR. LOCKLAIR

1 on this road?

2 A. I think so. I think so.

3 Q. Okay. Did you ever see him on the sidewalk or in
4 the actual roadway itself?

5 A. I didn't see him in the roadway. I believe the
6 sidewalk -- when I had already passed the residence and I
7 was trying to follow him in my rear-view mirror, it was
8 the sidewalk that was on right where I lost him.

9 Q. What was traffic like that day?

10 A. It was minor. It was about 1:00 in the afternoon,
11 so it's not rush hour.

12 Q. What kind of highway is that, two lane, four lane?

13 A. It's a two lane.

14 Q. Okay.

15 A. Two lane each way, so --

16 Q. So four total lanes?

17 A. Yes.

18 Q. Is that with a median?

19 A. Yes.

20 Q. When you first got the call and went to see
21 Mr. Fabian, where did he tell you he initially saw the
22 defendant at in the residence or outside of the
23 residence, which location?

24 A. He told me it was outside the residence when he
25 was running. He heard the sounds of somebody in his

1 house and the crash of somebody jumping back through the
2 window, and then he ran back out through the door, saw
3 the suspect gathering some stuff on the ground outside
4 the window, and then running down his driveway.

5 Q. Okay. You don't ever recall him telling you he
6 saw the suspect inside the first time?

7 A. No.

8 Q. Did he tell you why he had come to the residence
9 that day?

10 A. He told me that he comes to check on the residence
11 every day just about to play drums, hang out. It was his
12 grandfather's at the time, but since he'd been sick, he
13 wants to check on the residence.

14 Q. Okay. And when you -- I guess when you arrest, do
15 you do some kind of incident report, some kind of
16 paperwork?

17 A. Yes.

18 Q. Do you have copies of that paperwork?

19 A. There is original reports and supplemental
20 reports, yes.

21 Q. And do you recall what address Robert Fabian gave
22 you as his residence address?

23 A. I don't. I didn't do the original incident
24 report, so I don't know which one he gave the patrol
25 officers.

ROBERT KELLER - CROSS BY MR. LOCKLAIR

1 Q. So, basically, you do the investigation, and an
2 patrol officer would type up --

3 A. Yes. They take the original report. We do
4 supplemental reports.

5 Q. Okay. You said when you saw him in the driveway
6 it was only for a second or two that you would have been
7 able to see him in the driveway?

8 A. Yes, sir.

9 Q. But it was almost about ten-minutes before the
10 call came out?

11 A. Yes, sir.

12 Q. And you're pretty close in that ten minutes, you
13 think?

14 A. I believe so.

15 Q. Okay. Were you the first guy -- officer to
16 respond to the scene?

17 A. I was the first one to respond.

18 Q. Okay. And so I assume that you would have been in
19 charge of the crime scene?

20 A. Yes.

21 Q. And you would have been the one that conducted all
22 the interviews of Mr. Fabian at the time?

23 A. Yes.

24 Q. At any point would any other officers have
25 interviewed him?

1 A. The patrol officer probably would have -- when
2 they came to take the original report would have asked
3 him questions about what happened.

4 Q. Okay.

5 A. And then the crime scene would have asked him
6 after I had already left the scene. I would have asked
7 him, you know, just regular types of questions that they
8 normally ask in the course.

9 Q. When you were in the house, where was the drum kit
10 located?

11 A. I don't recall.

12 Q. Okay. And it's fair to say the inside of the
13 house was fairly messy, correct?

14 A. It was ransacked, yes, sir.

15 Q. Ransacked, but other than that, it's fair to say
16 that the house and the yard were not kept up very well?

17 A. The yard was not kept very well.

18 Q. It appeared nobody was actually living there,
19 correct?

20 A. It didn't appear that way. I mean, people in
21 Charleston usually have homes like that -- it's not
22 uncommon for us to see that.

23 Q. I trust you.

24 A. I've seen plenty of homes that look worse that
25 people live in.

ROBERT KELLER - CROSS BY MR. LOCKLAIR

1 Q. That is true, but it's safe to say -- it was not
2 kept up very well?

3 A. It was dirty, yes, sir.

4 Q. What about the inside of the house? Was there a
5 lot of dust, dirt I noticed on the pictures?

6 A. It was a dirty on the inside of the home. It was
7 very dirty but, that's not what I was looking at, was the
8 dirt or cleanliness of it.

9 Q. Did Robert Fabian tell you -- he said it was his
10 grandfather's house, correct?

11 A. Yes, sir.

12 Q. Did he ever mention anything about his uncle
13 living there?

14 A. No, sir.

15 Q. So you never talked to the uncle?

16 A. No.

17 Q. Did the grandfather ever show up at the scene?

18 A. No. He said he was ill, and being the age he was,
19 I -- you know, we didn't talk to him, didn't know where
20 he was, if he was in a hospital or a home.

21 Q. Okay.

22 A. Mr. Fabian seemed to have control of the
23 residence.

24 Q. So you all never spoke to the grandfather or the
25 uncle about the case?

1 A. No.

2 MR. LOCKLAIR: I beg Court's indulgence one
3 moment, Your Honor.

4 THE COURT: Yes, sir.

5 MR. LOCKLAIR: Just briefly, Your Honor.

6 BY MR. LOCKLAIR:

7 Q. When you saw the -- Mr. Robinson or whoever you
8 did see running down the driveway, did you see anybody
9 behind him?

10 A. I did not. Mr. Fabian could have been behind him,
11 but, like I said, I only saw him for a couple seconds.
12 My attention was focussed on driving, and seeing
13 Mr. Robinson running down the sidewalk, it was, hey,
14 that's suspicious, but I don't see anybody blatantly next
15 to him chasing or fighting with him, so I didn't --

16 Q. Okay.

17 A. My senses weren't that heightened.

18 Q. Did you say he was running down the sidewalk or
19 running down the driveway?

20 A. He was running down the driveway.

21 Q. And the driveway, you said it was about 40 feet
22 from the driveway to the road or the house?

23 A. Yes, sir.

24 Q. Is there a lot of trees at the front? Is it a
25 clear driveway?

ROBERT KELLER - CROSS BY MR. LOCKLAIR

1 A. You can see down the driveway. There's bushes
2 that are in front of the house, but it's not like the
3 driveway is obstructed.

4 Q. And this would be the house here on what's marked
5 State's Exhibit 1, the thing in the light blue --

6 A. Yes.

7 Q. -- octagonal shape? And you recall you were on
8 the inside?

9 A. I was on the inside.

10 Q. The lane by the median?

11 A. No. I would be on the outside lane, which is lane
12 number two.

13 Q. Okay. So you would have been passing by -- the
14 driveway would have been right there?

15 A. Yes.

16 Q. Is that correct? And is that, I guess -- can you
17 tell where those trees are, does the house jut out over
18 there or do you know?

19 A. The house over there.

20 Q. Does it end right there?

21 A. Yeah.

22 Q. And the driveway runs there?

23 A. Right there, yes.

24 Q. Okay. So you would have had a view basically from
25 the time you hit that branch of trees?

1 A. Correct.

2 Q. Okay. And you're sure you didn't see anybody
3 behind him?

4 A. I didn't see anybody at the time behind him.

5 Q. And based on all the training that you've had
6 prior, and obviously the Quantico training, which I'm
7 sure is very, very extensive, but the Charleston training
8 and the South Carolina Criminal Justice Academy, they
9 teach you all police officers to be very observant of
10 things that are sort of out of sorts, right?

11 A. Yes.

12 Q. So that's kind of why you noticed that?

13 A. Yes. A person running from a residence is
14 something to be suspicious of, but it's not worthy to
15 stop and detain or anything like that.

16 Q. And it would have been even more suspicious if you
17 would have seen a white man chasing a black man?

18 A. It wouldn't matter what it was. If I saw people
19 chasing each other, that would have been suspicious
20 enough to arrest him.

21 Q. Had Mr. Fabian been behind him, chasing him, you
22 probably would have noticed him, right?

23 A. If he was very close to him, I would have, but if
24 he was further back, I probably wouldn't have seen him
25 just because my attention was drawn immediately to

—RACHEL SANDERS - DIRECT BY MS. LINDER—

1 Mr. Robinson that was closest to me, and the amount of
2 time I saw him, it was just a second or two and then I
3 was gone.

4 Q. Okay. I guess if somebody almost caught somebody
5 and was right behind them, you would have noticed him,
6 correct?

7 A. It's possible. And it's possible that, you know,
8 whether he almost caught him means the other person --

9 Q. That's relative, okay.

10 MR. LOCKLAIR: Thank you very much, Special
11 Agent Keller. That's all I have.

12 THE COURT: Thank you. Redirect?

13 MS. LINDER: No redirect.

14 THE COURT: Thank you. Thank you very much,
15 Officer. You can step down.

16 All right, Solicitor. You can call your next
17 witness.

18 MS. LINDER: State calls Officer Rachel
19 Sanders.

20 RACHEL SANDERS,
21 having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. LINDER:

25 Q. Good morning. What is your occupation?

1 A. I am a patrolman in West Ashley for CPD.

2 Q. And can you tell the jury a little bit about your
3 education and your background.

4 A. I went to the Citadel, graduated with a criminal
5 justice degree, went to the South Carolina Criminal
6 Justice Academy, and required to do 40 hours in-house
7 training a year.

8 Q. And how long have you been employed by the city of
9 Charleston?

10 A. Three years.

11 Q. And what are your duties with the City of
12 Charleston Police Department?

13 A. I am on patrol in West Ashley, team four.

14 Q. And what do you do as a patrolman?

15 A. We patrol the area, answer calls for service.

16 Q. And did you have the occasion to be working back
17 on May 31 of 2011?

18 A. Yes.

19 Q. And did you have the occasion to become involved
20 in the investigation of this case in any way on that
21 date?

22 A. Yes.

23 Q. How were you first brought into this case and what
24 happened?

25 A. I was on patrol, riding in my cruiser, and we got

RACHEL SANDERS - DIRECT BY MS. LINDER

1 dispatched to [REDACTED] St. Andrews Boulevard for a burglary in
2 progress.

3 Q. And what information did you receive from
4 dispatch?

5 A. We received that it was a burglary in progress at
6 [REDACTED] St. Andrews Boulevard and the description of the
7 offender.

8 Q. And what happened when you responded to that call?

9 A. I saw a person matching that description walking
10 up St. Andrews Boulevard, coming off of Sheldon Road,
11 with items in his hand.

12 Q. And where is Sheldon Road on St. Andrews Boulevard
13 in comparison to where the burglary happened?

14 A. A couple houses down, maybe, like -- yeah, just a
15 couple houses down.

16 MS. LINDER: At this time -- permission for
17 the witness to come down? If you could come down here,
18 I'm going to show you this map that's already been
19 entered as State's Exhibit 1.

20 THE COURT: Just keep your voice up for us.

21 BY MS. LINDER:

22 Q. And if you can kind of use this map, can you show
23 the jury where the burglary occurred, [REDACTED] St. Andrews
24 Boulevard?

25 A. Yes.

1 Q. And can you show the jury kind of what direction
2 you were coming from in your cruiser?

3 A. Approximately up this way (indicating).

4 Q. And where did you see the individual? What did
5 you do?

6 A. He was walking off of Sheldon Road up St. Andrews
7 Boulevard, and I was driving. I believe I passed him, so
8 I turned around and pulled into a driveway in front of
9 that residence.

10 Q. And so your involvement in this case, you didn't
11 actually first respond to the scene?

12 A. No.

13 Q. And where was it again? Could you point -- use
14 both your hands, where you responded to and where the
15 incident was.

16 A. Here (indicating).

17 Q. All right. Thank you. Please take a seat.

18 Now, when you turned your car around when you saw
19 an individual, what did you do when you stopped?

20 A. I turned around and I pulled in a driveway, and I
21 saw the defendant walking up St. Andrews Boulevard. And
22 I turned my car in to the driveway, and I asked for him
23 to stop. And he turned around and stopped, and I asked
24 him where he was coming from.

25 He had objects from his hand. He had something

—RACHEL SANDERS - DIRECT BY MS. LINDER—

1 wrapped around his hand, and I just began to ask him
2 questions.

3 Q. Were you the only officer who stopped on the
4 street?

5 A. No. I was first out with him and then I had two
6 other officers stop with me.

7 Q. And did you locate anything on his person?

8 A. Yes. He had a screwdriver in his pocket. He had
9 a couple DVDs in his arm, and he had a shirt, or
10 towel-like thing, wrapped around his hand.

11 Q. And what did you do next with the defendant?

12 A. We detained him for further investigation.

13 Q. And did anyone else aside from the two other
14 patrol officers come up to your location when you had the
15 defendant with you?

16 A. Yes. The victim rode with Detective Keller up to
17 our location to do a show-up ID.

18 Q. And did the victim get out of Detective Keller's
19 car?

20 A. No.

21 Q. And what did you do when the victim and Detective
22 Keller drove up?

23 A. I took the defendant out of the back seat.

24 Q. And after Detective Keller left with the victim,
25 what did you do?

1 A. I then transported the defendant up to
2 CPD headquarters.

3 Q. After transporting to headquarters, what, if
4 anything, did you do with the items that you collected?

5 A. I placed them into CP evidence.

6 Q. All right. At this time I show you what's been
7 marked as State's Exhibit 3. Could you please tell the
8 jury what that is. Do you recognize it?

9 A. Yes. It's a screwdriver.

10 Q. How do you recognize that?

11 A. It was the one found in the defendant's pocket.

12 Q. Is that the same screwdriver that you turned in to
13 evidence?

14 A. Yes.

15 MS. LINDER: State would ask to admit State's
16 Exhibit 3 into evidence.

17 MR. LOCKLAIR: Without objection, Your Honor.

18 THE COURT: Admitted into evidence without
19 objection.

20 (State's Exhibit No. 3 was marked for
21 identification and admitted into evidence.)

22 BY MS. LINDER:

23 Q. At this time I show you what's been marked as
24 State's Exhibit 4. Do you recognize that?

25 A. Yes.

RACHEL SANDERS - CROSS BY MR. LOCKLAIR

1 Q. And how do you recognize those?

2 A. These were the DVDs that were found on the
3 defendant.

4 Q. And are those the DVDs that you turned in to
5 evidence?

6 A. Yes.

7 MS. LINDER: At this time, the State would
8 ask that State's Exhibit 4 be admitted.

9 MR. LOCKLAIR: Without objection, Your Honor.

10 THE COURT: Admitted without objection.

11 (State's Exhibit No. 4 was marked for
12 identification and admitted into evidence.)

13 MS. LINDER: I have no further questions. If
14 you would, answer any questions defense may have.

15 THE COURT: Thank you. Mr. Locklair?

16 MR. LOCKLAIR: Thank you, Your Honor. May it
17 please the Court:

18 CROSS-EXAMINATION

19 BY MR. LOCKLAIR:

20 Q. Good morning. How are you today?

21 A. I'm good.

22 Q. You stated that when you first observed the
23 defendant, he was walking back towards the victim's
24 residence or away from the victim's residence?

25 A. Towards the victim's residence.

1 Q. And you recall approximately how long from when
2 you first got the call from dispatch until you noticed
3 him?

4 A. I don't recall exactly, but it wasn't very long.

5 Q. Okay. When you first were interviewing him, were
6 there any other officers for the initial part of the
7 interview, or did you start interviewing him before
8 anybody else arrived or just wait for a backup?

9 A. As soon as I got out with him, there were officers
10 out with me.

11 Q. Okay.

12 A. With him.

13 Q. And what was your understanding about where the --
14 sorry. When you got the call from dispatch, where were
15 you told -- were you told where the defendant was headed
16 and what direction? Were you told where to look?

17 A. I don't recall.

18 Q. Okay. So you're just kind of patrolling the area
19 in general?

20 A. Yes.

21 MR. LOCKLAIR: Beg the Court's indulgence for
22 one moment.

23 THE COURT: Yes, sir.

24 BY MR. LOCKLAIR:

25 Q. Sorry about that. Do you ever recall if the

RACHEL SANDERS - CROSS BY MR. LOCKLAIR

1 victim had told you that --

2 THE COURT: That who? I didn't quite --

3 BY MR. LOCKLAIR:

4 Q. The victim. Do you recall if the victim ever told
5 you that the offender was driving south on St. Andrews
6 Boulevard?

7 A. I don't recall what the direction was.

8 Q. Okay. Did you talk to the victim?

9 A. I did not.

10 Q. So any information you had I guess would come from
11 Detective Keller, dispatch, or other officers?

12 A. Yes.

13 Q. So your only contact with the victim was when he
14 came up for the show-up identification for Detective
15 Keller and that's it?

16 A. Yes.

17 MR. LOCKLAIR: Thank you. That's all I have,
18 Your Honor.

19 THE COURT: Redirect, Solicitor?

20 MS. LINDER: No redirect.

21 THE COURT: Thank you very much, Officer.
22 You may step down. Any objections to Officer Sanders
23 being excused? Hearing no objection --

24 MR. LOCKLAIR: No objection.

25 THE COURT: You may be excused.

RICHARD WIERSMA - DIRECT BY MS. LINDER

1 MS. LINDER: State calls Richard Wiersma.

2 RICHARD WIERSMA,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. LINDER:

7 Q. Good morning.

8 A. Good morning.

9 Q. What is your occupation?

10 A. I'm a police officer for the city of Charleston.

11 Q. And who is your employer?

12 A. The city of Charleston.

13 Q. I'm sorry. How long have you been employed by the
14 City of Charleston Police Department?

15 A. About eight and a half years.

16 Q. And were you in law enforcement before coming to
17 the city?

18 A. Yes. I was a police officer in Michigan for seven
19 years prior to that.

20 Q. And can you tell the jury a little bit about your
21 education, background, training, and skills.

22 A. I have a bachelor's degree in criminal justice
23 from Ferris State University in Michigan. Like I said, I
24 was police officer up there for seven years. While up
25 there, I was trained as a crime scene technician,

1 evidence technician by the Michigan police crime lab.

2 After coming down here, I transferred to the crime
3 scene unit, and then I received in-house training with
4 our crime scene unit for the last six, six and a half
5 years.

6 Q. And what are your duties with the city of
7 Charleston as part of the crime scene?

8 A. Respond to any crimes in the city of Charleston
9 that may have -- need documentation, whether it be damage
10 or evidence, collect evidence, search for latent
11 fingerprints, any blood evidence, anything such as that.

12 Q. And were you working back on May 31 of 2011?

13 A. Yes, I was.

14 Q. And were you ever involved in the investigation of
15 this case back on that date?

16 A. Yes, I was.

17 Q. How were you first brought into this case and what
18 happened?

19 A. I know other patrol officers had been dispatched
20 after he arrived and the scene was secure. They asked
21 crime scene to respond due to the scene there, and it was
22 a burglary.

23 Q. And as part of the crime scene, what is your
24 primary objective when you first arrive at the scene?

25 A. The first thing we do is get information and then

1 observe the scene, see what's damaged, what needs to be
2 processed, what areas need to be documented or looked at.

3 Q. Do you take photographs as part of being with the
4 crime scene?

5 A. Yes.

6 Q. All right. Earlier the State admitted some
7 photographs into evidence. I'm going to show you a
8 couple, if you can explain to the jury. Is this where
9 you responded?

10 A. Yes, it is.

11 THE COURT: What number is that?

12 MS. LINDER: That's State's Exhibit 8.

13 THE COURT: Thank you.

14 BY MS. LINDER:

15 Q. This is State's Exhibit 10. Can you explain
16 what's in this photograph?

17 A. This was in the back yard of the residence, right
18 in the center there. It's a DVD case I removed, and that
19 is a shirt that was found on the ground.

20 Q. All right. This is State's Exhibit 12. Can you
21 explain what this is.

22 A. This is also the back yard, back of the residence
23 from the back yard. You can see the back door in there,
24 and there's also -- the left side of the screen is the
25 broken window.

1 Q. Oh, okay. Now, bear with me. This is State's
2 Exhibit 14. I'm going to attempt to zoom, but I can't
3 promise anything. There is a little glare.

4 I'm actually going to walk up to you and show you
5 this picture. This is State's Exhibit 14. Can you
6 notice anything on the back window?

7 A. I can see it appears to be broken glass and
8 curtains hanging in the window.

9 Q. Okay. And the jury will have these photos back
10 with them, but you're referring to the part in the window
11 on State's Exhibit 14. If you can please look -- this is
12 State's Exhibit 16. Could you explain what this picture
13 shows.

14 A. This is the kitchen of the residence. I know in
15 the kitchen there is a rag in the sink there. Some blood
16 was found on the rag.

17 Q. And what is that picture?

18 A. The inside of the sink, the rag up there in the
19 top left corner.

20 Q. And this is State's Exhibit 17. State's Exhibit
21 19, can you explain the photo you took here.

22 A. This is a bedroom in the residence. All the
23 dresser drawers had been pulled out. Some of them had
24 been dumped out. Things had been gone, rifled through,
25 and the mattress had been moved.

1 Q. Did you pull those dresser drawers out?

2 A. No, I didn't.

3 Q. Did you move that mattress?

4 A. No, I didn't.

5 Q. Is that exactly how the scene appeared when you
6 arrived?

7 A. Yes.

8 Q. When you were describing your general duties as a
9 crime scene technician, you discussed some other things
10 aside from just photographing a scene. You mentioned
11 fingerprinting. Could you explain that general process
12 to the jury, fingerprinting.

13 A. Yeah. Basically, when we go to a scene, first we
14 look for items that are most likely to have been touched
15 by somebody. Usually it's a point of entry or point of
16 exit or anything that's been moved or disturbed.

17 Once we do that, we look for surfaces that will
18 hold a print; hard, smooth, non-porous surface. Glass
19 would be ideal, but many times metal, wood that's got a
20 real smooth stain or varnish on it, stuff like that is
21 what we're looking for, for fingerprints.

22 Q. Did you attempt to lift any fingerprints from this
23 scene?

24 A. Yes, I did.

25 Q. Where did you attempt to lift fingerprints?

RICHARD WIERSMA - DIRECT BY MS. LINDER

1 A. I know I tried the back window, the one that was
2 broken, on the back door, and then the dressers, the
3 drawers that had been pulled out, the dresser itself, and
4 then the refrigerator door.

5 Q. Did you get prints from all those locations?

6 A. Not from those locations, no.

7 Q. Did you get any prints at all from the scene?

8 A. Yes, I did. I also processed the DVD case that
9 was found in the back yard, and I recovered prints from
10 that.

11 Q. And just so we're clear, what is this here?

12 A. That's the DVD case in the back yard.

13 Q. Is this the DVD case that you processed?

14 A. Yes.

15 Q. And that was State's Exhibit 10. Now, you
16 processed the DVD, and you said you lifted prints. What
17 did you do with the prints next?

18 A. After we lifted prints, they're sealed in an
19 envelope, and we put them in a locked box for our latent
20 print examiners to come, and they take the prints out and
21 examine them.

22 Q. So you yourself did not examine the prints?

23 A. No.

24 Q. You lifted them?

25 A. Correct.

1 Q. You mentioned in looking at one of the pictures
2 about a rag, and also you mentioned in your description
3 about collecting and testing certain items. Did you
4 collect or test items for blood in this case?

5 A. Yes. I found blood in multiple areas in the
6 residence.

7 Q. And can you explain the process of how you field
8 test something for blood?

9 A. If we see a substance that we believe is blood,
10 looks like it might be blood, we test using a chemical
11 called o-Toluidine. Basically, it reacts with the
12 hemoglobin in the blood and will turn it a bluish-green
13 color. Also we do a swab, use a swab or with a Q-tip,
14 using distilled water and o-Toluidine and hydrogen
15 peroxide to finish the reaction. If it's blood, it will
16 turn a bluish-green color.

17 Q. In this case, did you see any substance that you
18 believed through your training and experience should be
19 tested for blood?

20 A. Yes.

21 Q. And what did you see?

22 A. Saw a reddish brown substance later determined to
23 be blood, saw it on the curtains, saw it on the back
24 window, on the refrigerator door, and then on the rag in
25 the kitchen sink.

RICHARD WIERSMA - DIRECT BY MS. LINDER

1 Q. And did you use the o-Toluidine?

2 A. Yes.

3 Q. Did you use the o-Toluidine to test that?

4 A. Yes. In all three places, all three gave a
5 presumptive positive test for blood.

6 Q. And after the presumptive positive test for blood,
7 what did you do with those samples?

8 A. Using a separate clean swab and distilled water, I
9 swab each area and collected a blood sample from each
10 area.

11 Q. What did you do with those samples after you
12 collected them?

13 A. After they're collected, they're allowed to dry.
14 Usually they don't take -- the swabs don't take very long
15 to dry, but then they're packaged in a small cardboard
16 box, put in an envelope, and that's sealed and then that
17 evidence is placed in our office at headquarters.

18 Q. At this time I show you what's been marked as
19 State's Exhibit 6 and 7. I'm not opening this, but you
20 can move around everything. Can you tell me if you
21 recognize that?

22 A. Yes. That was the envelope -- these are the
23 envelopes that the swabs were packaged in. I can feel
24 the swab boxes inside of them, and I can see my initials
25 on the labels.

1 Q. And your initials are on the labels?

2 A. Yes. The labels that are the sealing tape on the
3 flap of the envelope, yes.

4 MS. LINDER: I have no further questions, if
5 you could please answer any questions the defense may
6 have.

7 THE COURT: Thank you, Solicitor.
8 Mr. Locklair?

9 MR. LOCKLAIR: May it please the Court, Your
10 Honor:

11 CROSS-EXAMINATION

12 BY MR. LOCKLAIR:

13 Q. Good morning. How are you doing today?

14 A. Very good, sir.

15 Q. You said you tried to lift some prints from
16 several areas of the house, correct?

17 A. Yes.

18 Q. Could you go back to where you tried to lift the
19 prints from, please.

20 A. I believe it was the rear window, the rear door,
21 the refrigerator, and the dresser drawers.

22 Q. And you were unable to secure any prints from any
23 of those?

24 A. Correct.

25 Q. What about the sink area? Did you attempt to

—RICHARD WIERSMA - CROSS BY MR. LOCKLAIR—

1 get -- you said there was some rag in the sink; is that
2 correct?

3 A. Yes.

4 Q. Did you attempt to get any prints from the sink?

5 A. No, I didn't.

6 Q. From the faucets, anything around the sink area?

7 A. No.

8 Q. And you said there were only three areas that you
9 tested for blood, correct?

10 A. Yes.

11 MR. LOCKLAIR: Could I ask you to mark this
12 as Defendant's 1 for ID.

13 (Defendant's Exhibit No. 1 was marked for
14 identification.)

15 BY MR. LOCKLAIR:

16 Q. When you do a crime scene for processing and all,
17 do you prepare reports to go along with that?

18 A. Yes.

19 Q. I'm going to show you what has been marked as
20 Defendant's Exhibit 1 for identification purposes and ask
21 you to flip through that and see if you recognize that.
22 I believe your stuff will be on page three, if that will
23 help you out.

24 A. Yes. That's my report.

25 Q. Okay. And that's basically a standard report

1 that's done in every case?

2 A. Yes.

3 Q. And what kind of information does that reflect?

4 A. Usually gives -- myself, my reports, gives brief
5 description of the scene that I go to and then what I did
6 at the scene.

7 Q. Okay. Is that part of a bigger incident report?

8 A. Yes.

9 Q. And on that incident report, did it tell you who
10 the victim and suspect were?

11 A. On the original incident, yes. On mine it
12 doesn't.

13 Q. And who does it say was the original victim?

14 A. James Fabian.

15 Q. And below that?

16 A. Robert Fabian.

17 Q. What is Mr. Robert Fabian's address?

18 MS. LINDER: Objection, Your Honor. The
19 defense is asking --

20 THE COURT: Step up here.

21 (Discussion held at sidebar.)

22 I will sustain the objection.

23 BY MR. LOCKLAIR:

24 Q. Did you ever meet with the victim at the crime
25 scene or Detective Keller do all that?

1 A. He was there. I may have talked to him briefly,
2 but nothing in depth.

3 Q. You had no purpose in discussing with him where
4 the suspect went or what occurred after the suspect left
5 or anything of that nature?

6 A. I don't recall if he walked through the house with
7 me or not, but usually officers will show me the scene.

8 Q. So he never talked to you about how -- the alleged
9 victim never talked to you about how the defendant would
10 have entered or exited the residence? You would have got
11 that from the other officers?

12 A. That's correct.

13 MR. LOCKLAIR: Thank you. That's all I have.

14 MS. LINDER: Nothing further.

15 THE COURT: Any objection to the officer
16 being excused?

17 MS. LINDER: None from the State.

18 MR. LOCKLAIR: No objection.

19 THE COURT: Perhaps now would be time to take
20 a 15-minute recess. If you haven't put your juror
21 numbers on, if you would do so that at this time. Please
22 do not discuss the case during this brief recess. Thank
23 you very much and you may go with your bailiff.

24 (In open court, jury not present.)

25 THE COURT: All right. Anything from the

1 State?

2 MS. LINDER: Nothing from the State.

3 (Recess taken.)

4 THE COURT: Anything from the State before we
5 bring the jury in?

6 MS. LINDER: Nothing from the State, Your
7 Honor.

8 THE COURT: From the defendant?

9 MR. LOCKLAIR: Judge, apparently my client
10 would like to make a motion that I be relieved as
11 counsel.

12 THE COURT: Stand up for me, Mr. Robinson.

13 THE DEFENDANT: I mean -- I'm getting
14 railroaded here, man, because that's very important to my
15 case, to find out where the place of residence was,
16 because he wasn't living there. I know he wasn't living
17 there, and they're lying, I know they lying, but he --

18 THE COURT: I thought your attorney did an
19 outstanding job -- let me finish.

20 I thought your attorney did an outstanding
21 job on the cross-examination of Mr. Robert Fabian
22 concerning the living arrangements, whether they did or
23 did not exist, as far as Mr. Robert Fabian of [REDACTED] St.
24 Andrews -- [REDACTED] or [REDACTED]?

25 MS. LINDER: [REDACTED].

1 THE COURT: [REDACTED] St. Andrews Boulevard.

2 THE DEFENDANT: The question he asked the
3 detective about the fact the man said -- the victim said
4 I ran across the highway. The detective said I ran right
5 on St. Andrews Boulevard, and he said I went left on St.
6 Andrews Boulevard. That is impossible for me to run
7 three different directions at one time.

8 THE COURT: And he's -- A, that testimony is
9 in the record; B, sergeant -- I think I'm promoting her,
10 she's not sergeant -- Officer Sanders testified you were
11 walking -- my memory is you were walking towards the
12 house, and your lawyer, in his opening statement, said
13 you got to look at these small details. They're
14 important, important details. They look to me like they
15 bring these details out in closing arguments.

16 They were in the opening statements. The
17 State, your lawyer, can argue the facts, the reasonable
18 inferences to be drawn from the facts, and how that
19 applies to the law.

20 THE DEFENDANT: Yeah, but they don't even
21 have all the pictures. There's more pictures in the
22 case. I had the pictures, but when they came to shake me
23 down, they take the pictures and they ain't give them
24 back to me.

25 MR. LOCKLAIR: They submitted some additional

1 pictures that were not into evidence, and I'm explaining
2 why I'm not introducing those into evidence.

3 THE DEFENDANT: Those are important to my
4 case because it shows -- it shows that the house is not
5 in stable condition.

6 MR. LOCKLAIR: As his lawyer, since I'm still
7 his lawyer, I would like to advise him to quit talking
8 because the prosecution is here, and what he says can and
9 will be used against him.

10 THE DEFENDANT: I'm saying he brought up the
11 -- I want the jury to see that so they can see what's
12 really going on because there is something that is
13 missing, what he isn't showing them, what he's showing
14 is -- because all you see is the back part of the window.
15 You don't see up close. You don't see inside, you know
16 what I'm saying?

17 THE COURT: What are you asking me to do?

18 THE DEFENDANT: I just -- I want everything
19 to be presented, man. I'm trying to go about doing it
20 the right way. I want all the evidence to be shown
21 because that way I can show I was set up. I was framed.
22 It was staged, what I'm telling him. What I went there
23 to do, I failed because --

24 THE COURT: What are you asking me to do?

25 THE DEFENDANT: As far as what, Your Honor?

1 THE COURT: Well, your lawyer said you had a
2 motion. I need to know what the motion is, what you're
3 asking me to do, and I'm going to decide --

4 THE DEFENDANT: I'm saying I want the part
5 where she object about the man giving up the address for
6 which the victim really said.

7 THE COURT: I sustained that objection.
8 That's hearsay. Doesn't matter whether you're trying the
9 case or whether your lawyer is trying case, I'm going to
10 sustain the objection.

11 THE DEFENDANT: But that's the place where
12 the man lived at.

13 THE COURT: I sustained that objection. Your
14 lawyer attempted to get that in front of the jury, and I
15 sustained the objection.

16 THE DEFENDANT: You can't win. You can't
17 win.

18 THE COURT: If you are found guilty and I'm
19 wrong on that evidentiary issue, your lawyer -- who knows
20 what an appellate Court may do? I don't know.

21 Anything before we bring the jury back in,
22 Mr. Robinson?

23 THE DEFENDANT: Man, I don't know -- I need
24 time to think, Your Honor. I need time to think.

25 THE COURT: That's why I took a break. I

1 took a break --

2 THE DEFENDANT: But he ain't come back and
3 talked to me or nothing.

4 THE COURT: I took a break because you might
5 need some time and you could have thought. Thinking
6 ain't talking. You could have thought during the break.
7 You said you needed time to think, not talk.

8 THE DEFENDANT: I need more time to think
9 because I don't know what the hell is going on, man.

10 THE COURT: Bring us the jury.

11 THE DEFENDANT: I want to represent myself.

12 THE COURT: No, sir. I'll deny that motion.

13 THE DEFENDANT: I don't want him representing
14 me. I don't want him representing me. There ain't
15 nothing fair about this.

16 THE COURT: Mr. Robinson, I'm going to have
17 you bound and gagged.

18 THE DEFENDANT: You're going to have me Tased
19 or what?

20 THE COURT: You're not going to interrupt
21 these proceedings.

22 THE DEFENDANT: This is my life at stake,
23 Your Honor. This is a kangaroo courtroom.

24 THE COURT: Sheriff, y'all got tape?

25 THE DEPUTY SHERIFF: I'll get some.

DUSTIN THOMPSON - DIRECT BY MS. BYRD

1 THE COURT: Okay.

2 THE DEFENDANT: This is unjust.

3 (In open court, jury present.)

4 THE COURT: Welcome back, ladies and
5 gentlemen of the jury panel. We will continue with the
6 presentation of evidence and testimony by the State in
7 their case in chief, if you would continue to give the
8 parties your complete and undivided attention.

9 Solicitor, you want to call your next
10 witness?

11 MS. BYRD: Thank you, Your Honor. The State
12 calls Dustin Thompson.

13 DUSTIN THOMPSON,
14 having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BYRD:

18 Q. Good morning, Detective Thompson. Could you
19 please tell us what your current position is at the
20 Charleston Police Department.

21 A. I'm the supervisor of the burglary division in our
22 detective office.

23 Q. And how long have you been employed with CPD?

24 A. For 12 years.

25 Q. Could you tell the jury a little bit about your

1 educational background, please.

2 A. I have a bachelor of science in criminal justice
3 from the University of South Carolina.

4 Q. Do you have any special training or continuing
5 education?

6 A. No, I do not.

7 Q. What are your current duties and responsibilities
8 in your position at CPD?

9 A. I supervise five burglary detectives. I oversee
10 their cases and make sure they're seen through to the
11 end.

12 Q. In May of 2011, did you have the occasion to
13 become involved in the investigation of this case?

14 A. Yes.

15 Q. Could you please explain how you became involved
16 in that investigation.

17 A. The officer that was originally assigned the case,
18 Detective Keller, had left the police department, and
19 there were a few things that needed to be followed up on.

20 I submitted defendant's prints in this case to our
21 crime scene tech, and I also submitted -- I obtained a
22 search warrant for his DNA and submitted that for
23 comparison to SLED.

24 Q. Could you explain a little bit how you actually
25 submit those items into evidence.

DUSTIN THOMPSON - DIRECT BY MS. BYRD

1 A. For the fingerprints, once somebody is arrested
2 and booked into a jail, they're assigned a number, a
3 South Carolina ID number. We can obtain that from NCIC,
4 which is a crime database, and what it is, we take that
5 number. I take that number and I review the crime scene
6 report, see if there is prints there. I put in a request
7 to our crime scene to compare his ID number to the prints
8 that were found at the scene.

9 Q. So you actually sent a request over to the print
10 analysis division of CPD in this case?

11 A. Yes, yes.

12 Q. All right. Detective Thompson, I'm going to hand
13 you what has been marked as State's Exhibit 26 for
14 identification purposes. I'll just keep these together.

15 (State's Exhibit No. 26 was marked for
16 identification.)

17 BY MS. BYRD:

18 Q. Do you recognize that exhibit?

19 A. Yes. This is a search warrant that I obtained for
20 the defendant.

21 Q. And what was the search warrant for, exactly?

22 A. For his DNA.

23 Q. Why would it be important in a case like this for
24 you to obtain DNA directly from him?

25 A. There was blood left at the scene, so we had to

1 take what is called a buccal swab. It's basically a
2 Q-tip, and you get the DNA from inside of his blood. You
3 get that to compare to the blood that was left at the
4 scene.

5 Q. And once that sample was taken from the defendant,
6 what did you do next?

7 A. It's packaged in a secure container. I place it
8 in evidence at the police department, and then our crime
9 scene takes it out of evidence and takes it to SLED to be
10 compared.

11 Q. When you submit the item into evidence at CPD,
12 could you give us a little bit more detail about how that
13 process goes.

14 A. Once you take the buccal swab, which, again, is
15 the Q-tip in the mouth, it goes into a secure box. You
16 label the box, defendant's name, date of birth, and my
17 initials. It goes into a smaller package like this.
18 Again, it's got the case number and everything on it, my
19 name. It's secured on the back like this, with my
20 initials on it, with a piece of tape.

21 Q. At this time I'm going to show you what's been
22 marked as State's Exhibit 5 for identification purpose.
23 Do you recognize the item?

24 A. Yes. This is the actual envelope that the buccal
25 swab was submitted in.

DUSTIN THOMPSON - CROSS BY MR. LOCKLAIR

1 MS. BYRD: Beg the Court's indulgence.

2 BY MS. BYRD:

3 Q. To be clear, how do you recognize that item?

4 A. It has my name on it.

5 Q. Is it in substantially the same condition it was
6 as when you submitted it?

7 A. It is.

8 MS. BYRD: No further questions at this time.

9 Please answer any questions the defense may have.

10 THE COURT: Thank you, Ms. Solicitor.

11 Mr. Locklair?

12 MR. LOCKLAIR: May it please the Court, Your

13 Honor:

14 CROSS-EXAMINATION

15 BY MR. LOCKLAIR:

16 Q. Good morning. How are you doing today?

17 A. Great.

18 Q. So you became involved in this when Detective
19 Keller left?

20 A. Yes, sir.

21 Q. Okay. And how did -- when you first became
22 involved, what steps did you take to come up to speed on
23 the case, so to speak?

24 A. I read over the report and noticed that the
25 fingerprints and the blood had not been submitted yet.

1 Q. Okay.

2 A. So I read over the report to see what hadn't been
3 done.

4 MR. LOCKLAIR: May I approach?

5 THE COURT: Yes, sir.

6 BY MR. LOCKLAIR:

7 Q. When I say report, I'm going to show you what has
8 been marked as Defense Exhibit 1 for ID, see if you can
9 recognize that.

10 A. Yes. That's a police report.

11 Q. And that's something you would have reviewed in
12 preparing to come up to speed on this case?

13 A. Yes, sir.

14 Q. Do you still have the search warrant up there by
15 chance?

16 A. I do.

17 Q. Can I see that real quick? You had prepared this
18 search warrant, is that State's --

19 A. Yeah.

20 MR. LOCKLAIR: Did y'all mark this already?
21 The warrant --

22 MS. BYRD: Yes, 26. It's on the outer
23 envelope.

24 BY MR. LOCKLAIR:

25 Q. State's 26, I'm going to keep this all together.

DUSTIN THOMPSON - CROSS BY MR. LOCKLAIR

1 This was something that you prepared and submitted?

2 A. Yes, sir.

3 Q. When you prepared this, if you could please look
4 at page three, there is a paragraph, reasons. See what
5 I'm talking about?

6 A. Yes.

7 Q. Did you speak to anybody when you prepared that or
8 did you just go off reports?

9 A. I went off the report.

10 Q. Okay. And could you please read off that, what
11 the second sentence says, starting with complainant.

12 A. The complainant, Robert Fabian Junior, advised
13 officers that his grandfather's residence had been
14 forcefully entered through a rear window.

15 Q. And do you know Robert Fabian Junior, where his
16 residence was?

17 A. I'm sorry. Could you repeat that?

18 Q. Do you know where Robert Fabian Junior -- where
19 his residence was? Does that reflect that in your
20 investigation?

21 A. No, it does not.

22 Q. Is there anything that might help refresh your
23 recollection?

24 A. I do not know where Mr. --

25 Q. Would there be anything -- take a look at Defense

1 Exhibit 1, the original police report.

2 A. Okay.

3 Q. Would there be anything in that that would refresh
4 your recollection that would help you rely on that
5 investigation, on page one, perhaps?

6 MR. LOCKLAIR: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. LOCKLAIR:

9 Q. You looked on page one of the original booking
10 report. Is there anything that might refresh your
11 recollection as to where Robert Fabian Junior resided?

12 MS. LINDER: Objection, Your Honor. The
13 defense is asking --

14 THE COURT: Step out a minute, ladies and
15 gentlemen. Please do not discuss the case. Hand me
16 Defense 1, please.

17 (In open court, jury not present.)

18 THE COURT: All right. What is your -- well,
19 number one, did you just testify, Sergeant, that you
20 didn't know Robert Fabian's address?

21 THE WITNESS: I see now it's listed in the
22 report, but I don't know where he lives.

23 THE COURT: Here is my question: Do you have
24 a memory to be refreshed? In other words, did you know
25 at one time -- you can't refresh somebody's recollection

DUSTIN THOMPSON - CROSS BY MR. LOCKLAIR

1 that never knew.

2 THE WITNESS: Right. I never knew where
3 Robert Fabian Junior lived.

4 THE COURT: There's nothing to be refreshed.

5 MR. LOCKLAIR: Well, Your Honor, I would
6 argue he did know because he stated he read this entire
7 report. He may not remember it from reading that report,
8 his address, but he did know at one time, but he has
9 forgotten but he did read the entire report. He said
10 that, so he did have that knowledge and now he's
11 forgotten it.

12 I mean, if you read it, you have knowledge of
13 it. If you don't remember it, that's your own fault.
14 That's why the rule is there, to refresh his
15 recollection.

16 THE COURT: I thought you'd have to have
17 recollection to be refreshed.

18 MR. LOCKLAIR: He recalls reading the report,
19 and he would have had to have read the address and had it
20 in his memory, but he just lost it.

21 MS. LINDER: And, Judge, our position is that
22 he has to refresh his recollection, his memory, his
23 reports. You know, he cannot just solely rely on someone
24 else's.

25 MR. LOCKLAIR: Well, his memory can be

1 refreshed through anything, Your Honor, especially when
2 it's an investigator that took over a case, and he
3 basically said that he obtained all this information by
4 reading the report, that's how he came up to speed.

5 He also relied on this information to prepare
6 a search warrant that was submitted to the judge to get
7 those swabs because he even said it was his grandfather's
8 residence, so he knew it was not Robert's residence when
9 he prepared that search warrant, at least that's what he
10 alleged to a judge, that it was not Robert's residence.

11 THE COURT: Well, I'll let you see if you can
12 lay a foundation as to his recollection under 803.

13 MR. LOCKLAIR: Yes, sir.

14 THE COURT: I do not believe the proper
15 foundation has been laid under 803(5), and I note that
16 803(5) indicates that 803(5) subsection is similar to
17 previous state law which allowed a witness to testify
18 from a writing when it was the original document prepared
19 by the witness contemporaneous with the event for the
20 purpose of preserving the memory of it.

21 And, of course, when you talk about search
22 warrant, everybody knows under State vs. Flood, State vs.
23 Wise that hearsay is admissible in an affidavit or a
24 search or an arrest warrant. They still have -- they
25 would still have to meet the rules of evidence when they

DUSTIN THOMPSON - CROSS BY MR. LOCKLAIR

1 get into the courtroom, and it's a different standard.

2 But, anyway, I'll allow you to examine him,
3 Mr. Locklair.

4 MR. LOCKLAIR: I'll move on, Your Honor. He
5 didn't prepare the document, so I'll move on.

6 THE COURT: All right. Now, that's a note.
7 That's a footnote to 803(5).

8 MR. LOCKLAIR: I don't have any additional
9 voir dire as far as getting that in. I put forth what I
10 think from is a proper foundation because he relied on,
11 it but if the Court is going to sustain her objection,
12 I'll move on.

13 THE COURT: All right. I just don't think --
14 not that you have not laid the proper foundation, I don't
15 think the proper foundation can be laid with this officer
16 as far as being admissible under 803. I didn't mean
17 that.

18 MR. LOCKLAIR: I understand what you mean.

19 THE COURT: All right. Bring us the jury,
20 please. The objection is sustained.

21 (In open court jury present.)

22 THE COURT: All right. Welcome back, ladies
23 and gentlemen. Mr. Locklair, you may continue.

24 MR. LOCKLAIR: Thank you. Your Honor.

25 BY MR. LOCKLAIR:

1 Q. When you prepare an affidavit to submit to a judge
2 for something like the buccal swabs, you do that under
3 oath, correct?

4 A. Yes.

5 Q. And you put in the information that you have
6 obtained through your investigation, correct?

7 A. Yes.

8 Q. And you got to make sure that everything you
9 include in the affidavit is very accurate, correct?

10 A. Correct.

11 Q. And in your affidavit, once again, it states on
12 that third page, under reason for applicant's belief that
13 property sought is on the subject premises, you put in
14 the report -- did you type this yourself?

15 A. I did.

16 Q. So you put in a report that a complainant, Robert
17 Fabian Junior, advised officers that his grandfather's
18 residence had been forcibly entered through a rear
19 window, correct?

20 A. Yes.

21 Q. And if he advised you it's his residence, you
22 would have put that in the report, correct?

23 A. That's correct.

24 MR. LOCKLAIR: Thank you. That's all I have,
25 Your Honor.

NADA KERSTEIN - DIRECT BY MS. BYRD

1 THE COURT: Redirect, Solicitor?

2 MS. BYRD: I have no redirect.

3 THE COURT: Any objections to the sergeant
4 being excused?

5 MS. BYRD: Nothing from the State, Your
6 Honor.

7 THE COURT: Thank you for being with us this
8 morning.

9 You may call your next witness.

10 MS. BYRD: Thank you, Your Honor. The State
11 calls Nada Kerstein.

12 NADA KERSTEIN,
13 having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. BYRD:

17 Q. Ms. Kerstein, could you please tell us where
18 you're currently employed.

19 A. I'm employed with the Charleston Police
20 Department.

21 Q. And how long have you been employed with the
22 Charleston Police Department?

23 A. It's approximately ten years.

24 Q. Would you tell us what your position is there.

25 A. My title is senior criminal identification

1 specialist, which is also the same as latent print
2 examiner.

3 Q. What are your responsibilities and duties in that
4 position?

5 A. I analyze and compare fingerprint evidence to ten
6 print evidence cards, ten print fingerprints, for the
7 purpose of identification and elimination. I also am
8 certified to run AFIS, which is our automated fingerprint
9 identification system. I also classify and compare ten
10 print cards for the identification department.

11 Q. How much of your work with Charleston Police
12 Department is dedicated to those tasks?

13 A. 100 percent.

14 Q. And how long have you been employed there, did you
15 say?

16 A. I've been employed with the police department for
17 ten years. I've been in the latent print division since
18 2008. Prior to that, I was in identification. Starting
19 in 2004 I started working with ten print evidence.

20 Q. What specialized education or training have you
21 received in the area of fingerprint analysis?

22 A. Since 2004, I've had over a dozen classes dealing
23 with fingerprint comparison analysis, and most of those
24 classes are at least a week long, at least 40 hours, and
25 they are usually with experienced latent examiners who

NADA KERSTEIN - DIRECT BY MS. BYRD

1 have been doing the work for many, many years.

2 Q. What type of equipment do you use for your
3 fingerprint analysis?

4 A. We use magnifying glasses and pointers and
5 occasionally additional light.

6 Q. And you said that you do have occasion to compare
7 latent prints to the ten print cards, correct?

8 A. Yes. That is the majority of my job, is doing
9 comparisons.

10 Q. And what are those ten print cards, exactly?

11 A. Ten print cards are eight-by-eight cards that are
12 designed specifically to capture ten fingers individually
13 and then the four fingers simultaneously, and the thumbs.

14 Q. Could you say approximately how many times you've
15 done these types of comparisons?

16 A. I don't have an exact number, but including my
17 case work and training and proficiency tests, it's well
18 over 100,000.

19 Q. Have you ever testified in court before?

20 A. Yes, I have.

21 Q. On any of those occasions, were you ever qualified
22 as an expert?

23 A. Yes.

24 Q. Would you tell us, please, what a known print is.

25 A. A known print is a reproduction of the friction

1 ridges of your fingers and palms, usually rolled in black
2 printers ink. It can be done electronically now, and
3 they are rolled on to a contrasting background, such as
4 the ten print card.

5 Q. Could you explain for us what a latent fingerprint
6 is.

7 A. Latent means hidden, or not readily seen by the
8 naked eye, and it's a print that is left by chance,
9 usually has to be developed in some way for it to be
10 seen, either with powder or some type of chemical. It
11 can also be photographed in the right light.

12 Q. How is it possible for a person to leave behind a
13 fingerprint?

14 A. When you have any type of fluid on your fingers,
15 if you rub your face and the oils from your face are on
16 your finger, or if your finger is sweating a little bit,
17 there is moisture there. If you just touch something,
18 you're going to leave an impression with that moisture,
19 and that's fingerprint evidence.

20 Q. What types of services are most conducive to
21 actually capturing a fingerprint?

22 A. Something smooth, not wet. Something like smooth
23 wood or glass, those types of surfaces.

24 Q. Is it possible for a person to touch a surface and
25 not leave a fingerprint?

1 A. Yes. If you have no moisture on your hands, if
2 your hands are very dry or if they're very cold, then you
3 could touch something and not leave a print.

4 Q. Why are fingerprints used as a means of
5 identification?

6 A. There are two reasons why we can use fingerprints
7 as evidence: One is uniqueness, and the other is
8 permanence. Every finger of every person has a ridge
9 arrangement that is unique. There are no two people that
10 have ever been found that have exactly the same ridge
11 arrangement. They are permanent. The arrangement that
12 you have when you're born is what you carry throughout
13 your entire life until death or decomposition. The
14 exception to that rule would be if you have any scarring
15 or intentional mutilation.

16 Q. Based on your training and experience and your
17 years of study, have you ever seen two persons with the
18 same fingerprints?

19 A. No, I have not.

20 Q. Can two people have the same fingerprints?

21 A. No.

22 Q. How many points of identification are needed when
23 making an identification through fingerprints?

24 A. In the United States, we do not have a set number
25 of points that are necessary. When we do a comparison,

1 we're taking the entire picture into consideration. We
2 are looking at pattern type and the ridge flow. We're
3 looking at the characteristics, all the minutiae that's
4 in that pattern, and if the print is clear enough, we're
5 looking at the ridge size, the ridge shape, the pore
6 placement, if it's clear enough and you can see the pore
7 placement, so it's the pore placement as identification
8 so it's not just points we're looking at. We're looking
9 at the whole picture.

10 Q. Could you please explain to us exactly how you
11 conduct your comparison of a fingerprint.

12 A. Yes. When we're doing a comparison, it's a
13 side-by-side comparison. I have the latent print on one
14 side, and I have the ten print card next to it, and I'm
15 using two magnifying glasses and pointers, and I'm going
16 characteristic by characteristic.

17 And what I mean by characteristic is that the
18 pattern type in the finger has certain points, is the
19 word I'm going to use. We're looking for bifurcations,
20 which is where a ridge runs along and then splits. We're
21 looking for enclosures, which is where two ridges run
22 along and then they split and come together, in a little
23 island.

24 Those are the characteristics that we use in order
25 to make an identification. If the characteristics are in

NADA KERSTEIN - DIRECT BY MS. BYRD

1 the same order, in the same sequence, around the entire
2 print, then those two prints were made by the same
3 contributor.

4 MS. BYRD: Your Honor, at this time the State
5 would like to move to submit Ms. Kerstein as an expert in
6 fingerprint analysis and comparison.

7 THE COURT: Questions?

8 MR. LOCKLAIR: Without objection from the
9 defense, Your Honor.

10 THE COURT: Thank you. Mr. Foreman, ladies
11 and gentlemen of the jury: What are you offering her as
12 an expert in?

13 MS. BYRD: Fingerprint analysis and
14 comparison, Your Honor.

15 THE COURT: All right. Normally, a person
16 cannot give opinion testimony. Normally when a person
17 testifies, they must testify as to what they either saw,
18 heard, by sense, by smell something of that nature.

19 However, there is an exception when someone
20 is qualified in a particular art, science, field or
21 profession because of education, experience, training,
22 they are permitted to give their opinions in certain
23 areas if the Court qualifies them that way.

24 This witness, Nada Kerstein, will be
25 qualified in the area of fingerprint analysis and

1 comparison to give opinion testimony in those areas.
2 That does not mean you must accept the opinion or
3 opinions, but it is evidence for you, the jury, to use in
4 any way you see fit.

5 Thank you, sir, and Mr. Locklair. You may
6 proceed.

7 MS. BYRD: Thank you, Your Honor.

8 (State's Exhibit No. 27 was marked for
9 identification.)

10 BY MS. BYRD:

11 Q. Ms. Kerstein, I'm going to hand you what has been
12 marked as State's Exhibit 27 for identification purposes,
13 if you'll look at that envelope itself. Could you tell
14 us if you've seen that exhibit before?

15 A. Yes, I have.

16 Q. And would you please tell us what it is.

17 A. This is the fingerprint evidence that we received
18 on case 1108929.

19 Q. And is that case number related to this case, the
20 State versus Otis Robinson?

21 A. Yes. This is the only evidence that we received
22 on this case.

23 Q. Okay. Were you able to make a comparison with
24 using that particular print?

25 A. Can I -- is it okay for me to look at my notes?

1 Q. Sure.

2 A. Can I open this so I can look at the cards? I
3 need a pair of scissors. Thank you.

4 We received two latent lifts on this case. The
5 first lift was non-comparable. The second lift, there
6 was one fingerprint that was identified to the ten print
7 card bearing the name Otis Maurice Robinson. It was
8 finger six, which would be the left thumb.

9 Q. How were you able to come to that conclusion?

10 A. I did a side-by-side comparison with the latent
11 card and the ten print card.

12 Q. In your expert opinion, based on your experience
13 and your training in the field of fingerprint analysis,
14 were all the levels of comparison that you described
15 earlier conclusive with the -- as a latent print matching
16 the ten print or the known print of the defendant, Otis
17 Robinson?

18 A. Yes.

19 Q. Was your analysis verified?

20 A. Yes, it was.

21 Q. And to your understanding, what was the conclusion
22 of that verification?

23 A. She agreed.

24 Q. Okay.

25 MS. BYRD: Beg the Court's indulgence.

1 THE COURT: Yes, ma'am.

2 MS. BYRD: I have no further questions at
3 this time. Please answer any defense may have.

4 THE COURT: Thank you, Solicitor.
5 Mr. Locklair?

6 MR. LOCKLAIR: May it please the Court:

7 CROSS-EXAMINATION

8 BY MR. LOCKLAIR:

9 Q. Good morning.

10 A. Good morning.

11 Q. Were those the only two prints that you analyzed?

12 A. Yes, it was.

13 Q. There were no prints submitted from inside the
14 house to you?

15 A. No. These were the only prints that were
16 submitted on this case.

17 MR. LOCKLAIR: All right. Thank you. That's
18 all I have.

19 THE COURT: Redirect, Solicitor?

20 MS. BYRD: No further questions.

21 THE COURT: Thank you. Thank you so much for
22 being with us today, Officer. You may step down. Any
23 objection to the officer being excused?

24 MR. LOCKLAIR: None from the defense, Your
25 Honor.

CATHERINE LEISY - DIRECT BY MS. BYRD

1 MS. LINDER: No objection from the State,
2 Your Honor.

3 THE COURT: You may be excused. All right.
4 Solicitor, you may call your next witness.

5 MS. BYRD: Thank you, Your Honor. State
6 calls Catherine Leisy.

7 CATHERINE LEISY,
8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BYRD:

12 Q. Good morning, Ms. Leisy.

13 A. Good morning.

14 Q. Could you please tell us what your occupation is.

15 A. I work with the South Carolina Law Enforcement
16 Division, more commonly known as SLED. I'm a forensic
17 scientist assigned to the DNA and serology unit.

18 Q. And what duties and responsibilities do you have
19 in that position?

20 A. My responsibilities include processing forensic
21 cases, generating reports based on the results and
22 conclusions drawn, testifying to those reports as
23 necessary, also responsible for certain quality control
24 measures within a laboratory as well as the training of
25 newly hired analysts.

1 Q. Could you give us some information about your
2 educational background and training.

3 A. I have a bachelor science degree in genetic
4 engineering from Cedarcrest College in Allentown,
5 Pennsylvania. I also received in-house training at SLED
6 for all of the different types of tests and analyses I'm
7 required to run as part of my job. I participate in
8 continuing education, which consists of training seminars
9 involving different aspects of DNA identification
10 testing. I also have a four years of experience as a
11 forensic DNA analyst at a private testing facility known
12 as Orchid Cellmark.

13 Q. In your educational background, did that include
14 hands-on work with DNA and testing techniques?

15 A. Yes, it did.

16 Q. Have you performed research in the area of DNA or
17 DNA testing?

18 A. I have.

19 Q. Prior to your employment at SLED, could you
20 describe any other employment you may have had?

21 A. Again, I spent four years as a forensic DNA
22 analyst at a private facility known as Orchid Cellmark,
23 where I performed many types of testing analysis I did at
24 SLED. I also spent approximately two years as a research
25 assistant at a molecular genetics lab that did gene

1 cloning.

2 Q. Are you currently a member of any professional
3 associations?

4 A. I belong to the American Academy of Forensic
5 Sciences.

6 Q. What role does that play in science and DNA?

7 A. It's very important in a continuing education
8 aspect. They sponsor a seminar every year that we
9 frequently attend. They also publish the Journal of
10 Forensic Sciences, which commonly contains articles
11 relating to new aspects of DNA testing, new types of
12 analysis that are available, helps us maintain being
13 up-to-date within the forensic community.

14 Q. Could you explain to us what type of technical
15 equipment you've used.

16 A. We use different types of instrumentation that
17 allows us to perform the different types of steps
18 required in DNA testing. Those instruments are
19 maintained regularly and are required to go through
20 what's called a valuation process, which is a series of
21 tests that allows us to show this the instruments work as
22 they are expected to, to ensure quality and consistency
23 in testing.

24 Q. Could you explain to us exactly, what is DNA?

25 A. DNA stands for deoxyribonucleic acid. It's the

1 genetic material found in all of our body cells with the
2 exception of our red blood cells. DNA is packaged into
3 structures call chromosomes which contain our genes, and
4 genes are simply strand evidence DNA that code for our
5 physical characteristics such as our height or eye color.
6 We receive one copy of DNA from our mother and one from
7 our father, and therefore we have two copies of every
8 gene.

9 Now, approximately 99.9 percent of an individual's
10 DNA is identical to that of everyone else's, and it's the
11 variation in that remaining .1 percent that allows us to
12 tell different people apart.

13 Q. Why is DNA important?

14 A. DNA is important in forensic testing because,
15 again, it allows us to tell different individuals apart.
16 It allows us to try and identify whether or not an
17 unknown biological stain found at a crime scene or item
18 of evidence could or could not have been contributed by a
19 known individual whose standard has been committed for
20 comparison.

21 Q. Are there methods to typing people?

22 A. There are.

23 Q. What are those methods called?

24 A. The type of testing we are using now has been in
25 place close to 15 years. The basic principle has been

1 around much longer than that. It's now the common way of
2 performing DNA testing.

3 Q. What do those methods do?

4 A. The method that we use is called PCR/STR testing.
5 PCR stands for polymerase chain reaction, and it's a
6 technique that allows us to make copies of a specific
7 location of DNA that we want to test. Those locations
8 are known as STRs, or short tandem repeats, and STR is
9 just a location in our DNA where a short core unit of
10 DNA repeats a certain number of times.

11 The number of times this unit repeats varies from
12 person to person, so by making copies of these locations
13 and testing the number of repeats, we can tell whether or
14 not an individual's number of repeats matches the number
15 of repeats found on an item of evidence and therefore can
16 tell whether or not that individual contributed the DNA
17 profile from the evidence.

18 Q. Is the PCR form of testing used in any other
19 fields besides for criminal investigation?

20 A. PCR is very widely used in medical testing,
21 research. It's also used in mass casualty identification
22 of bodies.

23 Q. Are any controls used in this method?

24 A. We use a number of controls to ensure not only
25 that our instrumentation works but that the chemicals

1 that we use work as we expect them to. We also introduce
2 controls to show that there's no contamination introduced
3 to the sample during testing and that all the tests
4 perform as we need them to.

5 Q. What is exactly is a control?

6 A. A control is a sample that we create as we're
7 processing samples from a case. It contains all the
8 chemicals that we're using and undergoes all the same
9 steps that the items of evidence do.

10 At the end of the process, that control should be
11 completely blank, as there has never been a DNA source
12 introduced to it. If it comes up blank, then we know
13 that the chemicals that we used were not contaminated and
14 that we did not introduce DNA to the item for testing.
15 We also use what is known as a positive control which is
16 a known sample. We already know the DNA profile. We run
17 it along with the items of evidence from beginning to
18 end, and as long as we obtain the known profile, we
19 expect we know that the tests worked as we needed them to
20 and all the instrumentation works properly.

21 Q. What happens if a control doesn't work properly?

22 A. If we believe either there has been a
23 contamination for the instrumentation or the chemicals
24 aren't working properly, if possible, we go back and
25 repeat the test, but it usually precludes us from using

1 any type of result that we gain from that person.

2 Q. How do you read the results of the PCR test?

3 A. We receive raw data off one of the instruments.

4 The data counts for us the number of repeat units present
5 at each of the locations we test. We convert that
6 information to a DNA table similar to an EXCEL sheet.
7 It lists all of the locations that we test as well as the
8 types or number of repeats present in each location.

9 The total accumulation of types at those locations
10 for an item of evidence is what we call a DNA profile.
11 Once that profile is investigated from evidence, we can
12 compare it to the profile of the known individuals to see
13 if they match.

14 Q. What kind of results can you get from a PCR test?

15 A. The strongest result that we can get is what we
16 call a match, where we have a full DNA profile from an
17 item of evidence and it matches completely the full DNA
18 profile of the known individual.

19 We can have an exclusion where the profile from
20 the evidence does not match the individual, and we
21 conclude them as being a possible contributor. We can
22 also have instances where you can say it may not be a
23 complete match, but someone cannot be excluded as a
24 possible contributor, but, again, the strongest statement
25 we can make is a match.

1 Q. Can a DNA sample change from one to another?

2 A. There is nothing during the testing process that
3 will cause the profiling to change, from beginning to
4 end.

5 Q. Can a sample be old or die?

6 A. Samples, as they get older, can degrade or break
7 down. As the DNA breaks down, it makes it more difficult
8 for us to develop a full DNA profile, but the degradation
9 process doesn't change the profile, it just means we may
10 not be able to get as much information from that sample
11 as from a less old, or healthier sample.

12 Q. What is contamination?

13 A. Contamination is the act of introducing DNA during
14 testing. It can be caused from carryover from one tubing
15 to another, or it can be caused by the analyst
16 introducing their DNA into a sample.

17 Q. If that would occur, what steps you do you take?

18 A. Again, with contamination we would go back and
19 perform a second test of the original item if at all
20 possible. If that's not possible, typically then we do
21 not report the results that were obtained from the
22 contaminated test.

23 Q. Do you or the lab in which you work undergo
24 proficiency testing?

25 A. I am required to perform two proficiency tests a

1 year. It's basically a mock case that is provided to us
2 by a company that designs these cases for us. It's to
3 show that I not only am performing my tests correctly,
4 but the that the tests themselves work, so we are
5 required to develop the correct DNA profiles that have
6 been submitted to us from those other labs.

7 Q. Do you know what the results were of your most
8 recent proficiency test?

9 A. I passed all my proficiency tests.

10 Q. What licenses does your laboratory hold?

11 A. SLED is accredited by the American Society of
12 Crime Laboratory Directors, laboratory accreditation
13 board. This is a voluntary program that labs can choose
14 to participate in to show that they meet several
15 guidelines and standards that have been set to ensure
16 quality and consistency in forensic testing.

17 Q. Do you undergo any quality assurance at the lab?

18 A. We do. We have a quality assurance department
19 that monitors all of our training, make sure that we
20 passed any necessary competency tests to go online and
21 help monitor our proficiency tests. They also monitor
22 things such as temperatures in refrigerators or heaters
23 that we have to use.

24 Q. When your lab receives cases for DNA testing, what
25 steps do you do take to ensure the integrity of those

1 samples?

2 A. When a sample is submitted to the, lab it comes in
3 through our evidence control department. The submitting
4 officer will place the items of evidence into a plastic
5 pouch. The pouch is then heat sealed and the initials of
6 the submitting officer as well as the date are written
7 across the seal.

8 The pouch may be transferred between different
9 people or to different locations before it arrives on my
10 desk, but as long as that pouch has not been opened, I
11 know that the evidence could not have been tampered with
12 in any way.

13 Q. Could you explain to us what population frequency
14 are?

15 A. Population frequencies are a way that we can
16 determine roughly how common or rare any given DNA
17 profile is within in the population. It helps us to
18 determine how strong the statement we're making when we
19 say something matches.

20 Q. And how important is that to DNA typing?

21 A. In terms of identification, I believe it's very
22 important. It helps us, again, to show how common or
23 rare a profile is, and it helps to let juries decide how
24 much weight they want to give to an item of evidence.

25 Q. Do you have any special education or training in

1 the area of population -- excuse me -- population typing?

2 A. I took an undergrad course in population
3 statistics. I'm also required to go through, again,
4 proficiency testing every year. Statistics is part of
5 your proficiency testing as far as how we apply it to
6 interpretations that we do, and I also receive in-house
7 training at SLED relating to how the population
8 statistics works in relation to the testing we perform.

9 Q. Would you explain what frequencies are.

10 A. Frequencies are how common or how rare certain
11 event is, how often you're likely to see a certain event.

12 Q. And how are those frequencies estimated in your
13 work?

14 A. We use databases that are maintained by the FBI.
15 They contain DNA types from three different population
16 databases, African American, Caucasian, Hispanic. We
17 also generate a type -- excuse me, a statistic using
18 Southeastern Hispanics that was generated by the Florida
19 Department of Law Enforcement and incorporated into the
20 database.

21 We use the data that we develop from an item of
22 evidence, compare it to the frequency of the types in
23 those databases, and determine the overall frequency of
24 the particular DNA profile we have in those databases.

25 Q. Have you testified in court before today?

1 A. Yes, I have.

2 Q. And on those occasions, were you ever qualified as
3 an expert in DNA analysis?

4 A. I was.

5 Q. About how many times?

6 A. Over 50 occasions.

7 MS. BYRD: Your Honor, at this time the State
8 would move to qualify Ms. Leisy as an expert in
9 DNA testing, DNA analysis, population estimates.

10 THE COURT: Mr. Locklair?

11 MR. LOCKLAIR: Without objection.

12 THE COURT: Mr. Foreman, ladies and gentlemen
13 of the jury, again, normally when a witness testifies,
14 they must testify to either what they saw, heard, sense,
15 by smell, something of that nature; however, there is an
16 exception when someone is qualified, based on education,
17 training, or experience in a particular art, science,
18 field, or profession, they're permitted to give opinion
19 testimony in certain areas if the Court qualifies them
20 that way.

21 This witness, Agent Catherine Leisy, if I
22 didn't mispronounce that, will be qualified in the area
23 of DNA analysis, testing, and population estimates to
24 give opinion testimony in those areas.

25 That does not mean you must accept the

CATHERINE LEISY - DIRECT BY MS. BYRD

1 opinions, but it is evidence for you, the jury, to use in
2 any way you see fit.

3 Thank you, Solicitor, Mr. Locklair. You may
4 continue.

5 MS. BYRD: Thank you, Your Honor.

6 BY MS. BYRD:

7 Q. In your position at SLED, did you have occasion to
8 do any testing or DNA analysis in regards to this case,
9 the State versus Otis Robinson?

10 A. Yes, I did.

11 Q. Did you receive any evidence in this case?

12 A. I did.

13 Q. I'm going to hand you what has been marked as
14 State's Exhibits 5, 6, and 7 for identification purposes.
15 Do you recognize those exhibits? If you need to open
16 anything, you can.

17 A. These are the items that I received in relation to
18 this case.

19 Q. Could you explain for us what those items were.

20 A. I received a set of buccal swabs from Otis
21 Robinson, and buccal swabs are simply sterile cotton
22 Q-tips that are rubbed inside of the cheek to collect
23 cells. We then use the sample to develop a profile to
24 use as that individual's known profile.

25 I also received a swab from the curtain and swabs

1 from a rag in the kitchen sink.

2 Q. What was done with the evidence when you received
3 it?

4 A. After taking the items into my custody, I first
5 performed a preliminary test on the swab from the curtain
6 and the swab from the rag to test for the possible
7 presence of blood. Those tests were positive, indicating
8 a possible presence of blood in those items.

9 I then developed a DNA profile from each item and
10 compared it to the DNA profile I was able to develop from
11 the standard from Otis Robinson.

12 Q. And the DNA profile from Otis Robinson, where was
13 that generated from?

14 A. That was generated from buccal swabs that were
15 submitted and identified.

16 Q. Did you make a comparison between the blood
17 samples that you received that were collected from the
18 scene and the profile you made from those and then the
19 profile from the sample received directly from
20 Mr. Robinson?

21 A. Yes, I did.

22 Q. What was the conclusion of that comparison?

23 A. The DNA profile developed from the swab from the
24 curtain and the swab from the rag in the sink matched
25 tDNA profile of Otis Robinson, and the probability of

CATHERINE LEISY - DIRECT BY MS. BYRD

1 randomly selecting an unrelated individual having the DNA
2 profile matching these items is approximately one in 2.3
3 quintillion.

4 Q. In your expert opinion, is that probability very
5 rare?

6 A. It is.

7 MS. BYRD: Beg the Court's indulgence.

8 BY MS. BYRD:

9 Q. In your expert opinion, whose DNA was found on the
10 rag in the kitchen from the crime scene?

11 A. My opinion within a reasonable degree of
12 scientific certainty is that Otis Robinson is the
13 contributor from the DNA developed from that item.

14 Q. And in your expert opinion from your analysis,
15 whose DNA was found on the kitchen -- the curtain on the
16 window where -- from the blood sample collected from the
17 crime scene?

18 A. Subsequent, within a reasonable degree of
19 scientific certainty, it's my opinion Otis Robinson is
20 the contributor of the DNA obtained from that.

21 MS. BYRD: Your Honor, at this time, the
22 State would move to admit its Exhibits 5, 6, and 7.

23 MR. LOCKLAIR: Without objection, Your Honor
24 opinion.

25 THE COURT: 5, 6, and 7 are admitted without

1 objection.

2 (State's Exhibit Nos. 5, 6, and 7 were marked
3 for identification and admitted into evidence.)

4 MS. BYRD: State has no further questions.
5 Please answer any questions the defense may have.

6 THE COURT: Mr. Locklair?

7 CROSS-EXAMINATION

8 BY MR. LOCKLAIR:

9 Q. May it please the Court, Your Honor. Good
10 morning.

11 A. Good morning.

12 Q. You were just given two items to develop as far as
13 the crime scene?

14 A. That's correct.

15 Q. And you didn't collect those items yourself, did
16 you?

17 A. I did not.

18 Q. So you're not aware that those items were actually
19 located at the crime scene, other than information you
20 received from the officers who gave it to you?

21 A. That's correct. That information was included on
22 the submission paperwork that came with the evidence.

23 Q. So on our report where you have item 3 listed as
24 swab from rag from kitchen sink, you have no way to know
25 if that rag actually came from outside and was later

1 placed in the kitchen sink, do you?

2 A. I have no information regarding where the rag was
3 in relation to the sink, no, sir.

4 MR. LOCKLAIR: Okay. Thank you. That's all
5 I have.

6 THE COURT: Redirect, Solicitor?

7 MS. BYRD: No redirect, Your Honor.

8 THE COURT: Thank you. Thank you very much.
9 Any objection to the officer being excused?

10 MR. LOCKLAIR: No, sir, Your Honor.

11 MS. LINDER: No.

12 THE COURT: You may be excused. Thank you
13 for being with us.

14 All right. Solicitor, you may call your next
15 witness.

16 MS. LINDER: Your Honor, may we approach
17 briefly?

18 THE COURT: Yes, ma'am.

19 (Discussion held at sidebar.)

20 THE COURT: All right. Mr. Foreperson,
21 ladies and gentlemen of the jury: The parties have a
22 stipulation concerning certain matters that would have
23 been introduced through our witnesses, and it's not going
24 to be a requirement to call those witnesses because the
25 parties have agreed to this stipulation.

1 Madame Solicitor is going to read it to you.
2 Solicitor, you may publish the stipulation.

3 MS. LINDER: Thank you, Your Honor. This is
4 the State of South Carolina, County of Charleston, versus
5 Otis Maurice Robinson, defendant, in the Court of General
6 Sessions Ninth Judicial Circuit, indictment number
7 2011-GS-10-5416.

8 This is a stipulation order for latent prints
9 buccal, blood samples, and defendant's buccal swab.
10 Attorneys for the State and the defense agree and
11 stipulate to the following: That in the Charleston
12 County police department case 11-08929, items labeled
13 blood swab from rear window and blood swab from rag in
14 kitchen sink were collected by and submitted into
15 CPD evidence by crime scene technician Richard Wiersma on
16 May 31, 2011.

17 Subsequently, those items were transported to
18 and submitted into evidence at South Carolina Law
19 Enforcement Division in Columbia by CPD evidence
20 custodian Ashley Dougherty on July 11, 2012. The item
21 was signed into SLED by Amy Stephens and assigned a SLED
22 item numbers 2 and 3 respectively. Patricia Crooks, also
23 of SLED, delivered those items to Catherine Leisy of SLED
24 who then performed DNA analysis on them.

25 In the same case item, item CPD number 1-A, a

1 latent print, was collected by and submitted into
2 CPD crime scene office by the crime scene technician
3 Richard Wiersma. The latent print was placed into the
4 AFIS lock box on May 31, 2011. CPD latent print analyst
5 Nada Kerstein received the item from the AFIS lock box
6 and transported it to CPD forensics division office in
7 order to conduct the fingerprint analysis on it.

8 In the same case, item labelled buccal swab
9 from Otis Robinson was collected by and submitted into
10 CPD evidence by Sergeant Justin Thompson on February 21,
11 2013. Subsequently that item was transported to and
12 submitted into evidence at SLED by CPD evidence custodian
13 Mary Phillips. This item was signed in at SLED by Doris
14 Yarbrough and assigned SLED item number four. Patricia
15 Crooks, also of SLED, delivered the items to Catherine
16 Leisy of SLED who then performed DNA analysis on them.

17 At no time were any of these items damaged or
18 changed from its original condition from the time of the
19 collection until the time of work done by Nada Kerstein
20 and Catherine Leisy. It is dated October 29, 2013 signed
21 by myself, Stephanie Linder, and defense counsel, Wesley
22 Locklair.

23 (Court's Exhibit No. 1 marked for
24 identification.)

25 THE COURT: Thank you. Thank you very much,

1 Solicitor. Mr. Foreman, ladies and gentlemen of the
2 jury: Given my understanding of administratively before
3 we continue the case, we're going to take our luncheon
4 recess a little early. I realize it's only 12:00. I
5 usually break around 1:00, but we're going to take our
6 luncheon recess a little early.

7 I will remind you during this recess you're
8 not to discuss this case with anyone. That includes
9 lunch mates, family, friends or anyone else. Do not
10 watch, listen to, or read any news accounts of the case
11 should there be any. Do not use your computer, cellular
12 phone, or any other electronic device with communication
13 capabilities to disclose or research any information that
14 is prohibited.

15 The information prohibited includes but is
16 not limited to information about the party, the
17 attorneys, the court officers, or witnesses, current or
18 past news accounts of the case, should there have been
19 any, information collected through your own research on
20 any topic raised by any witness or information any juror
21 might think would be helpful in deciding the case.

22 Remember, you decide the case -- you can
23 repeat this back to me -- based on the evidence and
24 testimony from the witnesses testifying under oath from
25 the witness stand, any reasonable inferences you think

1 may properly be drawn from that evidence, and the law as
2 I tell you the law is. With that being said, I am going
3 to excuse you for your luncheon recess. Please leave the
4 notes on your chair. They will be secured by the clerk's
5 office, but be back approximately at 1:30. Thank you.
6 Thank you very much.

7 (In open court, jury not present.)

8 THE COURT: I want Robert Fabian here at
9 1:30, and I also want Officer Elrod.

10 MS. LINDER: All right.

11 THE COURT: My understanding, what y'all have
12 told me from the bench, I want to think over this over
13 the lunch hour, and, Madame Clerk, would you place
14 Mr. Robinson under oath for me, please.

15 Mr. Robinson, when the solicitor and
16 Mr. Locklair were up at the bench, the solicitor
17 indicated they would rest after lunch, so I'm going to go
18 over some of your rights with you right now so you can
19 think about it during the luncheon recess, okay?

20 The solicitor rests. At that stage of the
21 trial, you would then have the opportunity to present
22 evidence before the jury for the jury to consider. Do
23 you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In that regard, through your

1 attorney, you may call witnesses to testify on your
2 behalf, or, if you choose to testify yourself, you may do
3 so.

4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: No one can force you to testify,
7 Mr. Robinson. You have the absolute right to remain
8 silent, and if you choose not to testify, I will tell the
9 jury that they cannot hold your silence against you in
10 any way. I will tell them they're not even to discuss
11 that in their jury room.

12 Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If your side, the defense, offers
15 no evidence at all, in other words, if neither you nor
16 anyone on your behalf testifies or offers any exhibits,
17 then your attorney, Mr. Locklair, will get to make the
18 last argument to the jury. Otherwise, the prosecutor
19 gets to make the last argument.

20 Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Locklair, Solicitor, does
23 Mr. Robinson have a criminal history that would subject
24 him to impeachment under rule 609?

25 MS. LINDER: He does, Your Honor.

1 THE COURT: And what would that be?

2 MS. LINDER: Your Honor, he has two burglary
3 convictions.

4 THE COURT: That's the '94 and the '06?

5 MS. LINDER: He has additional ones.

6 THE COURT: All right. These are two
7 additional?

8 MS. LINDER: Yes, Judge. In 2007, he has two
9 counts of burglary, second offense, violent. He has a
10 receiving stolen goods property offense enhancement from
11 2005, and I believe that's the extent I have within the
12 past ten years.

13 THE COURT: So he has -- make sure I'm
14 tracking correctly. He has two burglaries that you
15 placed in evidence, as far as the element of the offense,
16 and he has two additional burglaries, correct?

17 MS. LINDER: In the past ten years.

18 THE COURT: Meaning he has one receiving
19 stolen goods.

20 MS. LINDER: Yes, in the past ten years.

21 THE COURT: Do you agree with that?

22 MR. LOCKLAIR: Yes, sir.

23 THE COURT: And that's what you intend to
24 use?

25 MS. LINDER: I would intend to use that

1 unless they open the door for older items, and then I
2 would bring it up at that time, and he has other items,
3 if you would like me to read the length of his --

4 THE COURT: No, ma'am, not if you don't
5 intend to use them.

6 MS. LINDER: I don't intend to use them
7 unless the door is opened.

8 THE COURT: So what that means, Mr. Robinson,
9 is if you were to testify that in front of the jury, the
10 prosecutor could ask if you have been convicted of
11 certain offenses in the past. As I understand it, that
12 would be four prior burglary convictions and one prior
13 receiving stolen goods conviction.

14 They could not go into detail of prior
15 offenses, but they can ask you if you've been convicted
16 of those prior offenses. If that happens, I will tell
17 the jury that they can only consider that evidence
18 against you, if at all, other than the two on the
19 elements of the offense, but they can only consider it
20 against you, if at all, on the issue of whether your
21 testimony is believable or not and for no other purpose.

22 Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, Mr. Robinson, the decision
25 about whether you testify or not is your decision to make

1 and yours alone.

2 I expect, and I'm going to give you the
3 opportunity over the luncheon recess, that you can confer
4 with your attorney on this very important decision, but
5 that decision is your decision, Otis Maurice Robinson's
6 decision.

7 Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anyone exercised any undue
10 influence over you to get you to choose to testify or not
11 to testify?

12 THE DEFENDANT: No, sir.

13 THE COURT: I couldn't hear you.

14 THE DEFENDANT: No, sir.

15 THE COURT: Today are you under the influence
16 of any medication, drugs, alcohol, or anything that
17 negatively affects your thinking ability?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you suffer from any physical,
20 emotional, or mental problems that would affect your
21 thinking today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you have any questions you
24 would like to ask me about your right to testify or not
25 testify?

1 THE DEFENDANT: What, everything the
2 solicitor could bring up if I testify?

3 THE COURT: Four burglaries and receiving
4 stolen goods.

5 THE DEFENDANT: That's the only thing?

6 THE COURT: Yes, sir. I'm not going to ask
7 you right now for your decision. That's why I'm taking a
8 lunch break. When you've have time, we'll come back at
9 1:30, and I'm asking if you have any questions of me
10 right now about your right to testify or not testify.

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Thank you. Thank you
13 very much. Court is in recess until 1:30.

14 (Recess taken.)

15 (In open court, jury present.)

16 Welcome back, ladies and gentlemen. I hope
17 y'all had a pleasant lunch. We're continuing the trial
18 of the case, if you will continue to give the parties
19 your complete and undivided attention as you did
20 throughout the case.

21 Thank you. Thank you very much. Solicitor?

22 MS. BYRD: At this time, the State would like
23 to call Officer Elrod of the Charleston Police
24 Department.

25 THE COURT: All right.

JAMES ELROD - DIRECT BY MS. BYRD

1 JAMES ELROD,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. BYRD:

6 Q. Good afternoon. Could you please tell us what
7 your position is at Charleston Police Department.

8 A. Currently, I'm an investigator in our field
9 intelligence unit in central investigations.

10 Q. And before you came into court today, could you
11 tell us what you were doing prior to being here?

12 A. Yes, ma'am. I was meeting with a confidential
13 informant before I got my call.

14 Q. Are you usually out of uniform or dressed in your
15 clothing for those types of meetings?

16 A. Yes, ma'am. My daily work attire is similar to
17 what you see here, casual wear.

18 Q. How long have you been with Charleston Police
19 Department?

20 A. Two-and-a-half years.

21 Q. And could you give us a little information about
22 your educational background and training.

23 A. Yes, ma'am. I graduated from the Citadel with a
24 bachelor's in history, and I'm also enrolled in a
25 master's program at Charleston Southern, two classes

1 remaining for my master's degree. I graduated from the
2 South Carolina Criminal Justice Academy, certified law
3 enforcement one officer. I've also been through -- I'm a
4 drug recognition expert. I'm a specific skills
5 instructor through the academy as well as defensive task
6 instructor at the academy.

7 Q. On May 31, 2011 were you working at CPD?

8 A. Yes, ma'am.

9 Q. What was your position at CPD at that time?

10 A. At that time was a patrol officer in team four.

11 Q. In that capacity, did you have an opportunity that
12 day to respond to a burglary at [REDACTED] St. Andrews Boulevard
13 in Charleston County?

14 A. Yes, ma'am.

15 Q. And when you responded to that location, what did
16 you learn when you arrived?

17 A. When I responded to the location, I was met by my
18 supervisor at that time, Sergeant Milz, and I had already
19 been informed that there was a burglary in progress call
20 to dispatch. And when I got on scene, he informed me
21 that there had been a burglary -- there was evidence that
22 a burglary had occurred, and I was instructed to begin a
23 further investigation and complete the incident report.

24 Q. In completing that report, did you have particular
25 fields of information that you were required to complete?

JAMES ELROD - DIRECT BY MS. BYRD

1 A. Yes, ma'am.

2 Q. Did one of those fields include the victim's
3 address?

4 A. Yes, ma'am.

5 Q. When you were completing that report, specifically
6 the victim's address portion, do you recall how you were
7 able to obtain the proper -- or the information necessary
8 to complete that report?

9 A. I do not recall exactly. It was provided me by
10 the victim.

11 Q. In what form?

12 A. I do not recall. It was either through his
13 driver's license or he verbally stated to me that was his
14 address.

15 MS. BYRD: Court's indulgence.

16 THE COURT: Yes, ma'am.

17 BY MS. BYRD:

18 Q. Do you remember completing a phone number field in
19 your report?

20 A. I do not remember. There is one in there and so
21 that that's the phone number he provided to me.

22 Q. You seem to be looking down. Just so the jury is
23 aware --

24 A. I'm looking at the incident report.

25 Q. Is that a copy of your report?

1 A. Yes, ma'am.

2 MS. BYRD: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 BY MS. BYRD:

5 Q. If you would, please, could you read the phone
6 number you have listed for Robert John Fabian Junior.

7 A. Yes, ma'am.. Area code 843-677-9550.

8 Q. Okay.

9 MS. BYRD: No further questions at this time.
10 Would you please answer any the defense may have.

11 THE COURT: Thank you. Thank you very much.
12 Mr. Locklair?

13 MR. LOCKLAIR: May it please the Court:

14 CROSS-EXAMINATION

15 BY MR. LOCKLAIR:

16 Q. How are you doing today?

17 A. Fine, sir.

18 Q. You have that incident report. Is that defense
19 Exhibit 1 you have?

20 A. This is mine, sir.

21 Q. I'm going to show you what has been marked
22 previously for identification as Defendant's Exhibit 1,
23 just ask if you recognize that document and what it is.

24 A. Yes, sir. This is a copy of the incident report,
25 also with the supplementals and property listings I've

JAMES ELROD - CROSS BY MR. LOCKLAIR

1 attached to the report.

2 Q. Is that a report that you generated?

3 A. I generated all the fields you see on the front,
4 also wrote the initial incident narrative.

5 Q. Is that the one that starts out on the 5/31/11 at
6 approximately 1335 hours?

7 A. Yes, sir. That's mine.

8 Q. On the third line down where it says the
9 complainant stated --

10 A. Yes, sir.

11 Q. -- would that have been something he stated to you
12 or somebody else, if you recall?

13 A. That would be something that he stated to me.

14 Q. And would you please read that sentence.

15 A. Yes, sir. The complainant stated that the victim
16 has been ill and is not at the residence at the time of
17 the incident.

18 Q. And on the first page of your report, it has a
19 place for victims and incident data, property, correct?

20 A. Yes, sir.

21 Q. Down where it says others involved, who is the
22 name listed in that?

23 A. Robert John Fabian Junior.

24 Q. Is that the gentleman that you spoke to after this
25 incident?

1 A. Yes, sir.

2 Q. And there's a place there for your home address,
3 correct?

4 A. Yes, sir.

5 Q. When you filled this out, you asked him for his
6 home address, correct?

7 A. Yes, sir.

8 Q. And what address did he give you as his home
9 address?

10 A. [REDACTED] Garden Street, Charleston, South Carolina,
11 29407.

12 Q. Could you refresh my recollection, where did this
13 alleged burglary occur?

14 A. [REDACTED] St. Andrews Boulevard, Charleston, South
15 Carolina, 29407.

16 MR. LOCKLAIR: Thank you. That's all I have,
17 Your Honor.

18 THE COURT: Redirect, Solicitor?

19 MS. BYRD: No redirect.

20 THE COURT: Thank you. Thank you very much,
21 Officer Elrod. You may step down. Any objection to the
22 officer being excused?

23 MR. LOCKLAIR: None from the defense, Your
24 Honor.

25 MS. BYRD: None from the State.

ROBERT FABIAN - DIRECT BY MS. LINDER

1 THE COURT: Thank you. You may be excused.

2 All right. Solicitor?

3 MS. LINDER: The State recalls Robert Fabian.

4 THE COURT: All right.

5 ROBERT FABIAN,

6 having been previously duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. LINDER:

10 Q. Good afternoon. We appreciate you coming in today
11 and coming back to talk to us. I just had a few
12 follow-up questions for you.

13 What was the address where the burglary occurred?

14 A. [REDACTED] St. Andrews Boulevard.

15 Q. And do you recall what address was on your ID?

16 A. At the time?

17 Q. Yes.

18 A. It might have been [REDACTED] Garden Street.

19 Q. And --

20 A. It could have been [REDACTED]. I don't really remember.
21 Like I said, that was a long time ago.

22 Q. And did you have possessions in [REDACTED] St. Andrews
23 Boulevard?

24 A. Yes, ma'am.

25 Q. Did you have a bedroom in [REDACTED] St. Andrews

1 Boulevard?

2 A. Yes, ma'am.

3 Q. Did you ever sleep in [REDACTED] St. Andrews Boulevard?

4 A. Yes, ma'am.

5 Q. Do you recall what your phone number was back in
6 May of 2011?

7 A. At that house? That home phone number over there
8 was 769-2064, and my cell phone number was 730-0126.

9 Q. Do you know the phone number 766-9550?

10 A. Yes. That's my grandmother's number.

11 Q. That's your grandmother's number?

12 A. Yeah.

13 Q. And did your grandmother live at [REDACTED] St. Andrews
14 Boulevard at that time?

15 A. No, ma'am.

16 Q. Did you live at [REDACTED] St. Andrews Boulevard?

17 A. At that time?

18 Q. At -- that transitional period in your life.

19 A. Yeah. That was where I was claiming to be my
20 home.

21 Q. When you left to go to work back on May the 31st,
22 were you planning to return?

23 A. Honestly, I don't remember. That was actually on
24 my way home from work, so -- I mean, I would swing in
25 there from time to time, not on my way home, but to

ROBERT FABIAN - DIRECT BY MS. LINDER

1 wherever I was staying, really. I always took that way
2 back to West Ashley.

3 Q. And if you weren't sleeping at [REDACTED] St. Andrews,
4 whose other houses did you sleep?

5 A. My dad's, my aunt's, girlfriend at the time, just
6 some buddies of mine.

7 Q. Sometimes did you sleep at [REDACTED] St. Andrews?

8 A. Yeah.

9 Q. When you left for work on May the 31st, 2011, were
10 you ever intending to come back to [REDACTED] St. Andrews, ever,
11 that day, the next day, the next week, the next month?

12 A. Oh, yeah, yeah, definitely. I would go over there
13 all the time, to get mail, you know, whatever.

14 Q. And did you have an intention, ever, from when you
15 went to work that morning, to ever, a day, a week, a
16 month, however long, did you ever -- was the possibility
17 out there that you would have slept at [REDACTED] St. Andrews
18 Boulevard again?

19 A. Yeah, yeah, definitely.

20 MS. LINDER: Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 BY MS. LINDER:

23 Q. Was the house functioning as a residence? Did
24 anyone ever sleep at [REDACTED]?

25 A. Yeah.

1 Q. And did you have possessions in [REDACTED]?

2 A. Yes, ma'am.

3 Q. And did you ever previously sleep at [REDACTED]?

4 A. Yes, ma'am.

5 Q. And would you potentially maybe after May 31st
6 have ever slept in [REDACTED] again?

7 A. Yeah.

8 MS. LINDER: Nothing further.

9 THE WITNESS: Before I was living in Montana,
10 I lived there for, like, approximately three years, prior
11 to me coming back, so yeah.

12 MS. LINDER: Thank you.

13 THE COURT: Thank you, Solicitor.

14 Mr. Locklair?

15 MR. LOCKLAIR: May it please the Court, Your
16 Honor:

17 CROSS-EXAMINATION

18 BY MR. LOCKLAIR:

19 Q. I show you what has been marked as Defendant's
20 Exhibit 1 for identification and ask you to take a look
21 at that. If you would look about halfway down, it has a
22 section where it says others involved and it has your
23 name.

24 Do you see that?

25 A. Yes, sir.

ROBERT FABIAN - CROSS BY MR. LOCKLAIR

1 Q. Over to the far right where it says home phone, is
2 that your grandmother's phone number?

3 A. Yes, sir.

4 Q. Why did you give them your grandmother's phone
5 number versus your phone number?

6 MS. LINDER: Objection, Your Honor.

7 THE COURT: Step up here, Solicitor, and
8 Mr. Locklair.

9 (Discussion held at sidebar.)

10 THE COURT: All right. Thank you, Solicitor.
11 You may ask your next question, Mr. Locklair.

12 BY MR. LOCKLAIR:

13 Q. Do you recall talking with police that day, with
14 Officer Elrod?

15 A. I can't remember him particularly.

16 Q. Okay.

17 A. But I did talk to the police.

18 Q. And you recall providing him your grandmother's
19 phone number?

20 A. Yes, sir.

21 Q. You provided him that phone number because, in
22 fact, it was her house; is that correct?

23 A. Yes, and that I know for a fact she could always
24 be reached at that number, like one of us could always be
25 reached at that phone number.

1 Q. And what address is listed there as the home
2 address for you, as your home address?

3 A. [REDACTED] Garden Street.

4 Q. All right.

5 MR. LOCKLAIR: Thank you. That's all I have,
6 Your Honor.

7 THE COURT: Redirect, Solicitor?

8 MS. LINDER: No redirect.

9 THE COURT: Mr. Fabian, thank you. Thank you
10 very much for being back with us this afternoon. You may
11 step down. Anything objection to Fabian being excused?

12 MR. LOCKLAIR: Nothing from the defense, Your
13 Honor.

14 MS. LINDER: Not from the State.

15 THE COURT: All right. Thank you. Thank you
16 very much, Mr. Fabian.

17 All right. Solicitor, you may call your next
18 witness.

19 MS. LINDER: The State rests.

20 THE COURT: All right. Thank you. Thank you
21 very much. Mr. Foreman, ladies and gentlemen of the
22 jury: As you've heard the State announce, they have
23 rested. That means you have heard all the evidence and
24 the testimony you're going to hear in the trial of this
25 case from the State in its case in chief.

1 At this time, I'm required to take up certain
2 legal issues. It may take a few minutes, so I'm going to
3 allow you to take kind of a quick -- not necessarily a
4 short recess, but a quick recess from the time y'all got
5 back into the courtroom from a luncheon recess.

6 But if you would, please, leave your notes.
7 Do not discuss the case during this brief recess, and you
8 may go with your bailiff. Thank you. Thank you very
9 much.

10 (In open court, jury not present.)

11 THE COURT: Any arguments?

12 MR. LOCKLAIR: We make a motion for directed
13 verdict. We think the defense is entitled to a judgment
14 as a matter of law.

15 First off, there's been no testimony
16 whatsoever about him entering any home without consent.
17 Even Robert Fabian never said he entered the home without
18 consent, and that is one of the elements of burglary
19 first, entering the home without consent. They failed to
20 prove that.

21 Another thing, Your Honor, he is charged in
22 this indictment that in Charleston County, South
23 Carolina, on or about May 31, 2011, the defendant, Otis
24 Maurice Robinson, did enter the dwelling of James Fabian
25 located [REDACTED] St. Andrews Boulevard without consent and

1 with the intent to commit a crime therein.

2 There has been no testimony whatsoever from
3 Mr. James Fabian, anything about his consent, anything
4 about his area of the dwelling without consent. Clearly,
5 we think the evidence, even to a reasonable juror, would
6 show that Robert Fabian did not live there. During his
7 first time testifying, he stated he was couch surfing,
8 staying at his girlfriend's house at the time, staying
9 with my dad, Robert Fabian.

10 He just said he was staying with his aunt.
11 He said the house was old and in disrepair, and he was
12 trying not to stay there. So, basically, it was just
13 another place of many places that he would crash on his
14 journey to find a residence. It was not his residence.
15 It was his grandfather and grandmother's residence.

16 There's been no testimony about them at all.
17 Furthermore, when he got back up here, just again on
18 redirect, number one, his address is listed as [REDACTED]
19 Garden Street. He gave his grandmother's number on the
20 incident report because they were, in fact, the victims
21 and not him. He actually stated to her, Were you ever
22 planning on coming back after work?

23 And he said, Well, that was on my way home.
24 And he said, Oh, not back to home, but wherever I was
25 staying.

1 That clearly indicates that was not his home.
2 If he said, I stopped by on my way home or wherever I was
3 staying, It's not his home.

4 And, yeah, I go over there all the time to
5 get mail or whatever, that's not a place where he lives
6 it's not his residence. It's clear from his testimony
7 that's not his residence, and we think that they failed
8 to prove the essential elements of without consent;
9 number one, and, in fact, it actually was James Fabian's
10 house and not Robert Fabian's house, and we would ask the
11 Court to direct a verdict of not guilty.

12 THE COURT: Thank you. Solicitor?

13 MS. LINDER: Thank you, Your Honor. May it
14 please the Court: Looking in the light most favorable to
15 the State, the directed verdict should really look at the
16 existence or nonexistence of evidence, and we believe
17 there is the existence of evidence to where this should
18 go to the jury and the directed verdict should be denied.

19 Going through the elements of the case, that
20 there is an entry. The State submits there was testimony
21 that there was an entry. There are footsteps heard from
22 inside the dwelling, and then somebody came out the back
23 window. There was also broken glass. None of those
24 indicate -- those all indicate an entering without
25 consent. Again, there was broken glass. The door was

1 locked when the victim came home, and they did not know
2 one another.

3 As far as the dwelling is concerned, the
4 argument is -- for burglary first, it's a dwelling. It's
5 not a home; it's not a residence. There was testimony
6 that the grandfather was the owner of the residence. The
7 owner of the residence was ill. I believe there was
8 testimony that they were in the hospital. They also --
9 the owner of the residence was not in control of the
10 residence.

11 Again, we need to about back to the statute
12 to where what we're looking for is the dwelling itself.
13 You know, the dwelling is defined as any house, outhouse,
14 apartment building, erection, shed, or box in which a
15 proprietor, tenant, watchman, clerk, laborer or person
16 lodges there.

17 There was testimony that Robert Fabian had
18 control over the house. There was testimony that he had
19 had a key to the house. There was testimony he slept
20 there, albeit not every night. Many people do not sleep
21 in the same place every night.

22 As far as -- there has also been case law
23 about -- I believe it is State v. Evans that talks about
24 vacation homes. Somebody who has a second home that no
25 one resides in permanently, the whole thing is about --

1 is an intent to return. And in that case, the individual
2 had an empty vacation home and left but then had an
3 intent to come back, once a month, but that was enough.
4 It did not have to be resided in all the time.

5 Also, this is not about ownership. James
6 Fabian was the owner of the residence; however, this is
7 about possessions that were stolen from the home that was
8 broken into, but, again, you go back to the elements, and
9 it's a dwelling. Entering without consent to commit a
10 crime therein.

11 The State would submit that the trail of DVDs
12 shirts shows that there was a crime committed, that the
13 stolen DVDs found on Mr. Robinson's person showed that
14 there was intent to commit a crime, and, actually, a
15 crime completed within the dwelling.

16 Also, for the burg first we need to show the
17 two prior burglaries. We had not one, but two
18 individuals testify to the fact Mr. Robinson has two
19 prior burglary convictions, which elevates this to a
20 burglary in the first degree.

21 Your Honor, with all that being said, the
22 State would ask that you deny the defense's motion for a
23 directed verdict and send this to the jury.

24 THE COURT: Thank you. Anything in response,
25 Mr. Locklair?

1 MR. LOCKLAIR: No, sir, Your Honor.

2 THE COURT: All right. In this case, at the
3 directed verdict, I'm interested in the existence or
4 nonexistence of evidence, and there is two types of
5 evidence, both direct and circumstantial. I would
6 respectfully deny the motion for directed verdict based
7 on both State vs. Evans, which the solicitor cited 656
8 S.E. 2d 782, which was a residence up in the mountains in
9 Pickens County that people only went to maybe every two
10 weeks, maybe every month.

11 Evidence of the occupant's intent to return
12 to building burglarized by the defendant characterized by
13 occupants as a second home was sufficient to establish
14 that building constituted a dwelling for the purposes of
15 the statute defining the offense of first degree
16 burglary.

17 There is no question that this residence
18 constitutes a dwelling for purposes of the burglary
19 statute.

20 Further, I would cite State vs. White, 562
21 S.E. 2d 305 where a temporary absence from a residence
22 does not defeat the fact that it has been burglarized in
23 that case. I believe it was a motel room.

24 Further, I would cite State vs. Singley,
25 which is a Charleston County case in which the owner of a

1 residence, or part owner of a residence under the estate,
2 it was his mother's home, that was the owner, and
3 burglary is not a crime against ownership, it's a crime
4 against possession.

5 I think there is direct and circumstantial
6 evidence on all the elements it was a burglary of a
7 dwelling without consent with intent to commit a crime
8 therein, and at the time the defendant committed the
9 burglary, he had a conviction for two or more prior
10 burglaries.

11 All right. Any other motions, Mr. Locklair?

12 MR. LOCKLAIR: No, sir.

13 THE COURT: Stand for me, please,
14 Mr. Robinson. Madame Clerk, would you place Mr. Robinson
15 under oath for me.

16 (Defendant duly sworn.)

17 THE COURT: Mr. Robinson, remember we
18 discussed your right to testify or not testify before we
19 took our luncheon recess?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had an opportunity to
22 make your decision in that regard?

23 THE DEFENDANT: Yes, sir, but just one thing
24 I wanted to say.

25 THE COURT: Let me finish. Is it your

1 decision?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. And what was it you
4 wanted to say?

5 THE DEFENDANT: That DVDs -- it was my DVDs.

6 THE COURT: All right.

7 THE DEFENDANT: I never came in the house. I
8 never was in the house.

9 THE COURT: All right. Have you made a
10 decision about whether you want to testify or not
11 testify?

12 THE DEFENDANT: I will not testify.

13 THE COURT: You're not going to testify.
14 That is your decision?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Made of your own free will in the
17 court?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Thank you. Thank you
20 very much. You may be seated.

21 Does the defense intend to produce any
22 evidence or testimony?

23 MR. LOCKLAIR: No, sir, Your Honor. The
24 defendant rests.

25 THE COURT: So the defense intends to rest?

1 MR. LOCKLAIR: Yes, sir.

2 THE COURT: All right. Then we'll go right
3 in closings?

4 MR. LOCKLAIR: Yes, sir.

5 THE COURT: And the solicitor will close
6 first?

7 MS. LINDER: Yes, Your Honor.

8 (Recess taken.)

9 THE COURT: Anything from the State before we
10 bring the jury in?

11 MS. LINDER: Nothing from the State.

12 THE COURT: Generally, what I do is when they
13 come back out, I tell them again the stage we're at and
14 that the defendant may present evidence and testimony, if
15 the defendant chooses to do so. Then you rest formally.
16 I take it you're going to renew your motions?

17 MR. LOCKLAIR: Yes, sir.

18 (In open court, jury present.)

19 THE COURT: Welcome back, Mr. Foreman, ladies
20 and gentlemen of the jury of the jury panel: As you
21 heard, the State rests. We're now at the stage in the
22 trial where the defense may present evidence and
23 testimony if the defense chooses to do so.

24 As you recall, I told you briefly the
25 defendant, regardless of the nature of the charges, is

1 always presumed to be innocent. The burden of proof is
2 always on the State of South Carolina to prove the
3 defendant is guilty beyond a reasonable doubt. Defendant
4 does not have to prove himself or her evidence innocent,
5 but they may present evidence and testimony if they
6 choose to do so.

7 So we will direct our attention to
8 Mr. Locklair. Mr. Locklair, does the defendant intend to
9 present any evidence, witnesses, testimony?

10 MR. LOCKLAIR: No, sir. At this time, the
11 defendant would rest, and, just for the record, I will
12 renew my previous motions.

13 THE COURT: Thank you. Thank you very much
14 Mr. Locklair, and I will renew my previous trial rulings
15 in that regard.

16 You've now heard all the evidence and all the
17 testimony you're going to hear in the trial of this case.
18 We're now at the stage of the closing arguments by the
19 attorneys. Closing arguments are different from opening
20 statements. They are true arguments. The attorneys may
21 argue the facts, the inferences to be drawn from the
22 facts, the law, and how the law applies to the facts.
23 After you've heard the closing argument -- the solicitor
24 closes first on behalf of the State, followed by
25 Mr. Locklair on behalf of his client, Mr. Robinson -- I

1 will then instruct you on the law that you're to apply to
2 the facts of the case as you find the facts to be.

3 Please give the attorneys your complete and
4 undivided attention, as you have done throughout the
5 trial of this case. With that being said, Solicitor, you
6 may address the jury.

7 MS. LINDER: Thank you, Your Honor. May it
8 please the Court:

9 THE COURT: Yes, ma'am.

10 MS. LINDER: Ladies and gentlemen of the
11 jury: I'm going to begin by telling you a little bit
12 about the law in this case. Now, please do listen to me,
13 but, ultimately, at the end of me speaking with you and
14 Mr. Locklair speaking with you, the judge is going to
15 give you your instruction on the law. This is just to
16 highlight some information that I would like for you to
17 pay attention to.

18 In the State of South Carolina, burglary in
19 the first degree is section 16-1-311, and a person is
20 guilty of burglary in the first degree if the person
21 enters a dwelling without consent with intent to commit a
22 crime therein and the person has two prior burglary
23 convictions.

24 I ask that you keep that in mind as I go
25 through the testimony and everything else that you heard

1 today and yesterday.

2 First of all, speaking about a dwelling, a
3 dwelling is defined as -- let me get my glasses out --
4 any house, outhouse, apartment, building, erection, shed,
5 or box in which there could sleep a proprietor, tenant,
6 watchman, clerk, laborer, or other person.

7 A dwelling in this case, the dwelling is [REDACTED]
8 St. Andrews Boulevard, which is in West Ashley, just over
9 the bridge, past the round Holiday Inn as you're going up
10 St. Andrews Boulevard. This is a dwelling. This is the
11 front of the house where this incident occurred. This is
12 [REDACTED] St. Andrews Boulevard.

13 You'll have all these pictures back with you.
14 You'll have this map back with you, where [REDACTED] St. Andrews
15 is circled right here. I urge you to look at that. This
16 is a dwelling. There are pictures inside; there are
17 pictures outside. You heard from the victim who
18 testified, Robby, as I call him, Robert Fabian Junior,
19 that it's kind of a transitional point. He just came
20 back from Montana, and he had lived at that house for
21 three years prior. He went away and he came back. He
22 went away and he came back to that house.

23 Once he was back, living in Charleston, he
24 didn't sleep there every night. That's okay. Sometimes
25 you got a girlfriend, you got a boyfriend, you stay with

1 them. Sometimes if you go out to a buddy's house and
2 you're watching movies and having cocktails at their
3 house, you just crash on their couch.

4 Sometimes -- to this day, I'm married, I have
5 a child, I have a husband, but sometimes I'll still go
6 out to my parents' house and stay the night. They live
7 in town, but what doesn't change is this is a dwelling.
8 This is a place that had running water, had electricity.

9 The victim had a bedroom there. He, yes,
10 hung out there, yes, played his drums there, but also
11 slept there. I believe you heard from him that he slept
12 there 15, 20 nights a month.

13 The next thing we need to look at was there
14 an entry without permission? Again, I believe it's
15 easier if I hold it up to you, and I believe I did this
16 during testimony before, but State's Exhibit 14, along
17 with other photos, shows the back of it. It shows the
18 back door where Robby said he pulled in, always entered
19 and exited the back door using a key, and then you see a
20 window, picture window, bay window, plate window. It was
21 referred to as a lot of different things, and if you look
22 up here in the corner, you see kind of a little arc where
23 the glass is still in place up here and it's busted out
24 right here.

25 When I go into a house that I have permission

1 to be in, I knock and wait for an answer. I use a key.
2 I certainly don't dive through a window and cut my arm.
3 That just doesn't make sense. Why would you jump through
4 a window to enter if you have permission?

5 On the flip side of that, when Robby came
6 home, he saw the glass. He's like, that is weird.
7 That's -- that doesn't add up. He opened the door, tried
8 to find out who's there, heard a voice from inside the
9 house, a voice he didn't know, a voice he didn't
10 recognize, a voice from somebody who was a stranger and
11 did not have permission to be in his dwelling, and then
12 he heard footsteps from inside, running around, running
13 past him, back out the same window.

14 If you had permission, why the heck would you
15 run? If you had permission, why would you dive back
16 through the window where you had already cut yourself up?
17 It doesn't make sense. It only makes sense if he didn't
18 have consent to be in there.

19 You also see the next prong of the burglary
20 in the first degree is intent to commit a crime therein.
21 I submit, ladies and gentlemen, that you heard testimony
22 that not only was there intent to commit a crime, but
23 there was a crime. The whole place was a disaster. You
24 don't have to be a clean person, but my Lord, you don't
25 have your dresser drawers just -- I mean, all over. They

1 were full of stuff. Somebody obviously had all their
2 possessions in there, just yanked out. Mattress was
3 moved.

4 Just someone was just searching, looking for
5 anything that they could take, and that someone was this
6 defendant, was Otis Robinson. So he was searching, he
7 was looking, and then, the guy who lives here came home.
8 He got the heck out of there. So, yeah, he didn't take
9 the drum set. He didn't take the TVs. He was caught in
10 the act. Grab what he could grab, put it on his person,
11 and took off, diving back out that window.

12 Also, I think it's important that when Robby
13 came home, he didn't say, Hey, it's me. I'm here. Let's
14 play some drums. Let's play a video game.

15 No. Took off running. Robby turned around,
16 went back out the door, which is what people use when
17 they have the right to be somewhere. That's what people
18 use. You used it to come in. I used it to come in. If
19 you have the right to be there, you use a door.

20 Well, Robby heard the footsteps, straight
21 past him, back out the window. Robby went out the door
22 and started chasing him, started chasing Mr. Robinson,
23 started chasing him, Get the hell out. Get out of here.
24 What are you doing? Trying to catch him. He couldn't
25 catch him.

1 I'm not a sprinter myself, and Mr. Fabian
2 told you, I couldn't run that fast. You know, are you
3 going to fault him because he's not a sprinter? You
4 know, fault him because he didn't physically grab the
5 guy? No, but Mr. Robinson ran. He ran. He was being
6 chased because he wasn't welcome. He wasn't supposed to
7 be there.

8 I think it's also important, in looking at
9 the element of entry, you heard from crime scene tech
10 Wiersma. He's was with Michigan, I think, for seven
11 years, he said. He's been with Charleston for another
12 six, seven, eight, been a police officer for over a
13 decade. Whole time he's been doing crime scene. His job
14 with the crime scene is he goes somewhere. It has to be
15 secure. He goes through it. He photographs inside,
16 outside. A lot of these pictures are kind of redundant,
17 honestly, but he's doing his job. He's taking pictures.

18 And he takes pictures, and he took pictures,
19 not only of the dresser drawers all over, but he took
20 pictures of a bloody rag, of a bloody rag. Here is the
21 kitchen from further away, fully stopped, and you see,
22 like, a pink in color rag. That's the bloody rag.

23 Here is a close-up of it. Pink in color,
24 bloody rag. Look at that. There is some fresh soap
25 bubbles down there. I'm not a science expert, but if I

1 left for work eight hours prior, I don't think soap
2 bubbles would remain. The victim told you that it wasn't
3 his rag. This isn't his blood on this. This wasn't like
4 this when he left. This happened with someone else.

5 And you heard that the evidence was all
6 handled up to snuff. It was properly handled, properly
7 carried, all that. You heard from Catherine Leisy this
8 afternoon, I guess it was right before lunch. I mean,
9 she's a smart lady. I was getting lost myself. There is
10 a reason I'm a lawyer and not a doctor or scientific, but
11 one thing I had to Google, is how big is a quintillion?

12 She said in her results that the swab that
13 was taken from the rear window curtain, this is the
14 curtain by the window, and you could see it in the
15 pictures. You see it's almost like a white sheer, it
16 looks like, and it says that the swab from the rag in the
17 kitchen sink, inside the house, in the kitchen sink,
18 her -- is that the probability of randomly selecting an
19 unrelated individual is 1 in 2.3 quintillion. Sounds
20 like a lot.

21 Quintillion means that there are 30 zeros, so
22 2.30, 0, 0, 0, 0, -- 30 of them, so she got him. Otis
23 Robinson left his blood on that curtain, one in 2.3
24 quintillion. It's him. Otis Robinson left his blood on
25 that rag. That after he cut himself. He was trying to

1 wash it off. He was bleeding. That blood on that rag
2 was Otis Robinson's, 1 in 2.3 quintillion.

3 So, call it an act. Running out, you know,
4 bends down to gather some stuff, as you heard from Robby
5 in this case. What was he gathering?

6 Again, so you're not forced to see me fail at
7 operating that thing, here is the back. This is a DVD.
8 This is the DVD you see. This shirt, as the victim
9 testified, was not in the yard, and this is actually a
10 DVD that is sitting in the back yard. I don't store my
11 DVDs there. Neither does this victim.

12 That DVD is important, because what was
13 inside the house was outside the house, and you heard
14 from Nada Kerstein. She had a lot of education,
15 background certifications and trainings, and you heard
16 her talking about fingerprint analysis. And Richard
17 Wiersma from crime scene dusted a bunch of surfaces.
18 Didn't get a print. My -- my hands are cold. I'm
19 freezing in here. I don't know if I'm leaving prints.
20 She explained and he explained that you don't necessarily
21 get a useable print when you try to lift a print, but in
22 this case, he got two prints, two prints, both off of the
23 DVD that was once inside and is now outside in the back
24 yard.

25 Those prints went to Nada. She looked at

1 them. You know, one of them wasn't good enough. It was
2 good enough to be lifted, but not clear enough for her to
3 be able to compare. But she was able to compare one of
4 them from that DVD, and that fingerprint matched Otis
5 Robinson. That fingerprint matched the defendant's.

6 So his prints are on something that was once
7 inside that is now outside.

8 Also, you heard from Officer Sanders. You
9 heard from Officer Sanders that these disks, all these
10 DVDs, were on the defendant a few houses down. You can
11 see on this map. It's just down the street from where
12 this happened. Within ten minutes he had these DVDs on
13 him. These DVDs were in [REDACTED] St. Andrews. He also had on
14 him this screwdriver. I mean, I use a screwdriver to
15 attempt to fix things. I say attempt, but he had this
16 screwdriver on him. What it was for? My argument is
17 this kind of helps you break something, get into
18 something, open something, and he had this screwdriver on
19 him. He had a screwdriver and he had five DVDs and left
20 another DVD that he dropped in his quick exit, an
21 interrupted burglary, just outside the house.

22 You can look through the pictures. There are
23 other DVDs throughout that house. You also heard from
24 two people in the very beginning of the trial about
25 Mr. Robinson's priors.

1 One of the elements of burglary in the first
2 degree is that he has two prior convictions for burglary.
3 You heard -- and you'll have this back there with you.
4 You're welcome to look at it, analyze it, whatever you'd
5 like to do. There is a certified report from Seraphim
6 Haftoglou, Sammy, I call him, saying that he's compared
7 the print cards from this arrest to two prior ones. Same
8 guy.

9 And then, Sarah Lippe, or Sarah Clyde, came
10 in here from the Clerk of Court's office just downstairs
11 in the first floor. Y'all pass it when you were coming
12 in, and she brought -- this is the paperwork that we do.
13 Thankfully, we don't do too much here compared to civil
14 court, and she brought the paperwork that coincides with
15 each of the two burglaries that he was previously
16 convicted of.

17 I mean, feel free to look at them. It says
18 his name, his date of birth, his address, the indictment
19 number, case number, when it happened, what the charge
20 was. He signed it. Here is the judge's signature. I
21 mean, all of this is here. This is our records for a
22 criminal court.

23 So the two prior burglaries, I would submit,
24 have been proven not by one, but by two witnesses, Sammy
25 and Sarah. The entering a residence, I would submit, has

1 been satisfied by everything I talked to you earlier.
2 There is blood inside on the curtain, inside on the rag,
3 inside. There was no permission; the window; running
4 when Robby got home; running when Robby is trying to
5 chase him away.

6 The intent and actual commission of a crime:
7 The place was ransacked, and then when he was
8 interrupted, he still got out. Granted, a DVD does not
9 go for much today, but he still got out with stolen
10 items. His intent, I submit, was to take a heck of a lot
11 more than that but he couldn't. He was interrupted
12 mid-crime, and then he was stopped right there, a few
13 houses down, with all the stuff on him, bleeding from his
14 arm, and you heard Robby say, Yeah, that's the guy.
15 That's the guy.

16 You also heard Detective Keller, or I guess
17 Agent Keller now with the FBI. You also heard him say
18 that he saw Robinson running down that driveway when he
19 was just kind of cruising about on his business, normal,
20 everyday stuff before he got the call, and then you also
21 heard him in court point out to you that, Yep, that guy
22 over there in the tan button up shirt, he was the one
23 that was there for the show-up ID, and he was the one
24 that was identified by Robby in this case.

25 Ladies and gentlemen of the jury: When I

1 first came up here yesterday afternoon -- although it
2 feels probably a lot longer than that to you, and me,
3 sometimes -- I was telling you a story. I was telling
4 you what happened. I told you that on May 31 of 2011,
5 after working his shift at the local home improvement
6 store, Robby Fabian was heading home. He pulled into the
7 driveway. He got out of his car. He was going to the
8 back door to use his key to enter.

9 As he got out of his car and approached, he
10 saw something was off. He saw a window was broken out.
11 He then proceeded with caution inside, called out, Who's
12 there? heard a response from inside. He heard quick
13 footsteps inside. A person diving through the broken
14 window again. He saw it was ransacked. He saw his
15 property in a little trail leaving from the window
16 through the back yard.

17 He saw the blood inside that didn't belong to
18 him. Detective Keller went, interviewed him, walked
19 through the house. Detective Keller took him just down
20 the road for an identification, and Robby Fabian
21 identified Otis Robinson, this defendant, as the man who
22 was inside his home, dove out, and had his belongings.

23 You heard how crime scene responded. They
24 did their job. They photographed, they processed, they
25 collected evidence. You heard all of that. So, ladies

1 and gentlemen of the jury: At this time I just ask you
2 that when you go back to the jury room, look at
3 everything. Think of what the witnesses said. Look at
4 all the exhibits, re-listen to the 911 call, if you want,
5 and think about this case. And at the end of the day, I
6 submit you will come back with a verdict of guilty,
7 guilty for burglary in the first degree, guilty because
8 Otis Robinson entered a dwelling, guilty because Otis
9 Robinson did so without consent, guilty because Otis
10 Robinson had the intent to commit a crime therein, and
11 guilty because he had two prior burglary convictions.

12 Thank you.

13 THE COURT: Thank you. Thank you very much,
14 Ms. Solicitor.

15 Mr. Locklair?

16 MR. LOCKLAIR: Thank you very much, Your
17 Honor. Ladies and gentlemen of the jury: I want to
18 thank you for your time. I will try not to be too long.
19 I just want to rehash some of the evidence and go over
20 some law. I'm sure y'all have been paying close
21 attention and taking good notes, and I don't want to go
22 through too much because, obviously, you sat through and
23 heard it, but I did kind of want to go back to what I
24 said in my opening about the details of the case.

25 Robert Fabian, he already got up there twice

1 to testify, and he made some unique statements. First
2 thing that you need, when asked for his home address, he
3 puts a different address, for the police. When talking
4 about staying there, he even said, I'm trying not to stay
5 there. I'm couch surfing; staying at my girlfriend's
6 house, my dad's, my aunt's.

7 Basically, if he stays there at all, this is
8 one of many places he just bounces around to. He had no
9 residence at the time, and I would submit to you that if
10 he's trying not stay there, he had this many other people
11 that, in fact, he really didn't stay there as much as he
12 told y'all. I submit to you he stretched the truth when
13 he got up there, and that is shown through his testimony
14 and prior statements, the little details.

15 You heard Detective Keller say, you know,
16 that he, Robert, told Detective Keller that he comes over
17 there to check on the residence and plays drums. He
18 didn't tell him, This is where I live. He tells the
19 other detective, My grandfather was ill and I was going
20 to check on the house.

21 The most telling part, when he came back to
22 testify today, he even, said when the solicitor asked
23 him, Are you planning on going back that way?

24 No. I stopped by there all the time. That
25 was on my way home. Not my home, but that's where I'm

1 staying.

2 Obviously, that's not where he's staying if
3 he stops by there because it's back on his way home. He
4 says, I go over there all the time to get the mail, not,
5 I go over there because it's my house. It's where I
6 live.

7 Basically, he was watching out for his
8 grandfather's house when he wasn't there, playing drums
9 on occasion, but he wasn't living there. He wasn't
10 staying there. It's not being used by him as a dwelling
11 or anybody as a dwelling at the time.

12 I mean, he had Garden Street, which he said
13 he thinks is on his ID. That's where he told them where
14 he lived, and, for the prosecution, the whole thing about
15 being a dwelling, whether it's consent, they can
16 speculate, but that's not what happened to y'all. Y'all
17 have to decide whether they proved it beyond a reasonable
18 doubt.

19 She specifically asked him a question: Was
20 the possibility out there that you would ever sleep at
21 ■■■ St. Andrews Boulevard again? His answer was yes.

22 Well, the possibility is that I'm going to
23 hit the Powerball this weekend and quit practicing law.
24 Sure, it could happen, but it's not something -- it's
25 possible, it's possible, it's possible. That doesn't

1 work for the prosecution. They have to prove every
2 single element beyond a reasonable doubt to you.

3 Now, I told you that Mr. Robinson sat over
4 there presumed innocent, and he sat there throughout his
5 whole trial presumed innocent, and I'm sure some of you
6 have doubts in your mind right now about that innocence,
7 but I submit to you, there is a reason there's not a
8 guilty and innocent box on the jury verdict form.

9 It's guilty and not guilty. It's not has he
10 proved his innocence, it's have they proved him guilty
11 beyond a reasonable doubt, or have they failed to meet
12 their burden of proof, not is he innocent.

13 Obviously, there's DNA evidence that shows at
14 least he was most likely, and I'll be straight with y'all
15 because I want y'all to be fair to this man, and him that
16 there's he was at the window there is DNA evidence. It's
17 hard to argue with that, but they failed to meet their
18 burden of proving that he went into that home, that
19 dwelling, without consent.

20 A lot of my friends will talk about, Oh, you
21 make all these weird little arguments. We get into
22 debates, and I said that's part of my job because words
23 are very important in law. Semantics are very important.
24 Possibilities are very important. Sure, is it possible
25 or likely he might have done something? Well, yeah, but

1 that's not what we're here to decide, possibilities and
2 likelihoods.

3 What we're here to decide, what y'all have
4 the tough burden of doing, is have they proven every
5 element beyond a reasonable doubt? That's what we're
6 here to decide, and I submit they have not.

7 The indictment that the judge will read you
8 soon says he went into the residence of the victim, James
9 Fabian. Guess who the State didn't call to testify?
10 James Fabian, the person who the indictment says it's his
11 home and his dwelling.

12 In the incident report is where Robert Fabian
13 talked to police, it's his grandfather's building. I go
14 to check on it. I go to play drums. It's my house.
15 There is no testimony whatsoever from James Fabian saying
16 he doesn't have permission to be there, and why the
17 prosecution can speculate, why would you break a window?
18 Why would you do this? Why would do you that? It's not
19 a question of why would you do this, it's have y'all
20 proven beyond a reasonable doubt that James Fabian did
21 not give him consent to go into the home, and they have
22 not proven that.

23 In fact, Robert Fabian never directly
24 testified he didn't have permission to be there. He
25 never said that, and that is an essential element of what

1 they have to prove, and I submit to you that they failed
2 to prove that element under Hayes beyond any doubt, and
3 without that element, y'all must find him not guilty
4 because that is an essential element -- as the judge will
5 tell you all along, that is an essential element they
6 have to prove. Every element must be proved beyond a
7 reasonable doubt.

8 There might be some of you sitting in the
9 jury box thinking, Well, they got DNA on the curtain and
10 other stuff, and he already has two prior convictions for
11 burglary. If he did those, he must have done these.
12 He's a bad guy. Maybe we should just lock him up.

13 The judge will tell you, you can't do that
14 either, and that's a hard job because maybe he does have
15 a bad record. Maybe he has committed some things in the
16 past, but you can't judge him on that. That's only there
17 to prove the elements of this crime, that he has the two
18 priors, and that is hard to put out of your mind. This
19 guy with two burglaries must have done it, and that's how
20 human nature works. That's why your job is so hard,
21 because you have to go back there, and when you start
22 deliberating the case, other than finding those two
23 burglaries proved the element of the burglary in the
24 first degree, you got to put that out of your mind, and
25 you got to judge the rest of the facts, blocking that

1 out, and that's really hard to do.

2 I'll be honest with you: I have a tough time
3 doing it. I don't want to do y'all's job at all, But I
4 see y'all paying attention, and I know you paid attention
5 to what happened up on the witness stand, and if I
6 misstated something accidentally, use your own
7 recollection about what was said, not mine, because y'all
8 are the ones here to decide the facts.

9 Y'all are more important than me. You're
10 more important than the judge when it comes to deciding
11 the facts. That's y'all's sole job, and I would submit
12 to you they failed to meet all their factual elements.

13 They talk about fingerprints. Well, if he
14 was washing up around the sink, well, moisture, number
15 one, hands are wet. Stainless steel surfaces, plastic
16 surfaces, flat surfaces: No fingerprints from there.
17 Refrigerator: They emit moisture all the time. Moisture
18 comes out. You got to defrost your freezer, all that.
19 No fingerprints there.

20 I mean, I'm going to be straight with y'all:
21 Is it likely that he may have tried to break into the
22 house? Maybe it's likely, but did they prove beyond a
23 reasonable doubt that he did that, entered a house, a
24 dwelling, without consent? I submit to you they haven't
25 proven that beyond a reasonable doubt, and because they

1 failed to prove those crucial elements, y'all must find
2 Mr. Robinson not guilty.

3 THE COURT: Thank you. Thank you very much,
4 Mr. Locklair. Mr. Foreman, ladies and gentlemen of the
5 jury: If you please give me your complete and undivided
6 attention, I'm going to charge and instruct you on the
7 law that you are to apply to the facts of the case as you
8 find the facts to be, and the way I instruct the jury is
9 I charge or instruct you on the general law, the general
10 law that applies in all criminal cases first. When I
11 change from one subject matter to another, I'll give you
12 the caption of the area I'm fixing to cover.

13 After I charge you the general criminal law,
14 I will then charge you the law specific to the charge in
15 the indictment, burglary in the first degree, and,
16 finally, I will instruct you on the form of the verdict.

17 Charge, arrest, indictment: Not evidence.
18 The indictment charges the defendant, Otis Maurice
19 Robinson, with the crime of burglary in the first degree.
20 I remind you the fact that the defendant was arrested,
21 charged, and indicted in this case is not evidence and
22 cannot be considered by you as evidence of guilt in the
23 case, nor does it create any presumption or inference of
24 guilt. This document is a document that simply is the
25 formal written instrument which contains the charge made

1 against the defendant. It is the formal document which
2 brought this case into court.

3 Presumption of innocence: The defendant has
4 pled not guilty to the indictment, and that plea puts the
5 burden on the State to prove the defendant guilty. The
6 person charged with committing a criminal offense in
7 South Carolina is never required to prove himself
8 innocent. I charge you it is an important rule of the
9 law that the defendant in a criminal trial, no matter
10 what the seriousness of the charge may be, will always be
11 presumed to be innocent of the crime for which the
12 indictment was issued unless guilt has been proven by
13 evidence satisfying you, the jury, of that guilt beyond a
14 reasonable doubt.

15 This presumption of innocence does not end
16 when you begin your deliberations, but it accompanies the
17 defendant throughout the trial until you reach a verdict
18 of guilt based on evidence satisfying you of that guilt
19 beyond a reasonable doubt.

20 A presumption of innocence has been said to
21 be like a robe of righteousness placed about the
22 shoulders of the defendant which remains with the
23 defendant until it has been stripped from the defendant
24 by evidence satisfying you of the defendant's guilt
25 beyond a reasonable doubt.

1 The presumption of innocence is not a mere
2 legal theory. It is not just a legal phrase. It is a
3 substantial right to which every defendant is entitled
4 unless you, the jury, are satisfied from the evidence of
5 the defendant's guilt beyond a reasonable doubt.

6 What is a reasonable doubt? A reasonable
7 doubt is the kind of doubt that would cause a reasonable
8 person to hesitate to act. The State has the burden of
9 proving the defendant guilty beyond a reasonable doubt.

10 Some of you may have served as jurors in
11 civil cases in the past where you were told that it is
12 only necessary to prove that a fact is more likely true
13 than not true, such as by the greater weight or the
14 preponderance of the evidence.

15 In criminal cases, the State's proof must be
16 more powerful than that. It must be beyond a reasonable
17 doubt. Proof beyond a reasonable doubt is proof that
18 leaves you firmly convinced of the defendant's guilt.
19 Ladies and gentlemen: There are very few things in this
20 world that we know with absolute certainty. In criminal
21 cases, the law does not require proof that overcomes
22 every possible doubt. If, based on your consideration of
23 the evidence, you are firmly convinced that the defendant
24 is guilty of the crime charged, you must find the
25 defendant guilty.

1 If, on the other hand, you think there is a
2 real possibility that the defendant is not guilty, you
3 must give the defendant the benefit of that doubt and
4 find him not guilty.

5 Duties of the jury and trial judge: I remind
6 you that during this trial you and I have certain duties
7 to perform. As the trial judge, it's my responsibility
8 to preside over the trial of the case, and I also have
9 the duty to rule upon the admissibility of the evidence
10 offered during the trial.

11 You are to consider only the competent
12 evidence before you. If there was any evidence ordered
13 stricken from the record during this trial, you must
14 disregard that testimony. You are to consider only the
15 testimony which has been presented from the witness
16 stand, any exhibits which have been made part of the
17 record, and any stipulations of counsel.

18 I have the additional duty to instruct you on
19 the law that applies to this case. As the presiding
20 judge, I am the sole judge of the law of this case, and
21 it is your duty as jurors to accept the law and apply the
22 law exactly as I state it to you.

23 If you already have any idea of what the law
24 is or what the law ought to be and it does not agree with
25 what I now tell you the law is, you must abandon your

1 idea because you're sworn. You took an oath to accept
2 the law and apply the law exactly as I state it to you.

3 In every case tried in this court before a
4 jury, the jury becomes the sole and exclusive judge of
5 the facts of the case. A trial judge cannot intimate,
6 state, comment on, or make any statement to a trial jury
7 about the facts in a case. Since you, the jury, are the
8 sole judge of the facts in this case, you are not to
9 infer from what I have said during the progress of the
10 trial in ruling upon the admissibility of evidence or
11 otherwise, or anything that I now say to you during the
12 course of these instructions, that I have any opinion
13 about the facts in this case. The law does not allow me
14 to have an opinion about the facts in this case. That
15 matter is solely for you, the jury.

16 As jurors, it is your duty to determine the
17 effect, the value, the weight, and the truth of the
18 evidence that has been presented before you during this
19 trial. Direct and circumstantial evidence: There are
20 two types of evidence which are generally presented
21 during the trial, direct evidence and circumstantial
22 evidence. Direct evidence is the testimony of a person
23 who claims to have actual knowledge of a fact, such as an
24 eyewitness or an ear witness. It is evidence which
25 immediately establishes the main fact to be proved.

1 Circumstantial evidence is proof of a chain
2 of facts and circumstances indicating the existence of a
3 fact. It is evidence which immediately establishes
4 collateral fact from which the main fact may be inferred.
5 Circumstantial evidence is based on inference and not on
6 personal knowledge or observation.

7 The law, our law, makes absolutely no
8 distinction between the weight or the value to be given
9 to either direct or circumstantial evidence, nor is there
10 a greater degree of certainty required of circumstantial
11 evidence than of direct evidence.

12 You should weigh all of the evidence in the
13 case. After weighing all of the evidence, if you're not
14 convinced of the guilt of the defendant beyond a
15 reasonable doubt, you must find the defendant not guilty.
16 If you are convinced of the defendant's guilt beyond a
17 reasonable doubt, you must find the defendant guilty.

18 Credibility of witnesses: Necessarily, you
19 must determine the credibility of the witnesses who have
20 testified in this case. As you all know, credibility
21 simply means believability. It becomes your duty as
22 jurors to analyze and to evaluate the evidence and
23 determine which evidence convinces you of its truth.

24 In using your good judgment and your common
25 sense and determining the believability of witnesses who

1 have testified in this case, you may believe one over
2 several or several over one. You may believe a part of
3 the testimony of a witness and reject the remaining part
4 of the testimony of that same witness.

5 You may believe the testimony of a witness in
6 its entirety or reject the testimony of a witness in its
7 entirety. You may consider whether any witness has
8 exhibited to you any interest, bias, prejudice, or other
9 motive in this case. You may also consider the
10 appearance and the manner of the witness while on the
11 witness stand.

12 You are to search for the truth in the
13 testimony of the witnesses, the exhibits, and the
14 evidence that have been presented to you in this trial.
15 Expert witness: As you heard me say, the rules of
16 evidence ordinarily do not permit witnesses to testify to
17 opinions or conclusions. An exception to this rule
18 exists for witnesses which we consider expert witnesses.

19 A witness who by education or experience has
20 become expert in some art, science, profession, or
21 calling may state an opinion as to relevant and material
22 matters in which the witness claims to be an expert and
23 may also state the reason for the opinion.

24 You should consider any expert opinion
25 received in evidence in this case, and, like any other

1 evidence, give it the weight that you think it deserves.
2 If you decide the opinion of an expert witness is not
3 based on sufficient education or experience or if you
4 conclude that the reasons given in support of the opinion
5 are not sound or that the opinion is outweighed by other
6 evidence, you may disregard the opinion entirely.

7 An expert witness's testimony is to be given
8 no greater weight than that of other witnesses simply
9 because they're called an expert witness. Further, you
10 are not required to accept an expert's opinion even
11 though it is not contradicted.

12 If you would please continue to give me your
13 complete and undivided attention, I assure you the end of
14 my instruction is in sight.

15 I instruct you and emphasize that the fact
16 that the defendant did not testify is not a factor to be
17 considered by you in any way in your deliberations and in
18 your consideration on the question of the guilt or the
19 innocence of the defendant. It must not be considered by
20 you in any manner whatsoever.

21 A defendant has the constitutional right to
22 remain silent, and the assertion of this right must not
23 be considered by you in your deliberations. I repeat:
24 Under your oath, you're to draw no conclusions whatsoever
25 from the fact that the defendant in this case did not

1 testify. The fact that this defendant did not testify
2 should not even be discussed in the jury room,
3 Mr. Foreman.

4 The burden of proof, as I have stated to you,
5 is on the State. The defendant is not required to prove
6 his innocence. The burden of proof remains on the State
7 to prove guilt beyond a reasonable doubt.

8 Identification: An issue in this case is the
9 identification of the defendant as the person who
10 committed the alleged crime charged. The State has the
11 burden of proving identity beyond a reasonable doubt.
12 You must be satisfied beyond a reasonable doubt of the
13 accuracy of the identification of the defendant before
14 you may convict the defendant.

15 Identification testimony is an expression of
16 belief or impression by a witness. You must determine
17 the accuracy of the identification of the defendant. You
18 must consider the believability of each identification
19 witness in the same way as any other witness. You may
20 consider whether the witness had an adequate opportunity
21 to observe the offender at the time of the offense.

22 This will be affected by things like how long
23 or short a time is available, how far or close the
24 witness was, the lighting condition, whether the witness
25 had the chance to see or know the person in the past.

1 Once again, I instruct you the burden of
2 proof is on the State, and it extends to every element of
3 the crime charged, and this specifically includes the
4 burden of proof beyond a reasonable doubt.

5 The identity of the defendant as the person
6 who committed the crime: If, after examining the
7 testimony, you have a reasonable doubt as to the accuracy
8 of the identification, you must find the defendant not
9 guilty. On the other hand, if you have no reasonable
10 doubt, you must find the defendant guilty.

11 That is the general criminal charge. I'm now
12 going to charge you on the law as to burglary in the
13 first degree.

14 The defendant is charged with first degree
15 burglary. The State must prove beyond a reasonable doubt
16 that the defendant entered a dwelling without consent. A
17 dwelling is defined in our code with respect to burglary
18 as being a dwelling house, any house, outhouse,
19 apartment, building, erection, shed, or box in which
20 there sleeps a proprietor, tenant, watchman, clerk,
21 laborer, or person who lodges there with a view to the
22 protection of the property shall be deemed a dwelling.

23 A dwelling is any building or any portion of
24 any dwelling in which a person ordinarily sleeps. A
25 building is a dwelling even if the residents are

1 temporarily absent from the building. The test is
2 whether the occupant that has left has any intention to
3 return.

4 In order to prove that the defendant entered
5 the dwelling, the State does not have to show that the
6 defendant's entire body entered the dwelling. The
7 smallest entry is sufficient. It may be any part of the
8 body, such as a hand or a foot, or even an instrument,
9 such as a hook or any other intrusion. In addition, the
10 State does not have to prove that force was used to gain
11 entry.

12 Next, the State must prove beyond a
13 reasonable doubt that the defendant intended to commit a
14 crime, either a felony or a misdemeanor, at the time of
15 the entry. The mere entry into a dwelling without
16 consent is not burglary. If the intent to commit a crime
17 is formed after the entry, it is not burglary.

18 On the other hand, if the defendant attempted
19 to commit a crime at the time of the entry, it is a
20 burglary, even if the intent was abandoned after the
21 entry. It does not matter that the intended crime was
22 not completed, so it's the entering into a dwelling
23 without consent, intent -- and with intent to commit a
24 crime therein. Intent may be shown by the acts and
25 conduct of the defendant and the other circumstances,

1 direct and circumstantial, from which you may naturally
2 and reasonably infer intent.

3 Finally, the State must prove beyond a
4 reasonable doubt that the defendant has a prior record of
5 two or more convictions for burglary and/or
6 house-breaking. Evidence of a prior offense committed by
7 the defendant was not offered to prove the defendant has
8 a bad character or to prove that the defendant committed
9 the burglary on this occasion. The prior conviction may
10 be considered by you only for the purpose of determining
11 whether or not it satisfied that element of the offense
12 of burglary that makes it first degree burglary, if you
13 enter a dwelling without consent to commit a crime
14 therein and you have two prior convictions for burglary
15 and/or house-breaking.

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

20 If you find beyond a reasonable doubt that
21 the burglary was committed by the defendant, then you may
22 consider the evidence of the prior convictions as
23 evidence of the circumstance which would make that burden
24 first degree burglary. If you do not find beyond a
25 reasonable doubt that the defendant committed the prior

1 offenses, then you cannot return a verdict of first
2 degree burglary.

3 Ladies and gentlemen: That completes my
4 charge. Now, there are two possible verdicts you may
5 reach in this case: Either guilty of burglary in the
6 first degree or not guilty. The order in which I just
7 stated those possibilities has no significance
8 whatsoever. One must be stated first.

9 Ladies and gentlemen: Your verdict must be a
10 unanimous one. All 12 of you must agree. Your verdict
11 must be based on the evidence, the testimony, the
12 inferences, and the facts as you find them to be,
13 applying them to the law as I told you that the law is.
14 It cannot be based on passion, prejudice, emotion, or any
15 other factor not in evidence in this case.

16 Mr. Foreman: You will have this verdict form
17 in there with you. It's very self-explanatory. Please
18 mark the appropriate verdict below and follow the
19 accompanying instructions.

20 As to the charge of burglary, we, the jury,
21 unanimously find the defendant, Otis Robinson, guilty of
22 burglary of the first degree, line to the left, and not
23 guilty. If, in your determination of facts, the State
24 has met its burden of proving its case beyond a
25 reasonable doubt, then your verdict is guilty of burglary

1 in the first degree. I'd ask you to check to the left of
2 that, circle the checkmark, Mr. Foreman, and the words
3 guilty of burglary in the first degree, sign and date it.

4 If, after your determination of the case, you
5 find the State has failed to meet its burden of proof
6 beyond a reasonable doubt and your unanimous verdict is
7 not guilty, then, Mr. Foreman, I will ask you to check to
8 the left of the two words not guilty. I ask you to put
9 your checkmark on there, sign, and date it.

10 Once you have finished deliberating, just
11 knock on the jury room door. The bailiff will notify us,
12 and we'll receive you back into the jury room.

13 What will happen now -- and I'll let you take
14 your notes with you now. I have to meet with the lawyers
15 one final time outside of your presence. I'm required to
16 do that by law. I do not have to bring you back out.
17 Everybody looks great. Our alternates will come out, the
18 evidence will be presented to you, and then you will be
19 instructed by the clerk to begin your deliberations with
20 your fellow jurors.

21 Please do not begin deliberating until you
22 receive further instructions. You may now go with your
23 bailiff.

24 (In open court, jury not present.)

25 THE COURT: All right. Solicitor, any

1 exceptions?

2 MS. LINDER: None from the State.

3 THE COURT: Mr. Locklair?

4 MR. LOCKLAIR: No, sir, Your Honor.

5 THE COURT: All right. Y'all want to see the
6 verdict form and check the exhibits, please.

7 (At 3:33 p.m., the jury retires to deliberate
8 the verdict.)

9 (Court's Exhibit No. 2 marked for
10 identification.)

11 (In open court, jury not present.)

12 THE COURT: All right. I understand we now
13 have a verdict.

14 Anything from the State before we bring in
15 our jury, Solicitor?

16 MS. LINDER: Nothing from the State.

17 THE COURT: From the defense?

18 MR. LOCKLAIR: No, sir, Your Honor.

19 (5:46 p.m., in open court, jury present.)

20 THE COURT: Thank you. Thank you, Madame
21 Bailiff. All right, Madame Clerk. You may publish our
22 verdict.

23 THE CLERK: The State of South Carolina,
24 county of Charleston, in the court of General Sessions
25 for the Ninth Judicial Circuit, State of South Carolina,

1 plaintiff, versus Otis Maurice Robinson, defendant,
2 indictment number 2011-GS-10-5416, the verdict form as to
3 the charge of burglary: We, the jury, unanimously find
4 the defendant guilty of burglary in the first degree.
5 Signed by the presiding juror and dated October 29th,
6 2013.

7 Ladies and gentlemen of the jury: If this is
8 your verdict, please indicate by raising your right hand.

9 THE COURT: All right. All hands are raised.
10 Anything further for the jury from the State, Madame
11 Solicitor?

12 MS. LINDER: Nothing from the State.

13 THE COURT: Anything further for the jury
14 from the defense?

15 MR. LOCKLAIR: The defense would respectfully
16 request the Court poll the jury.

17 THE COURT: All right. Madame Clerk, will
18 you explain that procedure to the jury panel and poll the
19 jury, please.

20 THE CLERK: So when I call your juror number,
21 please raise your hand to identify yourself. I will then
22 ask you two questions. Please answer with yes or nor.

23 Beginning with the foreman, juror number 65,
24 is this your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?
2 THE JUROR: Yes.
3 THE CLERK: Juror number 236, is this your
4 verdict?
5 THE JUROR: Yes.
6 THE CLERK: Is it still your verdict?
7 THE JUROR: Yes.
8 THE CLERK: Juror number 176, is this your
9 verdict?
10 THE JUROR: Yes.
11 THE CLERK: Is it still your verdict?
12 THE JUROR: Yes.
13 THE CLERK: Juror number 125, is this your
14 verdict?
15 THE JUROR: Yes.
16 THE CLERK: Is it still your verdict?
17 THE JUROR: Yes.
18 THE CLERK: Juror number 238, is this your
19 verdict?
20 THE JUROR: Yes.
21 THE CLERK: Is it still your verdict?
22 THE JUROR: Yes.
23 THE CLERK: Juror number 229, is this your
24 verdict?
25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror number 241, is this your
4 verdict?

5 THE JUROR: Yes.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror number 25, is this your
9 verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Juror number 99, is this your
14 verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror number 97, is this your
19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror number 271?

24 THE JUROR: Yes.

25 THE CLERK: Is this your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: And juror number 27, is this your
5 verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Your Honor, the jury has been
10 polled and the verdict stands.

11 THE COURT: Thank you, Madame Clerk.
12 Anything further for the jury from the defense,
13 Mr. Locklair?

14 MR. LOCKLAIR: No, sir, Your Honor.

15 THE COURT: All right. Thank you. Thank you
16 very much. All right.

17 Mr. Foreman, ladies and gentlemen of the
18 jury: Momentarily I'm going to release you from your
19 jury service. For what remains of the evening there is,
20 I appreciate y'all's focus and attention that you've
21 shown all the parties throughout the trial of this case.

22 Today is Tuesday. I must ask you to report
23 back tomorrow morning at 9:30 in the jury assembly room;
24 is that correct?

25 THE CLERK: Yes, Your Honor.

1 THE COURT: On the second floor, y'all are
2 more familiar with it than I am. I never had to report
3 there, if you'll please report back at 9:30 in the
4 morning to the jury assembly room. With that being said
5 you're now excused for the evening, and be back promptly
6 at 9:30 in the morning. Thank you. Thank you very much.

7 (Jury dismissed.)

8 Do you have any motions, Mr. Locklair?

9 MR. LOCKLAIR: We just renew our previous
10 motion on the directed verdict, and if we file a motion
11 for anything else, we'll put it in writing.

12 THE COURT: All right. I would respectfully
13 deny those motions and reaffirm all my trial rulings and
14 motions on directed verdict.

15 Any reason sentencing cannot be imposed at
16 this time?

17 MR. LOCKLAIR: No, sir.

18 THE COURT: All right. Solicitor, do you
19 have a sentencing sheet?

20 MS. LINDER: Mrs. Byrd actually just went to
21 get one. She just went upstairs to our work room.

22 THE COURT: All right.

23 MS. LINDER: Also, Judge, defense counsel has
24 a copy. I was going to hand up to the Court, a copy of
25 the life notice, if that's necessary.

1 THE COURT: A copy of --

2 MS. LINDER: The life without parole notice
3 that was served.

4 THE COURT: Yes, ma'am. All right.
5 Anything additional from the State,
6 Solicitor?

7 MS. LINDER: We don't have anything
8 additional to add.

9 THE COURT: Anything additional from the
10 defendant, Mr. Locklair?

11 MR. LOCKLAIR: No, sir, Your Honor.

12 THE COURT: All right. Then I have been
13 handed up a document with the caption State of South
14 Carolina versus Otis Maurice Robinson, notice of
15 intention to seek sentence of life without parole.
16 Appears it was filed with the clerk 31 January 2013,
17 signed by Assistant Solicitor Linder.

18 It appears this was served on the defendant
19 on the 31st day of January 2013 in Charleston. There is
20 a signature line for Mr. Robinson, under that written the
21 word refused. There is an acknowledgement of service of
22 notice of intent to seek life without parole from Jason
23 King, attorney, by the defendant, signed by attorney King
24 on 31 January. It appears to be in the proper form under
25 17-25-45.

1 Attached to these documents are the
2 sentencing sheet on 2006-GS-10-4812, Otis Maurice
3 Robinson, burglary second degree violent, and that is a
4 serious offense?

5 MS. LINDER: Yes, Your Honor.

6 THE COURT: And there is another sentencing
7 sheet 2006-GS-10-12813, Otis Maurice Robinson, burglary
8 second degree, violent, so he has those two prior violent
9 burglaries. The notice is proper and was served within
10 ten days of trial, the 28th and 29th of October 2013.

11 All right. On indictment 2011-GS-10-5416,
12 the State versus Otis Maurice Robinson, the defendant,
13 the jury, having returned a verdict of guilty of burglary
14 first degree, a violent most serious offense, having been
15 properly served with notice of intent to seek life
16 without parole, the defendant is committed to the State
17 Department of Corrections for a term of life without
18 possibility of parole.

19 Good luck to you, Mr. Robinson.

20 MR. LOCKLAIR: Thank you, Your Honor.

21 - - -

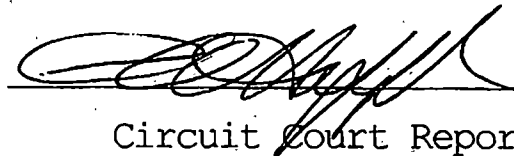
22 (Whereupon, the proceedings were concluded.)

23 - - -

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official 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 all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 29th of October 2013.

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

February 8, 2015


Circuit Court Reporter

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FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)Otis Maurice Robinson)

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

v.)

State of South Carolina)

2016 - CP - 10 - 5451

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2016 OCT 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
4460 Broad River Rd. Columbia 29210
2. Name and location of Court which imposed sentence Charleston County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 GS-10-5416
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Oct. 28-29 2013
- (b) Life w/o Parole
- (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?
- _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeal Case No. 2013-002392
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 4, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Anders Brief
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Denied of Due Process

(c) Prosecutor Misconduct

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Failed To challenge The chain of custody of Evidence

(b) False testimony Violate Due Process

(c) Failed to challenge the prior conviction

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) your sentencing? Life without Parole
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Denied
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Anders Brief

18. If you answered "yes" to one or more parts of (17); list:

(a) the name and address of each attorney who represented you:

i. Wesley Locklair Law Firm
2007 Lincoln Street
 ii. Columbia, South Carolina 29201
John Wesley Locklair III
 iii. _____

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

i. Lara M. Caudy Appellate Defender
 ii. South Carolina Commission of Indigent Defense
Division of Appellate Defense
 iii. P.O. Box 11589
Columbia 29211-1589 803-734-1330

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

Vacate Sentence on the ground seeking to set aside
A conviction For burglary in first degree that it was
obtain by a prior conviction that was dismiss at the

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

None that I know about

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Otis Robinson #288206, 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.

Otis Robinson #288206

SWORN to and subscribed before me this 3rd
 day of October, 2014

Janelle T. Spearman (L.S.)
 Notary Public

My Commission Expires JANELLE T. SPEARMAN
Notary Public State of South Carolina
My Commission Expires
August 26, 2025

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

I, Otis Robinson #288206, 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.

Otis Robinson #288206
Applicant

SWORN or affirmed to and subscribed before me this
day of October 2016

Janelle T. Spearman
Notary Public
JANELLE T. SPEARMAN
Notary Public-State of South Carolina
My Commission Expires August 26, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Otis Maurice Robinson, #288206,

Case No. 2016-CP-10-5451

Applicant,

RETURN AND PARTIAL MOTION
TO DISMISS

v.

State of South Carolina,

Respondent.

FILED
2017 JUN 28 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT

Respondent (the "State"), making its Return to the application for post-conviction relief filed on October 13, 2016, would respectfully show this Court:

I.

Otis Maurice Robinson ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its September 2011 term of court, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2011-GS-10-5416). Wesley Locklair, Esquire, represented Applicant. Assistant Solicitors Stephanie Linder and Lindsey Byrd, Esquires, prosecuted the case. On October 28-29, 2013, Applicant proceeded to jury trial before the Honorable R. Knox McMahon. The jury convicted Applicant as indicted and Judge McMahon sentenced Applicant to imprisonment for life without the possibility of parole.

Applicant filed a timely notice of appeal. Lara M. Caudy, Esquire, of the Office of Appellate Defense perfected the appeal. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed Applicant's appeal on June 8, 2012. State v. Robinson, Op. No. 2016-UP-273 (Ct. App. filed June 8, 2012). The remittitur was

returned to the circuit court on June 24, 2016.

II.

On May 31, 2011, Victim came home to discover a broken window. (Tr. p. 125-26). Victim heard footsteps and then saw a man walk past him, grab some items from his home, and leave through the broken window. (Tr. p. 126). Victim immediately reported the crime after attempting to chase Applicant. (Tr. p. 126). A crime scene technician arrived at the scene and collected evidence including two pieces of a rag and a curtain that both had what was later identified as blood on them. (Tr. p. 127). An officer arriving after the crime scene technician stopped a man matching the description given by Victim in his report. (Tr. p. 127). The man's arm was bleeding, and he was carrying the stolen goods from Victim's residence. (Tr. p. 127). Victim identified this man as Applicant. (Tr. p. 128).

III.

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

1. "Ineffective Assistance of Counsel"
 - a. "Failed to challenge the chain of custody of evidence."
2. "Denied Due Process"
 - a. "False testimony violated Due Process."
3. "Prosecutor Misconduct"
 - a. "Failed to challenge the prior conviction."

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the post-conviction relief application. The State reserves the right to amend this Return upon receipt of any relevant materials.

IV.

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

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

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

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

V.

Applicant also alleges a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VI.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's

burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Therefore, the State submits this allegation should be summarily dismissed.

VII.

The State, therefore, requests this Court convene an evidentiary hearing on the allegations of ineffective assistance of trial counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

OTIS MAURICE ROBINSON,
S.C.D.C. No. 288206,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2016-CP-10-5451

AFFIDAVIT OF SERVICE BY MAIL

JULIE J. ARMSTRONG
CLERK OF COURT

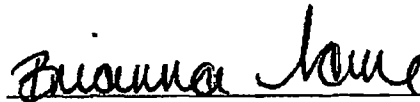
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FILED

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 and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this 27th day of June, 2017.


 Brianna Amone, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2016-CP-10-5451
4 OTIS MAURICE ROBINSON,)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: February 2, 2018
9 _____)

10 B E F O R E:

11 THE HONORABLE MAITE MURPHY

13 A P P E A R A N C E:

14 CHRISTOPHER L. MURPHY
15 Attorney for the Applicant

16 JESSICA E. KINARD
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter

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1 MR. MURPHY: Your Honor, if I could have one minute
2 to speak with him. He says he has something else. I'm
3 ready to go, but he wants one last minute.

4 THE COURT: Okay.

5 MR. MURPHY: Thank you, Judge.

6 THE COURT: No problem.

7 (Whereupon, a recess transpired.)

8 MS. KINARD: Thank you, Your Honor. May it please
9 the Court. This is the matter of Otis Maurice Robinson vs.
10 The State of South Carolina, Case No. 2016-CP-10-5451.

11 Mr. Robinson filed his application for
12 post-conviction relief on October 13th, 2016. He's
13 presently confined in the South Carolina Department of
14 Corrections pursuant to orders of commitment from the
15 Charleston County Clerk of Court.

16 During its September 2011 term, the Charleston
17 County Grand Jury indicted him for first-degree burglary.
18 He was represented at trial by John Locklair, III.
19 Assistant Solicitor Stephanie Linder and Lindsey Byrd
20 prosecuted the case.

21 On October 28th of 29th, they proceeded to trial
22 before the Honorable R. Knox McMahon. The jury convicted
23 the applicant as indicted. And Judge McMahon sentenced him
24 to imprisonment to life without the possibility of parole.

25 Mr. Robinson filed a timely notice of appeal. Lara

1 Caudy of the Office of Public Defense perfected that appeal.
2 Following the submission, a brief was submitted pursuant to
3 *Anders v. California*.

4 South Carolina Court of Appeals dismissed his
5 appeal on June 8th, 2012, in an unpublished opinion. The
6 remittitur was returned to the circuit court June 24th,
7 2016. The State filed a return and partial motion to
8 dismiss on June 27th, 2017.

9 The allegations as listed in his application were
10 ineffective assistance of counsel, failure to challenge the
11 chain of custody of evidence, a denial of due process due to
12 false testimony, prosecutorial misconduct for failure to
13 challenge a prior conviction.

14 The State moved to dismiss the due process issue
15 and the prosecutorial misconduct issue. I'm not sure if
16 those will be pursued at trial; however, I just wanted to
17 state that for the record.

18 The State is present and ready to proceed.
19 Mr. Robinson is present, represented by Christopher Murphy.

20 MR. MURPHY: Thank you, Your Honor. Before we
21 begin, the only issue we are going to be presenting is a
22 breakdown in communication between Mr. Robinson and his
23 attorney in a failure to explain the nature of the charges
24 against him, the elements and the consequences and so forth.

25 I would like to hand up, Your Honor, and ask the

1 Court to take judicial notice of an opinion from the Supreme
2 Court as to Mr. Barr -- or, I'm sorry, Mr. Wesley (sic).
3 And if we could mark that as an exhibit.

4 He was disbarred for three issues: An addiction to
5 cocaine, A; bipolar -- untreated bipolar disease; and also
6 case of depression. Matter number one is Mr. Robinson's
7 matter for which he was disbarred.

8 MS. KINARD: Your Honor, I would just like to
9 object to the characterization. I don't think those three
10 issues are why he was disbarred. He was disbarred for the
11 reason outlined.

12 THE COURT: The order will speak for itself.

13 MR. MURPHY: Yes. All I would say is that a lot of
14 the substance -- at the end of his trial, he was trying to
15 file an appeal. And whatever he was suffering from was so
16 bad, he couldn't get the paperwork correct to file an
17 appeal.

18 He also admits in the order that he did not keep
19 the client informed about the case and he failed to act with
20 diligence as part of it. And that -- Your Honor, the order
21 does speak for itself. Both of us have tried to get in
22 touch with Mr. Locklair, but we can't find him. We don't
23 know where he is.

24 And, Your Honor, next would be our witness,
25 Mr. Robinson, that we would call.

1 THE COURT: All right. Come on up, Mr. Robinson.

2 OTIS MAURICE ROBINSON,

3 having been duly sworn, testifies as follows:

4 THE CLERK: Spell your last name for the record.

5 THE WITNESS: R-o-b-i-n-s-o-n.

6 BY MR. MURPHY:

7 Q. Mr. Robinson, can you please tell the judge how far
8 you went in school?

9 A. 10th grade.

10 Q. Okay. And did you ever get a GED?

11 A. Yes, sir.

12 Q. Now, have you ever been treated for substance abuse
13 at all?

14 A. No, sir, I was -- may I say?

15 Q. Yes.

16 A. I was accepted to South Carolina STRONG drug
17 program. That was never mentioned.

18 Q. Did you have drug issues in your past?

19 A. Yes, sir.

20 Q. Okay. Have you ever been treated for mental
21 illness?

22 A. No, sir.

23 Q. During the course of your representation, do you
24 know if you were ever evaluated for a mental illness at all?

25 A. Never was.

1 Q. Now, you recall Mr. Locklair representing you,
2 correct?

3 A. Yeah, he was my lawyer.

4 Q. Let me ask you this. How many times did you meet
5 with Mr. Locklair about your case?

6 A. He said -- it's on the transcript. He said two
7 times. When he tried to talk to me, we never spoke. He
8 knew nothing about my crime, nothing.

9 Q. Let me ask you this. Did you talk to Mr. Locklair
10 on the phone prior to trial?

11 A. Never did.

12 Q. Did you try to call him from the jail?

13 A. Yes, sir.

14 Q. And do you recall how many times, approximately,
15 you tried to call him?

16 A. So many times.

17 Q. Did you write him letters?

18 A. Yes, sir.

19 Q. Did he respond to those letters?

20 A. No, sir.

21 Q. So when you met with him the two times, did you go
22 over the facts that were being alleged against you?

23 A. No, sir. We never spoke about it, because I told
24 him what happened in the county jail, about my stuff being
25 stolen, my property.

1 Q. We're going to get to that. I know you want to
2 talk about the county jail issue. But let's talk about the
3 crime. Did you talk to Mr. Locklair about the elements that
4 needed -- the State needed to prove to convict you?

5 A. He never spoke about anything, sir.

6 Q. Did you ever talk about possible defenses?

7 A. Both times, he left because we got into an
8 argument, you know, strained between each other.

9 Q. When you said you got into an argument, what were
10 you arguing about?

11 A. The facts of my case.

12 Q. And why -- who initiated the argument or raised
13 their voice? What was the problem?

14 A. Because when I asked him about my situation that
15 was going on as far as my evidence, he said, oh, I don't
16 want to talk about that. He said, let's go to this. And I
17 said, what do you mean?

18 Q. All right. Let's talk about this evidence. The
19 evidence, what evidence are you talking about?

20 A. The crime scene photos.

21 Q. Okay. You had pictures of the crime scene?

22 A. 54 pictures.

23 Q. All right. And did you give those pictures to
24 Mr. Locklair?

25 A. No, sir.

1 Q. Why not?

2 A. Because they weren't in my possession anymore.

3 Q. Why weren't they in your position?

4 A. They came in 3E and shaked down the unit.

5 Q. That's while you were in Charleston County?

6 A. Yes, sir.

7 Q. So what you are saying is the county sheriff's
8 office took the photos?

9 A. They took my property. And I questioned him about
10 that. And I went through all kind of aggravation. They
11 were trying to lock me up. So I fought back and I did two
12 grievances.

13 Q. You actually had a grievance against Mr. Locklair
14 or against the sheriff's office?

15 A. The county jail, for the shakedown, trying to ask
16 me where my crime scene photos is.

17 Q. Did you ever get the photos back before trial?

18 A. No, sir.

19 Q. Did you talk to Mr. Locklair about getting the
20 photos back?

21 A. Yes, sir, yeah.

22 Q. Did he ever get the photos back, that you know of?

23 A. He didn't. He did nothing.

24 Q. And do you believe -- what was so important about
25 these photos?

1 A. It would have showed that it was -- the crime was
2 set up. It wasn't the way it was.

3 Q. Okay.

4 A. Tampered evidence.

5 Q. Let me ask you this. Did you have any discussions
6 with Mr. Locklair about your prior convictions?

7 A. Yes, sir.

8 Q. And what were they?

9 A. The fact about the one where it got dismissed at
10 the preliminary hearing and they brought it back up with a
11 direct indictment for first-degree burglary, and it was
12 never first-degree burglary. It happened in broad daylight.
13 It was nothing there. It's an abandoned house. Nobody
14 lived there.

15 Q. They were talking about a prior charge?

16 A. Yes, prior charge. And then they took me to court
17 and convicted me of something I never was indicted of.

18 Q. Now, we can't challenge that prior charge in this
19 hearing. But did your attorney explain to you the
20 consequences of that conviction?

21 A. No, sir.

22 Q. Do you know what the three strikes law is in South
23 Carolina?

24 A. Not really, sir.

25 Q. Do you recall if you were served with a notice for

1 a life -- that the State was seeking life without parole?

2 A. Yes, sir, I was. Yeah. That was a different
3 attorney at the time, Jason King.

4 Q. Jason King. All right. And then did you talk
5 about that LWOP notice with Mr. Locklair at all?

6 A. Yeah. I told him I didn't commit the crime. I
7 told him I was set up. And the fact of the matter is, I
8 talked about the preliminary hearing. He didn't even have a
9 preliminary hearing.

10 Q. You are talking about in the case you are serving
11 life now, you did not have a preliminary hearing?

12 A. That's right, sir.

13 Q. But that would have been at the time Mr. King was
14 representing you?

15 A. Yes, sir.

16 Q. And you understand that he could waive that
17 preliminary hearing?

18 A. Yes, but I didn't tell him to waive it. I wanted
19 to go forward, because I didn't commit the crime.

20 Q. Let's focus back on Mr. Locklair. As you were
21 going to trial, did you -- did Mr. Locklair talk to you
22 about any plea negotiations or offers by the State?

23 A. Never did.

24 Q. Did you know -- did you ask Mr. Locklair whether
25 the State is going to give you a deal or not?

1 A. No, I never asked him if they were going to give me
2 a deal.

3 Q. Did that ever come up, that issue?

4 A. No, sir.

5 Q. Now, at trial, before heading to trial, did you
6 meet to discuss the evidence that the State was going to
7 present against you?

8 A. Well, right then, I was trying to fire him. I was
9 trying to -- I don't know what the word is as far as --

10 Q. You were trying to get him relieved as counsel?

11 A. Yes, sir.

12 Q. All right. Now, did you -- ultimately, he was not
13 relieved; is that correct?

14 A. No. The judge said he thinks Locklair was a real
15 good attorney.

16 Q. Why were you -- what did you think he was doing
17 wrong that led you to ask him to be relieved?

18 A. He didn't look right from the start. I mean, he
19 looked like he -- you know, from my course of being
20 involved, use of drugs, he didn't look right.

21 Q. Now, did you, after -- did you talk with him about
22 your right to testify at trial?

23 A. Yeah.

24 Q. And how did that discussion go?

25 A. Terrible. He don't think it's in my best interest

1 to testify.

2 Q. And what was your defense at trial; do you recall?

3 A. My defense?

4 Q. Yes.

5 A. The fact about my crime scene photos that I didn't
6 have, I couldn't present any evidence to show what I was
7 saying, to back up the facts. You know?

8 Q. But if your defense was, I didn't do it, did you
9 have any witnesses that could have said -- did you have any
10 witnesses that could have explained where you were if you
11 weren't at the scene of the crime?

12 A. That's what I'm saying. What they are saying did
13 not happen. All the aggravating circumstances didn't
14 happen. I was not even there when the dude said he came in
15 and did all the other stuff. That ain't never happened.

16 Q. Now, let me ask you this. After you got convicted
17 by the jury, the jury said guilty, did you talk to
18 Mr. Locklair about your options after the trial?

19 A. He didn't say any word to me.

20 Q. Did you ever see him again after that?

21 A. No, sir.

22 Q. Did you ever talk to him on the phone at that time?

23 A. No, sir.

24 Q. Did you get any letters from him about anything?

25 A. No, sir.

1 Q. Did you talk about or did you know about a right
2 for a motion for a new trial?

3 A. I didn't know. He didn't explain that to me. I
4 didn't know nothing.

5 Q. Did you understand that if you were convicted at
6 trial, the judge would have no choice but to give you life
7 in jail?

8 A. No, sir. I thought maybe I could talk to him, you
9 know, deal with the allocution.

10 Q. And prior to trial, is it your testimony that you
11 didn't know of any offers to plead by the State to a lesser
12 charge or a 15-year deal or anything like that?

13 A. No, sir.

14 MR. MURPHY: That's all I have, Your Honor.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MS. KINARD:

18 Q. Thank you, Your Honor. Mr. Robinson, you said that
19 you were trying to fire Mr. Locklair when you went into
20 trial?

21 A. Yes, ma'am.

22 Q. Did you talk to the judge about that?

23 A. Yes, ma'am.

24 Q. Okay. And at some point, did you attempt to
25 represent yourself during trial?

1 A. I mean, because they wouldn't assign me to another
2 attorney, I said, I guess I have no choice.

3 Q. Well, didn't he give you a choice between
4 continuing representing yourself or continuing with
5 Mr. Locklair?

6 A. Well, like I was saying, it wasn't matter of
7 choice. It was either/or, you know. He just made it quite
8 simple that, you know, he's going to be the attorney. So I
9 really had no choice. He forced it on me.

10 Q. So you argued that motion. And when did
11 Mr. Locklair become your attorney again? Was it some point
12 during the trial?

13 A. About three or four months.

14 Q. Let me rephrase. So you told Judge McMahon you
15 wanted to represent yourself; is that correct?

16 A. He said, if you don't have Mr. Locklair here to
17 represent you, Mr. Robinson, you are going to have to
18 represent yourself. I didn't want to represent myself,
19 because I didn't know nothing about the law.

20 Q. You went into jury selection; is that correct?

21 A. Yes, ma'am.

22 Q. And sometime during jury selection, did you say,
23 hold on, maybe since Mr. Locklair is here, he should
24 represent me?

25 A. No, not during the jury selection.

1 Q. Is it fair to say that by the time the trial was
2 over, Mr. Locklair was your lawyer in full again?

3 A. Yes, ma'am.

4 Q. Okay. And you stated that Mr. Locklair didn't
5 review your prior charges with you; is that correct?

6 A. He didn't do anything.

7 Q. Did the judge talk about your prior charges at the
8 trial?

9 A. No, ma'am.

10 Q. So you don't recall any discussion on the record
11 about your prior charges and what those could do to your
12 potential sentence?

13 A. Yeah. If I remember, I did say something dealing
14 with that, dealing with the facts of the matter that, you
15 know, the prior conviction was -- it lacked subject-matter
16 jurisdiction.

17 Q. Lacked subject-matter jurisdiction. Okay. Do you
18 recall a hearing before the trial started in full regarding
19 an eyewitness identification?

20 A. Can you please repeat that again, ma'am?

21 Q. Do you recall a pretrial hearing regarding
22 eyewitness identification?

23 A. Not that I remember. I don't think so.

24 Q. Now, you testified there were some photos that were
25 removed from your possession?

1 A. Yes, ma'am.

2 Q. Who created those photos?

3 A. Who created those photos?

4 Q. Yes. Who took those pictures?

5 A. I believe Wisener (ph).

6 Q. Those were photos created by the police
7 department?

8 A. Yes.

9 Q. And the gentleman that created those photos
10 testified at your trial?

11 A. Yes, ma'am.

12 Q. So anything that he had could have potentially been
13 brought in, even though you didn't have a copy?

14 A. But I'm entitled to have my crime scene photos.
15 That's part of my evidence, ma'am, dealing with my
16 Constitution.

17 Q. I understand your position. Thank you. You
18 testified there was no plea negotiation that you are aware
19 of, but you also didn't ask Mr. Locklair to negotiate for a
20 plea on your behalf; is that correct?

21 A. If I didn't ask him?

22 Q. Did you ask him to negotiate for a plea?

23 A. Not that I remember. I don't think so.

24 Q. Did you and Mr. Locklair discuss the evidence that
25 the State had against you?

1 A. We didn't discuss anything about no evidence.

2 Q. So you didn't know, for example, that they had
3 forensic matches putting you at the crime?

4 A. Well, what I'm saying, that's a whole different
5 subject. Based on my crime scene photos, that's what I was
6 talking to him about. And he said he didn't want to talk
7 about it. So, therefore, we didn't have nothing to talk
8 about.

9 Q. No, not the photos, about the blood and
10 fingerprints, did you know that they were matches found at
11 the crime scene?

12 A. Yeah. Yes, ma'am.

13 Q. You knew that before you went to trial?

14 A. Yes, ma'am.

15 Q. And you knew you were facing life without parole
16 because you had been served with those papers?

17 A. Yeah. I know I was facing life without parole
18 because I signed some papers saying that. I didn't refuse
19 to sign it.

20 Q. You talked with Mr. Locklair about whether you
21 should testify on your own behalf?

22 A. Yes, I did ask him that.

23 Q. And he advised you it would not be in your best
24 interest?

25 A. It would not in my best interest, but I should

1 have.

2 Q. Did he advise you of other things, for example,
3 whether he thought it was in your best interest to represent
4 yourself?

5 A. No. He never mentioned anything about that.

6 Q. Did he mention whether it would be in your best
7 interest to call witnesses on your behalf?

8 A. He didn't mention anything about that.

9 Q. Did you give him names of people to call or
10 investigate on your behalf?

11 A. Ma'am, we never talked about anything.

12 Q. And you testified that's because every time y'all
13 spoke, you got into a fight?

14 A. Argument. He came to me two times. And he and I
15 never talked about the fact trying to prove my innocence, he
16 didn't talk to me about anything, he just left, got in an
17 argument and left. We said things to each other and he left
18 each time.

19 Q. I will call the Court's attention to the bottom of
20 page 14, top of 15, where some discussion is had on the
21 record of these arguments. And there's quite a bit of
22 information in the transcript about the relationship that
23 was had between these gentlemen. I believe since we don't
24 have the benefit of Mr. Locklair's testimony, I just ask the
25 Court to take notice of that.

1 And, Mr. Robinson, you testified that y'all didn't
2 really discuss a defense in terms of what you were going to
3 say?

4 A. Adequate investigation of the crime scene, nothing,
5 he didn't do nothing.

6 Q. Okay.

7 MS. KINARD: All right. I have no further
8 questions. Thank you.

9 THE COURT: Any redirect?

10 MR. MURPHY: Nothing further, Your Honor.

11 THE COURT: You may step down, Mr. Robinson.
12 Any other witnesses?

13 MR. MURPHY: That would be all. We would rest,
14 Your Honor.

15 THE COURT: From the State?

16 MS. KINARD: The State would call Stephanie
17 Linder.

18 STEPHANIE LINDER,
19 having been duly sworn, testifies as follows:

20 THE COURT: Your witness.

21 MS. KINARD: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. KINARD:

24 Q. Ms. Linder, thank you for being here.

25 A. Sure.

1 Q. Let's start at the beginning. Do you recall any
2 plea negotiations that happened in this case?

3 A. Yes. I do recall a fair amount of them. I
4 requested my file from storage. And our storage is held off
5 site. So I did not -- I don't have that with me. But I'm
6 very familiar with the case. It kind of stood out to me.
7 So, yes, there were some negotiations in this case. Any
8 talk of a plea was had between myself and Mr. King, who
9 represented the defendant for the majority of the time.
10 Mr. King and I kind of discussed the case, strengths from my
11 perspective, and we discussed an offer. This defendant did
12 not want to plead guilty to my offer.

13 And at that time, while represented by Mr. King, I
14 served him life without parole notice because we were going
15 to proceed to trial. So it was only at that time later that
16 Mr. Locklair got involved with this case.

17 Q. Okay. Now, for better or worse, we are here about
18 Mr. Locklair's conduct rather than Mr. King's. So heading
19 into trial, do you recall, pretrial, were there any issues
20 between the applicant and Mr. Locklair that you were aware
21 of?

22 A. I was aware of items -- I had many conversations
23 with Mr. Locklair leading up to this trial, ever since he
24 got involved in this case. And so he and I had discussed,
25 via telephone and a few times in person, but mainly phone

1 and e-mail, we had discussed the case, kind of leading up to
2 it, different items. And Mr. Locklair had expressed to me
3 that he was having difficult communicating with his client,
4 with different -- with the client yelling at him and things
5 like that at their meetings. But he kept going back. And
6 he said he's doing everything he can.

7 And then, of course, I heard all about it when it
8 was on the record with Judge McMahon when this case was
9 called for trial.

10 Q. Do you recall an issue about Mr. Robinson changing
11 clothes?

12 A. Yes.

13 Q. Could you describe that, please?

14 A. Sure. Mr. Robinson, when we started this trial, he
15 -- I don't know the best way to say it. He was difficult.
16 He went back and forth and was sparring with Judge McMahon.
17 He kept interrupting Judge McMahon when he was in the middle
18 of a sentence, in the middle of trying to address him. He
19 kept saying he's being railroaded, he's being railroaded.
20 He then was very disrespectful to the judge. He wouldn't be
21 quiet when he was asked to be quiet. He wouldn't answer a
22 question that the judge would ask.

23 And the clothing is just one of the examples.
24 After insisting that he wanted a new lawyer, although he was
25 already on his second, and he did not want to represent

1 himself because he didn't have law books. And he just
2 wanted to continue. He was going back and forth. And then
3 the judge talked to him and then asked if there were clothes
4 for him to change into. Mr. Locklair indicated, yes, there
5 were clothes, that if he goes back in the back, he could get
6 dressed out for trial before the jury came in, before the
7 jury selection.

8 And then the defendant got pretty snippy with the
9 judge and everyone and just refused, that he wanted to stay
10 in his jail clothes. And then it was only at
11 Mr. Locklair's -- Mr. Locklair then brought up, well, can
12 we, please, please, please, if Mr. Robinson wants to stay in
13 that -- totally in that outfit and shackles, Mr. Locklair is
14 the one that asked for Mr. Robinson to get the shackles
15 taken off, so, you know, his appearance would be better, I
16 guess you could say, to the jury for jury selection.

17 Q. Okay. After that, you went into pretrial motions.
18 And correct me if I'm wrong, but the defendant had filed
19 several motions, one including prior bad acts. What prior
20 bad acts did he have and how were those addressed?

21 A. Well, those were addressed as one of the elements
22 of burglary first and how we were proceeding, because there
23 was no firearm in this one and this was during the daytime.
24 So to get to the burg' first, one of the elements that I had
25 to prove beyond a reasonable doubt was his prior record. So

1 I had to prove that there were two prior convictions for
2 burglaries in order to proceed on the burg' first.

3 How I did that and how it was presented at trial is
4 that I had somebody from the Charleston Clerk of Court
5 testify with certified sentencing sheets, certified
6 convictions. And, furthermore, I had a fingerprint analyst
7 compare the booking fingerprints from this burg' first that
8 he was on trial and the burg' first from the convictions
9 that were brought in. So not just was it looking at date of
10 birth and social, but we also had fingerprint cards compared
11 by an expert. So I had to prove that.

12 As far as everything else, I assured the Court,
13 which is my standard practice, that, you know, I was -- I
14 was not intending to go into anything for impeachment
15 purposes, you know, unless the defendant got up there. And
16 I wasn't going to argue for anything beyond kind of the
17 traditional, you know, shoplifting, fraud check, all the
18 dishonest ones. I wasn't going to go into anything further
19 unless and until the defendant were to open the door if he
20 were to take the stand.

21 Q. All right. Was there a *Neil v. Biggers* hearing in
22 this case?

23 A. Yes. There was a *Neil v. Biggers* hearing. My
24 victim, Robbie Fabian, he was present for the *Neil v.*
25 *Biggers*. And then also, we had law enforcement testify of

1 their involvement in that.

2 Q. Do you recall the outcome of that?

3 A. Yes. The ID was allowed in. We went through all
4 the basic things for a *Neil v. Biggers*, the opportunity to
5 view, daylight, the description that was given to law
6 enforcement before any sort of ID was actually made of the
7 defendant by the victim. We kind of went through all those
8 and through the testimony and my argument and the judge's
9 finding. I think he did it fairly clearly, laid out
10 everything.

11 Q. Moving into the facts a little bit, since we are
12 there, can you run through your remembrance of the facts in
13 this case, including the identification and kind of how
14 things happened, please?

15 A. Sure. The victim in this case at that time worked
16 at Lowe's. Now he works at Buck Lumber. He still works at
17 Buck Lumber. I saw him a couple of months ago. And he got
18 off of work from Lowe's about two o'clock in the afternoon.
19 He was heading home. And his home was a home that was owned
20 by his grandfather. It was on St. Andrews Boulevard. So
21 it's kind of almost directly across the street from In and
22 Out Carwash when you get into West Ashley from downtown
23 Charleston.

24 And he came home. He drove up. Pulled in the
25 back. And then noticed something was off about the house.

1 A back window was broken. So there was broken glass. Kind
2 of proceeded with caution in the house. When he's in the
3 house, then he saw the defendant in his home. And then the
4 defendant took off, went back out that broken window, bent
5 down outside to pick up some of the items, and then took off
6 running.

7 The victim, who is a heavy-set male, took off after
8 him. Did not fully catch up, but saw the items that were
9 items from within his home that were outside of the
10 residence. He took off down the driveway. When he couldn't
11 catch him, he saw where the defendant ran. The victim then
12 called 911. Police were right there, so close.

13 As the police were coming, responding to the 911
14 call, they saw the defendant coming down the actual drive of
15 the house that was burglarized and drive down Saint Andrews.
16 The defendant was stopped within moments right there at the
17 house or in the street, I guess, the house is on.

18 Police talked to the victim. The victim gave a
19 full description of the age, body type, all of that,
20 clothing, all of that of the defendant. After he did that,
21 he was taken to the location where the defendant was, which
22 was like, more or less, like a few blocks down, few houses
23 down. And it was a show-up ID.

24 Q. And do you recall any details about the show-up ID
25 as presented?

1 A. What I remember from the show-up ID is that Keller,
2 Robert Keller, was the case agent for this, he's now with
3 the FBI, and he kind of did the normal spiel that, this may
4 or may not be the person, you know, if you see the person,
5 you indicate to me. And the victim, without hesitation,
6 identified the defendant as the individual who burglarized
7 and was inside his home and that he began to chase.

8 So is that what you wanted me to answer about that?

9 Q. Yes. Yes.

10 A. Okay.

11 Q. Do you recall, based on your review of the
12 transcript and arguments presented at trial, what the
13 defense's strategy or line of defense was in this case?

14 A. Yes. The defense's strategy was to knock out the
15 dwelling portion of the burg' first and say it wasn't -- it
16 wasn't where the victim lived. Frankly, I think that was
17 his best shot. I mean, this was a very strong case from the
18 prosecution's standpoint.

19 There were fingerprints of the defendant on a DVD
20 outside the residence that was taken from within the
21 residence. The defendant's blood was found inside the home
22 after the glass was broken. You know, there were a lot of
23 different things that were great from prosecution's
24 standpoint.

25 And the defense tried to go against the dwelling

1 aspect of it, because the house was owned by the victim's
2 grandfather. The victim did not stay there every night.
3 And there was -- everyone keeps their house different, but
4 it was a fairly messy home that wasn't -- that didn't
5 necessarily -- there could be an argument made, and the
6 defense made it, that, you know, you don't sleep there every
7 night, you don't have your fridge fully stocked with milk
8 and all that. So there was argument that -- that's the
9 strategy that the defense did. So they did a heavy cross of
10 the victim on that point.

11 Q. And do you recall if he incorporated that into his
12 various arguments, such as a motion for directed verdict or
13 anything like that?

14 A. Oh, absolutely, absolutely. I mean, I now --
15 obviously, take it for what it is. I obviously now know
16 what's happening with Mr. Locklair. But, I mean, I think
17 that his strategy was the best one he could have had. And I
18 think that in all of my conversations with him, he knew
19 everything about the case. He is very bright and brought up
20 a bunch of issues when we would talk about the case leading
21 up to trial. He filed a bunch of motions that were good
22 motions prior to trial.

23 I've had to try a bunch of cases in 12 1/2, almost
24 13 years being a prosecutor, state and federal, and I think
25 he did a good job.

1 Q. Thank you. And just because it was presented in
2 the actual application, I just wanted to review. Did you --
3 did you present witnesses to establish a chain of custody of
4 the fingerprint evidence as well as the DNA evidence?

5 A. Yes. I didn't have every single person. We did a
6 stipulation to the chain of custody, but I did have the
7 individual who collected the items. So I guess the ones
8 that mattered, the fingerprint, the blood, I did have
9 testify the individual who took the blood standard from the
10 defendant. I had an individual testify who took the blood,
11 the crime scene person from the scene. And I did have the
12 individual who took the fingerprint, plus all the analysts
13 at the tail end. So I had those book ends of people all
14 testify.

15 Q. And as you stated, there's a chain of custody to
16 which was stipulated. And for the Court's record, I believe
17 that's page 257, if you would like to review. And because
18 the applicant brought it up, crime scene photographs,
19 regardless of whether he had them or not, was the gentleman
20 who took the photographs present at trial, and did he
21 testify?

22 A. Yes. Richard, he testified. He went through a
23 lot. He went through everything.

24 Q. And some of those photographs were presented?

25 A. Yes, many photographs were entered into evidence.

1 Q. And he described how the crime scene appeared when
2 he got there?

3 A. Yes.

4 Q. And, certainly, the applicant and his attorney
5 would have had the opportunity to cross-examine and did, in
6 fact, cross-examine him?

7 A. Yes.

8 MS. KINARD: I have no further questions. Thank
9 you very much.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. MURPHY:

13 Q. Thank you, Your Honor. Ms. Linder, you and I
14 worked together years ago?

15 A. Yes.

16 Q. And we've also had cases together over the years?

17 A. Yes.

18 Q. I don't know if that's an advantage or not in
19 talking to you, but I want to ask you about Mr. King. Do
20 you recall why Mr. King was relieved as counsel?

21 A. I think there was some sort of conflict, but I am
22 not quite certain.

23 Q. Do you know what type of conflict it is or any idea
24 what the nature of that conflict was?

25 A. I don't. If it's in the transcript or something, I

1 don't have my file. I don't know exactly. I am not usually
2 told if there's a conflict in the PD's office and why.

3 Q. Let me ask you this. They had a hearing before the
4 judge. Were you present at the hearing when counsel was
5 relieved and new counsel was appointed?

6 A. Yes.

7 Q. Now, in terms of offers, let me talk about, first
8 of all, Wesley Locklair. You knew him before this case?

9 A. Yes.

10 Q. And did you go to law school with him?

11 A. No. He's older than me. I knew him through
12 Mr. King when I was in law school at Carolina. I clerked at
13 the Richland County Public Defender's Office. And Jason
14 King was a public defender there. So I met Jason King when
15 he was a PD and I was his law clerk. And Wes Locklair was a
16 friend of his then.

17 And then just as years passed, I graduated law
18 school, I came down here. I became a solicitor here. Jason
19 King became a PD here.

20 Q. Got you. Let me ask you this. When Wesley took
21 over the case, I would imagine, and correct me if I'm wrong,
22 did you tell Wesley, I've given a 15-year offer, have you
23 talked to your client about that, or anything like that?

24 A. No, no. That offer was long gone.

25 Q. Did you have any offers to give Wesley once he got

1 in?

2 A. No. No. Once -- how it works in our office is, we
3 have to have permission from the elected solicitor in order
4 to serve life notice. And once it's served, we are not
5 pulling it back. We are not taking it back when there's a
6 thoughtful rejection of an offer.

7 Q. Was there any testimony on the record that they had
8 a hearing, that you made an offer to him and he rejected it?

9 A. I don't recall if there was a plea rejection on the
10 record or not. I am not quite sure.

11 Q. When you were doing the trial with Mr. Locklair,
12 did you have any idea what personal issues he was going
13 through at the time?

14 A. No. I knew that he had recently been or was in
15 midst of getting divorced, but that was all I knew.

16 Q. Did you know if there was any in-camera hearings
17 where Mr. Locklair said, I need to talk to the judge, I need
18 to have an in-camera hearing about what was going on?

19 A. Not that I'm aware of.

20 Q. Do you know if either Mr. King or Mr. Locklair had
21 their client evaluated at all?

22 A. I do not believe he was evaluated.

23 Q. Now, the facts that you talked about, they weighed
24 heavily against the client, supported conviction, would you
25 agree with that?

1 A. Yes.

2 Q. And I don't want to put words in your mouth, but I
3 bet you felt comfortable about winning the case at trial?

4 A. Yes.

5 Q. And you've talked about stipulating -- I'm sorry.
6 You've talked about that you had to prove the elements of
7 the prior burglaries. Did you have any discussions with
8 Mr. Locklair about stipulating to the admission of those
9 burglaries so you wouldn't have to call those witnesses?

10 A. I did. I always have conversations, because, to
11 me, if you can stipulate and streamline something, it's
12 great. And we did. And that is part of the time when I
13 would talk to Mr. Locklair and he would explain that he
14 tried to talk to his client and he's just shutting down,
15 he's fixated on this prelim, and if his prelim was waived,
16 which was under Jason King. And so they would kind of
17 battle it out about that and nothing of use would come out
18 of it.

19 So, more or less, Mr. Locklair said, I can't get
20 him passed the prelim point to have a meaningful
21 conversation about potentially stipulating to the priors.
22 So that's kind of where that breakdown in communication --
23 it just kind of halted everything, because Mr. Robinson was
24 fixated on the prelim situation.

25 Q. I got you. Now, the next question is, in terms of

1 your talks with him about stipulating or forcing you to
2 prove those prior burglaries, would you have stipulated, if
3 he said yes, we will stipulate, rather than forcing to prove
4 them?

5 A. Well, sure.

6 Q. Now, you also mentioned that Mr. Locklair said he
7 was having a difficult, if not impossible, time
8 communicating with Mr. Robinson.

9 A. Uh-huh.

10 Q. Is that the case?

11 A. He said that Mr. Robinson was calling him slurs and
12 Mr. Robinson was cussing at him, which makes any
13 conversation with anybody pretty difficult. But
14 Mr. Locklair and I discussed the case numerous times.

15 Q. Do you know if Mr. Locklair ever brought it to the
16 attention of the court that he was having a difficult time
17 communicating with his client?

18 A. Yes, he did.

19 Q. And when was that? Was that at the motion to be
20 relieved? When I say "relieved", that was at trial. Was
21 that at trial in front of Judge McMahon?

22 A. Yes.

23 Q. But there wasn't anything prior to that?

24 A. I don't know. I don't know. I would have to look
25 at the different --

1 Q. Okay. Let's talk about the defense of the
2 dwelling, whether or not the fellow lived there. That was
3 not a legal defense that would entitle him to a directed
4 verdict, is that the case, where he's saying the fellow
5 didn't live there all the time?

6 A. Well, I mean, I think you can -- how do I say this?
7 And this comes from, of course, my experience and my angle.
8 DV motions are made because you have to have a record. But
9 in a case where there's blood evidence and all of this other
10 stuff, and Mr. Robinson was making all these comments even
11 prior to the trial that, like, he was there, but he didn't
12 make it inside. I mean, so he wasn't even -- the DV
13 argument was made, but I don't want to say he was hollow,
14 but it was kind of like everything that was being laid out
15 in the case was all about for the jury.

16 Q. But I understand that. But my question is, there's
17 no case law that says that somebody has to live at a
18 dwelling all the time in order to be convicted of burglary?
19 I mean, there was no -- his defense wasn't supported by any
20 case law that you know of?

21 A. I don't think there really were any defenses to the
22 case. He tried to attack the ID. It failed. And then he
23 was just kind of going for what he could.

24 Q. And let me ask you this. Did he ever ask you about
25 trying to get a deal for an offer to plead for Mr. Robinson

1 at all?

2 A. I don't recall him asking me. However, when he got
3 into the case, he was brought up to speed by Mr. King about
4 Mr. King and the defendant's relationship, about the
5 rejection of the offer. I mean, that's standard, bringing
6 somebody up to speed. So when Wesley got it, it was, okay,
7 it's a trial.

8 MR. MURPHY: Okay. That would be all the questions
9 I have, Ms. Linder.

10 THE COURT: Any redirect?

11 MS. KINARD: Just one, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. KINARD:

14 Q. You indicated once an LWOP offer is extended, it's
15 not revoked by your office, that's policy?

16 A. It has to be a very special circumstance with
17 boss's approval if you take that back.

18 Q. So if this is the posture for trial, LWOP served,
19 it would not be your policy to continue to negotiate?

20 A. No, there's absolutely no negotiation. Once the
21 LWOP is served, it's done.

22 MS. KINARD: Thank you. Nothing further.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Any other witnesses from the State?

1 MS. KINARD: No, Your Honor. And Ms. Linder is
2 here at my request. I ask she be excused, if she would
3 like..

4 THE COURT: Any objection?

5 MR. MURPHY: No objection.

6 THE COURT: You are free to go. Thank you. Have a
7 good day.

8 MR. MURPHY: Your Honor, we would just ask for
9 rebuttal, one single question to ask Mr. Robinson.

10 THE COURT: Mr. Robinson, you can stay right there,
11 if you would like.

12 BY MR. MURPHY:

13 Q. Mr. Robinson, did you ever know of a deal to plead
14 to 15 years in this case?

15 A. No, sir.

16 MR. MURPHY: That's all I have.

17 THE COURT: Anything from the State?

18 MS. KINARD: No, Your Honor.

19 THE COURT: Parties care to give a brief summation?

20 MR. MURPHY: Yes, Your Honor.

21 Your Honor, there's a reason why the public, I
22 think, lacks faith in the judicial system. And there's a
23 reason why the profession of law comes under reticule. And,
24 unfortunately, a lot of the wounds are self-inflicted. Here
25 we have counsel that had a substance abuse issue. He had a

1 mental issue. He was suffering from depression. And it's
2 not clear whether he was being treated or not. But,
3 certainly, he didn't bring any of those issues up to the
4 judge at the time when he had the chance to do so.

5 We know at this point that he was suffering so bad
6 that he couldn't get the paperwork together to do an appeal,
7 which is a pretty basic thing to do. And if he couldn't do
8 that, there's no way he would be capable of dealing with the
9 complexities of a trial, especially someone that faced life
10 imprisonment.

11 I can't imagine that Otis Robinson had competent
12 counsel based on the issues that are admitted in that bar
13 opinion. And we have a chance here to correct this wrong
14 and to take a step and to put some faith back into this
15 judicial system.

16 The admission in this bar opinion is that he did
17 not keep the client informed. He did not act diligently.
18 That's uncontradicted. And he lost his license for it. I
19 don't see how this Court could find that he had competent
20 counsel. And, certainly, that Mr. Otis Robinson's entitled
21 to a lawyer that was not suffering from those issues. It is
22 unfortunate for Mr. Locklair, but we are talking about a
23 life imprisonment here.

24 There was uncontroverted evidence that there was no
25 communication between the two. There wasn't a breakdown.

1 There weren't issues or in-camera hearings brought to the
2 court. And I think, clearly, as a matter of law, he did not
3 get that competent counsel he's entitled to.

4 THE COURT: Thank you, Mr. Murphy.

5 MS. KINARD: Thank you, Your Honor.

6 Regardless of the issues that Mr. Locklair faced,
7 the State submits that there's simply nothing in the record
8 to show that they made any effect on this case. By review
9 of the transcript, by testimony of the opposing counsel in
10 this matter, Mr. Locklair presented the best case he could.
11 Ms. Linder and the transcript certainly speak to the fact
12 that there was overwhelming evidence in this case. There
13 was IDs by law enforcement, IDs by the victim, forensic IDs.
14 There's an inextricable link between Mr. Robinson and the
15 crime in this case. There was ID that was held to be
16 admissible at trial.

17 So regardless of Mr. Locklair's difficulties, I
18 would submit that they stayed outside of the courtroom.

19 What did come into the courtroom is the difficulty
20 of his client and the fact that it became nearly impossible
21 for them to work together. A detrimental or dysfunctional
22 relationship between attorney and client is something that
23 even best attorneys cannot get around.

24 Regarding Mr. Locklair's ability to file an appeal,
25 even though that is really not an issue before the Court

1 today, other than the fact that it was brought up by the
2 presentation of this opinion, there's also no prejudice
3 there because Mr. Robinson did get his appeal. There was an
4 *Anders* brief, a full review by the Court of Appeals.

5 And even though the opinion says he failed to
6 notify him of certain issues, Ms. Linder testified there's
7 really nothing to notify him of, at least prior to trial.
8 There were no plea negotiations, no offers that would have
9 been extended. He was facing life without parole - "he"
10 being Mr. Robinson - because of his prior bad acts, of his
11 history and the fact that he did go and commit this crime.
12 Mr. Locklair had no say-so in the sentence he was facing and
13 no way to mitigate the sentence he was facing.

14 So, overall, due to the overwhelming evidence in
15 this case, which I think is very well presented by the
16 transcript, as well as the fact that these two had such a
17 contentious relationship, I simply don't see any prejudice
18 or deficiency on the part of Mr. Locklair. When looking at
19 these facts under *Strickland vs. Washington*, there is no
20 deficiency. There's nothing that Mr. Locklair did wrong.
21 He took a difficult case and made the best out of it. He
22 presented a defense, as Ms. Linder testified to, the only
23 one possible, given the other facts.

24 So for that reason, there's no deficiency and
25 there's certainly no prejudice, as the odds were stacked

1 against them walking into the courtroom and in many, many
2 ways, which have been presented here today.

3 So for those reasons, the State asks that you deny
4 this application, dismiss it with prejudice. Thank you.

5 THE COURT: Thank you, counsel. I will take the
6 time to review the matter and notify you of my decision.

7 (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

SOUTH CAROLINA STATE

V.

OTIS MAURICE ROBINSON

MOTION TO AMENDED THE FOLLOWING
INFORMATION ADD ONTO THE PCR
HEARING2018 JUN - 1
CLERK OF COURT
FILED
JUN 1 2018
CLERK OF COURT

UNDER THE SIXTH AMENDMENT CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL THE DEFENDANT MUST PROVE DEFICIENT REPRESENTATION AND RESULTING PREJUDICE. THE USE OF AN UNCOUNSELLED CONVICTION RESULTING IN A SENTENCE OF IMPRISONMENT TO ENHANCE THE PUNISHMENT IN A SUBSEQUENT CONVICTION VIOLATES THE SIXTH AND FOURTEENTH AMENDMENTS. IT IS THE DEFENDANT BURDEN TO PROVE BY A PREPONDERANCE OF EVIDENCE THAT A PRIOR CONVICTION IS CONSTITUTIONALLY DEFECTIVE OR INVALID WHEN OBJECTING TO THE USE OF THE PRIOR CONVICTION TO "ENHANCE" PUNISHMENT OF A SUBSEQUENT CONVICTION. MY ATTORNEY WESLEY LOCKLAIR WAS MY TRIAL ATTORNEY AND HE WAS INEFFECTIVE FOR THE ABOVE SIXTH AND FOURTEENTH AMENDMENT. FOR THE FACTS IN THIS CASE THAT WERE NEVER MENTION DURING TRIAL IN ~~THE~~ STATE V. PHILLIPS IN SEEKING LWOP SENTENCE BASED UPON SECTION 17-25-45. THE STATE BEARS THE BURDEN OF ESTABLISHING THE DEFENDANT'S PRIOR CONVICTION FOR A SERIOUS OR MOST SERIOUS OFFENSES. STATE V. JOHNSON 350 S.C. 543, 547, 48, 561, SE. 2d 486, 488 WHEN A PRIOR CONVICTION IS FOR AN OFFENSE NOT CONTEMPLATED BY SECTION 17-25-45 THE TRIAL COURT SHOULD EXAMINE THE ELEMENTS OF THE OFFENSE AND DETERMINE WHETHER THEY ARE EQUIVALENT TO ANY CURRENT OFFENSES CLASSIFIED AS "SERIOUS OR MOST SERIOUS STATE V. WASHINGTON 338 SC 392 397-98, 526 SE 2d 709 711 (2000) I ALSO ARGUE THAT THE TRIAL COURT ERRED IN SENTENCING ME TO LWOP BASE UPON A A 2007 CONVICTION THE APPLICANT PLEAD GUILTY TO 2ND DEGREE BURGLARY 16-11-312 WHICH OUT OF 2 1 BEING REDUCED FROM 1ST DEGREE BURGLARY TO A LESSER INCLUDED OFFENSE, BUT I WAS INDICTED FOR WHICH WAS ~~1ST~~ DEGREE BURGLARY, I ADDRESS THIS TO MY TRIAL ATTORNEY MR. LOCKLAIR ABOUT THE PRIOR'S CONVICTION, IN MEANING TO THAT IS ONE OF THE PRIOR CONVICTION ~~WAS~~ ~~INVALID~~ BECAUSE 2ND DEGREE 16-11-312 (B) IS NOT A LESSER INCLUDED OFFENSE OF THE 16-11-311 (A) AND I WAS NEVER INDICTED FOR THE 2ND DEGREE 16-11-312 (B) FOR ENTERING A BUILDING, I WAS INDICTED FOR ENTERING A ~~1ST~~ DWELLING, THE PRIORS CONVICTION WAS NOT INDICTED AND I DID NOT WAIVE PRESENTMENT TO GRAND JURY UPON "COUNSEL'S PERFORMANCE FELL WAY BELOW ~~THE~~ PROFESSIONAL NORMS ACCORDING TO STRICKLAND V. WASHINGTON THE COURT FAILED TO PITMAN V. STATE TO ADVISE APPLICANT TO THE ELEMENTS OF THE ~~OFFENSE~~ ~~HE~~ HE WAS PLEADING TO WHICH WAS THE CRUCIAL OMISSION IN THE CONTEXT OF THIS CASE. AS PURSUANT TO WILSON V. LINDE THE ELEMENTS OF ENTRY OF A DWELLING PURSUANT TO 16-11-312 (A) ARE DIFFERENT FROM THE ELEMENTS OF ENTRY OF A BUILDING PURSUANT TO ~~16-11-312 (B)~~

LEGAL MAIL

THE APPLICANT WAS NEVER INDICTED FOR ENTRY OF A BUILDING AND HE DID NOT WAIVE HIS RIGHTS TO BE PRESENTED TO A GRAND JURY AND MOST IMPORTANTLY UNDER DUE PROCESS CLAUSE ~~HE~~ HE WAS NEVER PUT ON NOTICE. HE WAS PLEADING TO ENTRY OF A BUILDING NOR DID THE COURT ADVISE HIM HE WAS BEING PROSECUTED FOR ENTRY OF A BUILDING. THE COURT HAD A DUTY TO ADVISE APPLICANT HE WAS PLEADING GUILTY TO ENTRY OF A BUILDING IN THE NIGHTTIME, HE WOULD HAVE CORRECTED THE COURT'S ERROR THAT HE DID NOT ENTER A BUILDING, ^{AND} IS NOT A LESSER INCLUDED OFFENSE OF ENTRY OF A DWELLING. ~~AND~~ AND THE COURT FAILURE TO ENUNCIATE AND ADVISE APPLICANT TO THE ELEMENTS HE WAS PLEADING TO RENDERED THE WAIVER OF APPLICANT'S TRIAL RIGHTS INVOLUNTARY PURSUANT TO PITMAN V. STATE AND BOYKIN V. ALABAMA AS THE WAIVER WAS NOT KNOWINGLY ENTERED. CASE HILL V. LOCKART, HELD "BUT FOR COUNSEL ERRORS APPLICANT WOULD HAVE NOT PLEAD GUILTY." AND COUNSEL HAD A DUTY TO ADVOCATE FOR HIS CLIENT AND AND PROTECT HIS STATUTORY RIGHTS, SOUTH CAROLINA AND US CONSTITUTIONAL RIGHTS. PURSUANT TO ARTICLE I SEC. 11 SC CONSTITUTION APPLICANT HAS A RIGHT TO BE INDICTED PURSUANT TO 17-19-20 SC. CODE OF LAWS. CARTER V. STATE AND SUCH RIGHTS CANNOT BE WAIVED BASED ON A SILENT RECORD. MOORE V. STATE 732 SE.2d 871 (2012) AS IT IS A CONSTITUTIONAL RIGHT. SEE CAMPBELL V. STATE 535 SE.2d 928 WHICH IS DIRECTLY ON POINT WITH THE FACTS OF THIS CASE. OF SENTENCING TO AND OFFENSE THAT IS NOT A LESSER INCLUDED OFFENSE WHERE THEY DID NOT WAIVE GRAND JURY INDICTMENT IN CARTER V. STATE 495 SE.2d 277 (1996) REQUIRES A WRITTEN WAIVER OF GRAND JURY INDICTMENT; IN CAMPBELL V. STATE 535 SE.2d 928 (SC 2000) HELD THAT 16-11-312(B) IS NOT A LESSER INCLUDED OFFENSE OF 16-11-312(A) AND PCR COURT / SUPREME COURT VACATED THE PLEA BECAUSE CAMPBELL DID NOT WAIVE PUR. TO 17-19-20 GRAND JURY INDICTMENT A CONSTITUTIONAL RIGHT PUR. TO ART. I SEC. 11 OF SC CONSTITUTION. IN SPROUSE V. STATE AND WIENHUAER V. STATE 514 SE.2d (1999) HELD THAT 16-11-312(B) IS ALSO NOT A LESSER INCLUDED OFFENSE OF 16-11-311(C) SEE WILSON V. LINDER 995 F.2d 1256, APPLICANT DID NOT WAIVE HIS RIGHTS TO BE INDICTED; TRIAL COUNSEL FAILED TO OBJECT TO COURT FOR THE USE OF A PRIOR ~~CONVICTION~~ CONVICTION THAT I WAS NEVER INDICTED FOR ALSO TRIAL COUNSEL FAILED TO ADVISE THE COURT THAT THE APPLICANT WAS DEPRIVE OF HIS CONSTITUTION RIGHTS, BECAUSE IT CLEARLY SHOWS THEY WERE A DEFECTS IN THE INDICTMENT. MY TRIAL COUNSEL FAILED TO ~~BRING~~ BRING UP THE FACTS THAT HIS CLIENT WAS FORCE TO PLEA TO AN OFFENSE HE WAS NOT INDICTED UPON, IT SHOWS COUNSEL PERFORMANCE FELL WELL BELOW PROFESSIONAL NORMS AND APPLICANT DETERMINED BY

LEGAL MAIL

BY THE OMISSIONS. TRIAL COUNSEL FAILED TO ADVISE THE COURT OR
 OBJECT TO THE COURT THAT THE CIRCUIT COURT LACK SUBJECT MATTER
 JURISDICTION TO CONVICT AND SENTENCE DEFENDANT UNDER AMENDED
 INDICTMENT THAT HAD NOT BEEN PRESENTED TO THE ~~THE~~ GRAND JURY.
 ALSO TRIAL COUNSEL FAILED TO ADVISE OR OBJECT TO A PRIOR CONVICTION
 THAT WAS USED TO ENHANCE WAS DISMISSED AT THE PRELIMINARY
 HEARING COURT DATE 6-20-2006, THE SAME CHARGE AGAIN TO WHICH
 IS DOUBLE JEOPARDY FOR THE FACTS OF CASE, THERE WAS NO
 AGGRAVATING CIRCUMSTANCE IN ONE OF THE PRIOR CONVICTIONS IN
 THIS CASE 2006GS104812, HOW CAN YOU GET A DIRECT INDICTMENT ON
 A 1ST DEGREE BURGLARY THAT GOT DISMISSED AT A PRELIMINARY
 HEARING, AND DON'T MEET THE ELEMENTS OF THE CRIME IN THE
 FIRST PLACE, AND THERE WAS NO PLEA AGREEMENT TO ANYTHING SO
 HOW COULD THEY DROP IT TO A LESSER INCLUDED OFFENSE THAT I
 NEVER BEEN INDICTED FOR. THE PCR LAWYER CHRISTOPHER MURPHY DID
 EVERYTHING HE COULD TO NOT BRING UP ~~THE~~ FACTS IN THE CASE, HIS LETTER
 I RECEIVE FROM HIM INDICATES THAT HE WAS NOT ON MY SIDE, HE DID
 NOT MENTION ANYTHING ABOUT THE FACTS IN THIS CASE, THE CRIME SCENE
 PHOTO'S WERE OBTAINED BY THE SHakedown CREW IN THE COUNTY JAIL AND
 THEY DID NOT NOTIFY ME THAT THEY TOOK MY CRIME SCENE PHOTO'S. SO
 I PUT 2 GRIEVANCE IN ON 5/12/2013 AND 6/12/2013 IN CONCERNING
 MY CRIME SCENE PHOTO'S MY RULES BRADY FILE THAT I AM ENTITLED TO
 HAVE, I EXPLAIN THE SAME THING TO MY TRIAL ATTORNEY AND HE DID
 NOTHING FOR ME TO GET A COPY OF MY RULES BRADY FILE OR CRIME
 SCENE PHOTO'S, THAT IS A VERY IMPORTANT PART OF MY CASE THAT THE
 JURY DON'T KNOW ABOUT BECAUSE MY ATTORNEY WESLEY LOCKLAIR
 FAILED TO CHALLENGE OR OBJECT TO ANYTHING DEALING WITH THE
 FACTS IN THE CASE. I HAVE COPIES OF DEPUTY FORM INDICATING THAT
 I WAS TRYING TO GET MY BRADY AND EVERYTHING DEALING WITH MY
 CASE, HE FAILED TO DO ANYTHING FOR ME AND IT SHOWS BECAUSE HE
 WAS ON DRUGS DURING MY COURT SESSION, HE WENT TO REHAB IN
 MARCH 2ND 2013 MR. LOCKLAIR STATED HE HAD BEEN INVOLUNTARILY
 COMMITTED FOR SUBSTANCE ABUSE ISSUE, HE WESLEY LOCKLAIR
 ADMITTED HE HAD A SERIOUS DRUG PROBLEM FOR SEVERAL YEARS, THAT'S
~~MORE~~ MORE THAN 3 YEARS, SO HE WAS ON DRUGS DURING DATED
 ALWAYS BACK TO MAY, 2013, THE FACTS IN THIS CASE IS IN
 PLAIN REVIEW TO SHOW COUNSEL PERFORMANCE **LEGAL MAIL**
 IS NOT GOOD AT ALL WHERE IS THE

EVIDENCE TO SHOW THAT HE DID ANYTHING TO HELP HIS CLIENT. MY PCR LAWYER SAID THIS IS A MAJOR ISSUE AND ONE WHICH COULD VERY WELL PROVIDE YOU THE RELIEF YOU SEEK. IT WILL TAKE SOME RESEARCH BUT WE WILL GET TO THE BOTTOM OF THE ISSUE. HE SAID I AM HOPING THAT YOU PLEA TO TWO BURGLARY 2ND AND THAT ONE THEM WOULD NOT BE CLASSIFIED AS VIOLENT. THAT SHOULD BE ENOUGH TO GET YOU A NEW TRIAL ON ~~DEC. 6,~~ 2016 AND ~~DEC. 20,~~ 2016 I RECIEVE 2 LETTERS INDICATING THAT I HAVE A GOOD CHANCE TO GET BACK IN COURT FOR A NEW TRIAL, MY PCR ATTORNEY ALSO TOLD ME THE THIRD ISSUE YOU RAISE IS THE FAILURE TO CHALLENGE A PRIOR CONVICTION. I ASSUME YOU HAD A PRIOR MOST VIOLENT CONVICTION WHICH SUBJECT YOU TO THE 3 STRIKES RULE. THIS IS ALWAYS A GOOD ISSUE TO RAISE ASSUMING THAT THE COURT IMPROPERLY RELIED ON A CONVICTION. IN ~~THE~~ ORDER TO PREVAIL ON THIS GROUND, WE WOULD HAVE TO SHOW THAT YOUR PRIOR CONVICTION DID NOT QUALIFY AS A MOST SERIOUS OFFENSE, IF THIS IS THE CASE, WE HAVE A VERY GOOD GROUND TO CHALLENGE THE SENTENCE. THE PROOF IS IN THE PAPER WORK I HAVE TO SHOW THAT IT WAS A ILLEGAL CONVICTION BECAUSE I WAS NEVER INDICTED FOR 2ND DEGREE BURGLARY FOR ENTERING A BUILDING. SO HOW CAN I BE CONVICTED FOR A CHARGE THAT DONT EXITS. FAILURE TO INVESTIGATE ADEQUATELY BEFORE ALLOWING A DEFENDANT TO PLEA GUILTY CAN RESULT IN MATERIAL PREJUDICE TO THE DEFENDANT AND GIVE RISE TO A SUCCESSFUL CHARGE OF INEFFECTIVE ASSISTANCE OF COUNSEL. I INFORM THE JUDGE AT A TRIAL WHEN I TOLD HIM THAT I DONT HAVE ALL THE EVIDENCE PERTAINING TO MY CASE TO REPRESENT MYSELF, THE JUDGE AND SOLICITOR AND MY ATTORNEY SAID NOTHING ABOUT THE FACTS OF MATTER ABOUT WHAT EVIDENCE I WAS TALKING ABOUT BECAUSE THEY ALL CONSPIRED TOGETHER TO MAKE SURE THAT I DONT HAVE THE RIGHT TO PRESENT MY EVIDENCE AT TRIAL, THE SOLICITOR EVEN MENTION ~~IT~~ IT DURING THE PCR HEARING THAT SHE KNEW MR. WESLEY LOCKLAIR BEFORE HE WAS AN ATTORNEY, SHE SAID HE WORK WITH HER ON STUDYING TO BE AN ATTORNEY. I TOLD MY TRIAL ATTORNEY THAT I DONT HAVE ALL THE EVIDENCE TO MY CASE BECAUSE THE SHAKEDOWN CREW IN THE COUNTY JAIL TOOK MY CRIME SCENE PHOTO'S OUT OF MY BOX AND THEY DID NOT TELL ME ANYTHING. OR NOTIFIED ME OF WHAT WAS GOING ON, MY TRIAL ATTORNEY DID NOTHING. HE WAS INEFFECTIVE. ~~IN~~ IN HAROLD GIBSON V. STATE, 334 SC. 515, 514 SE. 2d 520. S.C. 1999) WHEN A DEFENDANT LACKS KNOWLEDGE OF MATERIAL EVIDENCE IN THE PROSECUTIONS POSSESSION, THE WAIVER OF CONSTITUTIONAL RIGHTS CANNOT BE DEEMED KNOWING AND VOLUNTARY. A BRADY CLAIM IS BASED UPON THE REQUIREMENT OF DUE PROCESS. SUCH A CLAIM IS COMPLETE IF THE IF ACCUSED CAN DEMONSTRATE (1) THE EVIDENCE WAS FAVORABLE TO THE TO THE ACCUSED. (2) IT WAS IN THE POSSESSION OF OR KNOWN TO THE PROSECUTION. (3) IT WAS SUPPRESSED BY THE PROSECUTION

LEGAL MAIL

(4) IT WAS MATERIAL TO GUILT OR PUNISHMENT, STATE FAILURE TO ASSIST DEFENSE BY DISCLOSING INFORMATION THAT MIGHT HAVE BEEN HELPFUL IN CONDUCTING CROSS-EXAMINATION AMOUNT TO CONSTITUTIONAL ~~VIOLATION~~ VIOLATION ONLY IF DEPRIVES DEFENDANT OF A FAIR TRIAL CONSTITUTIONAL ERROR OCCURS, AND CONVICTION MUST BE REVERSED, ONLY IF EVIDENCE IS MATERIAL IN SENSE THAT ITS SUPPRESSION UNDERMINES CONFIDENCE IN OUTCOME OF TRIAL. (DENIED THE RIGHT TO ALLOCATION COMMON LAW, PLAIN ERROR { U.S. V. AVILA-CORTEZ 582 F.3d 602 (5th Cir. 2009) }

NEWLY DISCOVERED EVIDENCE - CRIME SCENE PHOTO'S WERE MISSING BEFORE TRIAL APPLICANT 16-11-312 (B) INDICTMENT/CASE # 2006 GS 104812 TO BE VACATED WITH PREJUDICE. ON PRIOR CONVICTION, BOYKIN V. ALABAMA 395 US 238, 243 (1969) MCCARTHY V. US 394 U.S. 459, 467 (1969) JUDGE FAILED TO CONFIRM FACTUAL BASIS FOR PLEA WHEN HE DID NOT DIRECTLY ADDRESS DEFENDANT IN COURT STATE V. WHEELER, 193 SE. 2d 515; FAILURE TO CONDUCT PRELIMINARY HEARING PROPERLY DEMANDED BY DEFENDANT CHARGE WITH CRIMES BEYOND THE MAGISTRATES JURISDICTION, DEPRIVES COURT OF GENERAL SESSION OF JURISDICTION TO ~~INDICT~~ INDICT OR TRY THE DEFENDANT.

I OTIS ROBINSON 288206, BEING DULY SWORN ON 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.

OTIS ROBINSON #288206

SWORN TO AND SUBSCRIBED BEFORE ME THIS 29th NAME OTIS ROBINSON DATE

DAY OF May 2018
Jennifer Washington (L.S.)
NOTARY PUBLIC

MY COMMISSION EXPIRES March 8, 2020

APPLICATION TO PROCEED WITHOUT ~~PREPAYMENT~~ PREPAYMENT OF COST AND AFFIDAVIT IN SUPPORT THEREOF

(1) I AM THE APPLICANT IN THIS ACTION AND I BELIEVE I AM ENTITLED TO REDRESS

✓ (2) BECAUSE OF MY POVERTY ~~I~~ I AM UNABLE TO PAY THE COST OF SAID PROCEEDING OR GIVE SECURITY THEREOF.

OTIS ROBINSON #288206

SWORN OR AFFIRMED TO AND SUBSCRIBED BEFORE THIS 29th DAY OF May 2018
Jennifer Washington
NOTARY PUBLIC

MY COMMISSION EXPIRES March 8, 2020

LEGAL MAIL

OTIS ROBINSON

Proof Copy's

ATN-10X005209020
WARR-NA @*
CIT-16-1-57-FELONY

ARREST CHARGE 01-PROPERTY
OFFENSE, 3RD OR SUBSEQUENT
OFFENSE DATE-07/28/2005
PHOTOGRAPH AVAILABLE

ROBINSON, OTIS MAURICE / 09/19/2005
SC0100000 CHARLESTON CNTY SO
CASE-2005021283
ATN-10X005263014
WARR-77812DF
CIT-44-53-370(D) (4)-MISDEMEANOR

MY PCR
LAWYER TOLD
ME LIES AFTER
LIES

ARREST CHARGE 01-POSS 28G OR
LESS MARIJ OR 10G OR LESS
HASH 1ST
OFFENSE DATE-09/19/2005
PHOTOGRAPH AVAILABLE

ROBINSON, OTIS MAURICE 11/29/2005
SC0100100 CHARLESTON POLICE DE
CASE-0525736
ATN-10X005334003
WARR-H975625
CIT-16-13-160(A) (1)-FELONY

ARREST CHARGE 01-BREAKING
INTO AUTO OR TANKS, WHERE
FUEL STORED
OFFENSE DATE-11/29/2005
PHOTOGRAPH AVAILABLE

ROBINSON, OTIS A04/18/2006
SC0100100 CHARLESTON POLICE DE
CASE-129602
ATN-990000180975
WARR-K121639
CIT-16-11-311 FELONY

Counsel did
Not protect my
Rights to a Fair

ARREST CHARGE 01-BURGLARY - Trial
FIRST DEGREE
OFFENSE DATE-04/18/2006
PHOTOGRAPH AVAILABLE

CIT-16-11-311-FELONY
DOC-00GS10 WARR-K121639

CHECK
this out

COURT CHARGE 01-BURGLARY -
FIRST DEGREE
COURT DISP-NON-CONVICTION;
DISMISSED AT PRELIM
COURT DATE-06/20/2006
ATN-990000180975

DOUBLE
JEOPARDY

ROBINSON, OTIS MAURICE 07/04/2006
SC0100100 CHARLESTON POLICE DE
CASE-06013322
ATN-10X006185013
WARR-0120060704@
CIT-16-17-530-MISDEMEANOR

ARREST CHARGE 01-PUBLIC DISOR
DERLY CONDUCT
OFFENSE DATE-07/04/2006

DIRECT
IN PICT
IS FOR
1ST DEGREE
BURGLARY

So How CAN I ~~not~~ be charge
for 2nd degree AND convicted for
A charge that I am not here...
RULE 5-00027
FALL 1 OF AGT

Grievances Detail Report

Inmate ID

0000037283

Inmate Name

ROBINSON, OTIS M.

Status

CLOS

Group

Detention

Entered on Kiosk

A3K

Assigned To

DetOfc

Reviewed By

Resolved By:

Date Filed:

06/12/2013

Date Reviewed:

Date Resolved:

06/12/2013

Subject

REQUEST/DETENTION/MAIL/MAIL - OTHER REQUEST

Inmate's Statement:

I NEED TO FIND OUT WHAT HAPPEN TO MY PICTURES I HAD IN MY BOX THAT THE SHAKEDOWN CREW FROM TEAM "4", TOOK OUT OF MY BOX WHEN THEY SHOOKDOWN ABOUT A MONTH AND A HALF AGO AND DID NOT INFORM ME OF ANYTHING THAT HAS BEEN TAKEN OUT OF MY BOX THAT IS DEALING WITH MY CASE ; I PUT IN A REQUEST ABOUT THIS AND I HAVE'NT GOT ANY ANSWERS , WHATS GOING ON I WOULD LIKE TO KNOW

Officer's Review:

I TOLD MY TRIAL LAWYER THIS IS WHAT
ABOUT THE CRIME SCENE I TOLD MY PCR
photo's also. HE could have LAWYER TOO
give IT To me, BUT he did not
want to BECAUSE THE POLICE SET me up!

Officer's Findings:

PLEASE RESUBMIT USING THE RECORDS OPTION IN THE KIOSK MENU. ^SGT B
DUVAL^Sheriff Al Cannon Detention Center

RESNICK & LOUIS, P.C.
ATTORNEYS AT LAW

Christopher L. Murphy
Admitted in SC
cmurphy@rlattorneys.com

REPLY TO THE CHARLESTON OFFICE
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
(843) 800-1187

January 16, 2018

VIA U.S. MAIL

Mr. Otis Robinson, SCDC #288206
MONT. 275
Broad Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: *Otis Maurice Robinson v. State of South Carolina*
Civil Action No.: 2016-CP-10-5451

Dear Mr. Robinson:

I received your last letter about the crime scene photos and offer the following.

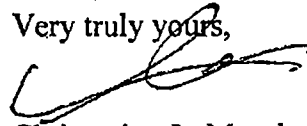
First, you allege that the officers from the Department of Corrections took your crime scene photos in violation of Brady. This is not a violation of Brady because your photos would have been produced from the prosecutor's office and sent to your criminal defense attorney. The fact that you got the photos in the first place indicates that the State complied with the Brady request. Furthermore, it makes no sense that you would be the only one to have copies of the photos in question. The State would have sent you copies of the photos, not originals. In addition, your defense counsel would have given you copies of the photos he received from the State as well. Therefore, assuming you lost your photos at a shakedown, both the State and defense attorney would have additional copies and/or the originals. Thus, there is no Brady violation.

I also understand you maintain your innocence in this case. However, the PCR application is not a venue to retry or relitigate all of the facts in your case. You were convicted by a jury and the State presented enough facts from which a jury could convict you.

Should you have any questions, please feel free to call or write me a letter.

With kindest regards, I am

Very truly yours,


Christopher L. Murphy, Esq.
For the Firm

CLM/jh

ALBUQUERQUE | BAKERSFIELD | CHARLESTON | DALLAS | DENVER | LAS VEGAS | MIAMI | ORANGE COUNTY |
ORLANDO | PHOENIX | RIVERSIDE | SACRAMENTO | SALT LAKE CITY | SAN DIEGO | TAMPA | LONDON, UK

www.rlattorneys.com

PROVEN FACTS

That's
Another
LIE

That's
my
CASE

Why
would
HE
like



RESNICK & LOUIS, P.C.
ATTORNEYS AT LAW

PROOF

Mitchell J. Resnick
Admitted in AZ, CA, CO, NV, NJ & NY
mresnick@rlattorneys.com

Christopher L. Murphy
Admitted in SC
cmurphy@rlattorneys.com

REPLY TO THE CHARLESTON OFFICE
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
(843) 212-0435

July 11, 2017

VIA U.S. MAIL

Mr. Otis Robinson, SCDC #288206
MONT. 275
Broad Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Otis Maurice Robinson v. State of South Carolina
Civil Action No.: 2016-CP-10-5451

Dear Mr. Robinson:

I received a copy of your trial transcript and I enclosed the state's partial motion to dismiss and demand for an evidentiary hearing. As you can see the State wants to narrow your claims to actual ineffective assistance of counsel. This does not really affect your claim since we don't have any basis to allege prosecutorial misconduct or violation of your due process. Please understand, I know you suspect these violations, but we be able to actually prove the violations. So far, talking to you and review of the letters has not produced any solid grounds.

The next issue is the lack of communication which is really the key to your case. You keep wanting to attack the prior pleas which I explained we cannot do based on the statute of limitations. However, this clearly shows in my mind that you did not fully understand the consequences of your prior pleas when deciding to go to trial.

I also attached the ethics opinion where the Supreme Court disbarred Mr. Locklair and your case appears to be the first matter. This will be part of the record and since this matter happened during the course of your appeal, I think it is very reasonable that he did not properly communicate with you.

In addition, it also appears you did not understand the evidence against you or the probability of a conviction. In addition, you did not put up a defense nor testify on your behalf. I know you had a prior record, but if you did not have anything to do with the crime, you needed to explain your story. This would qualify as your attorney's failure to properly communicate with you.

WAY WOULD HE LIE?

PHILLIP v. STATE
PRIOR CONVICTION
IS NOT
GOOD

LIES

he was on
drugs

ALBUQUERQUE | BAKERSFIELD | CHARLESTON | DALLAS | DENVER | LAS VEGAS | MIAMI | ORANGE COUNTY | ORLANDO |

PHOENIX | RIVERSIDE | SACRAMENTO | SALT LAKE CITY | SAN DIEGO | TAMPA | LONDON, UK

www.rlattorneys.com

you
don't
want to
help me

Very
important

Mr. Otis Robinson, SCDC #288206
 December 20, 2016
 Page: 2

WHY WOULD THE PCR MR. MURPHY
 TELL ME THIS IF THE STATUTE OF
 LIMITATION SAYS
 different

Not violent

False
 conviction

No good

			conviction (?) Referenced in the 2011 warrant for Burg 1st
2006 GS-10-4812	False Burg 1st	06/06/07	15 yrs suspended on 5 yrs probation. (See website printout) ✓
2006 GS-10-12813	Burg 2 True Burg Second	No indictment 06/06/07	15 yrs consecutive to the above Burg 1st charge. (See plea sheet you sent)
2011 GS-10-5416	False Burg 1st	10/29/13	Life without Parole

Based on the above, I am either missing information on a conviction or it looks like you were indicted for Burglary 1st and plead to a Burg 2nd. I can't tell and will need to see your trial transcript to make sense of your situation.

From what I can see, it looks like you were convicted of Burg 1st at trial and the judge sentenced you to life without parole based on either two prior Burg 2nd convictions (which appears to be the case) or due to a prior Burg 1st conviction.

In these situations, the courts go over this type of sentencing with counsel and the prosecutor so I am sure the transcript will explain the reasons for your LWOP sentence. As such I am requesting a full transcript. In South Carolina, you can get LWOP'ed for convictions of three violent offenses or two most violent offenses. Here, it looks like either scenario could apply to your situation.

Very important
 This is a major issue and one which would could very well provide you the relief you seek. It will take some research, but we will get to the bottom of the issue. I am hoping that you plead to two Burg 2nd and that one of them would not be classified as violent. That should be enough to get you a new trial. However, the courts might find that the issue is one of sentencing only and that the remedy is for you to pursue the matter before the administrative law judge. I will discuss this with you as I investigate matter. proof

Next you raise additional issues in your letter related to your conviction. First, you indicate that you did not have a preliminary hearing despite your request for one. This is not a valid issue to raise and will not get you anywhere. I say this because of the result of the

FIRST HE SAID HE WAS GOING TO GET TO
 THE BOTTOM OF THIS, BUT HE ALSO SAID THAT HE
 COULD NOT ATTACK THE PRIOR PLEA. HE LIED
 LOOK AT IT, I WANT MY FREEDOM

There is some things you cant hide.

RESNICK & LOUIS, P.C.

ATTORNEYS AT LAW

REPLY TO THE CHARLESTON OFFICE

234 Seven Farms Drive, Suite 128

Charleston, SC 29492

(843) 800-1187

January 23, 2018

VIA U.S. MAIL

Mr. Otis Robinson, SCDC #288206

MONT. 275

Broad Correctional Institution

4460 Broad River Road

Columbia, SC 29210

MY ATTORNEY
LIED TO ME

ABOUT MY CRIME
SCENE PHOTOS

THE CRIME
SCENE PHOTOS
ARE BRADY TO

Re: *Otis Maurice Robinson v. State of South Carolina*
Civil Action No.: 2016-CP-10-5451

Dear Mr. Robinson:

I received your last letter on January 12th asking for certain information. I already sent you a letter explaining why the missing photos are not a Brady violation. In addition, the facts in this case really have no bearing in your PCR application as we are focused on questions of law.

In your case, you have a very good defense with your attorney being disbarred for the use of drugs. At this point, it doesn't look like your attorney explained anything to you including the consequences of a guilty verdict. That being the case, he clearly committed reversible error. In addition, he will not be testifying as the State cannot locate him and probably does not have the power to subpoena him assuming if they do find him. These facts, coupled with the Court taking judicial notice of his disbarment, should entitle you to a new trial.

These facts give you the best chance at success in your PCR application. In order to find that you had competent counsel, the Court would have to condone the use of drugs while representing clients in trial which is something I find very difficult to believe.

Please allow this to serve as a response. As such, I will not be investigating these lost photos you mentioned anymore.

With kindest regards, I am

Very truly yours,

Christopher L. Murphy, Esq.
For the Firm

CLM/jh

THE MISSING
PHOTOS ARE
MY CASE

VIOLATION
OF
MY
CONSTITUTION
RIGHTS

cc 438
AG
SOL
CS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Otis Maurice Robinson,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-10-5451

ORDER OF DISMISSAL

FILED
2019 APR -5 PM 3:42
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief ("PCR") filed on October 13, 2016 by Otis Maurice Robinson ("Applicant"). An evidentiary hearing was convened on February 2, 2018 in Charleston County at the Charleston County Courthouse. Applicant was present and represented by Christopher L. Murphy, Esquire. Jessica Kinard, Esquire of the South Carolina Attorney General's Office, represented the State.

Before the Court were the records of the Charleston County Clerk of court regarding the subject conviction, applicant's records from the South Carolina Department of Corrections, and the application.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its September 2011 term, the Charleston County Grand Jury indicted him for first-degree burglary. He was represented at trial by John Locklair, III. Assistant Solicitors Stephanie Linder and Lindsey Byrd prosecuted the case.

On October 28th and 29th, Applicant appeared in the Charleston County Court of General Sessions before the Honorable R. Knox McMahon. The jury convicted the applicant as indicted

and Judge McMahon sentenced him to life imprisonment without the possibility of parole. Mr. Robinson filed a timely appeal, which was perfected by Lara Caudy of the Office of Public Defense. Following the perfection of the appeal, a brief was submitted pursuant to Anders v. California. The South Carolina Court of Appeals dismissed the appeal on June 8th, 2016 and the remittitur was returned to the circuit court on June 24th, 2016. The State filed a return and partial motion to dismiss on June 27th, 2017.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleged ineffective assistance of counsel, failure to challenge the chain of custody of evidence, a denial of due process due to false testimony, and prosecutorial misconduct for failure to challenge a prior conviction.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

On direct examination, Applicant testified that he had a 10th grade education and that he had his GED. He further testified that he was not treated for substance abuse or mental illness, but that he was accepted to the South Carolina STRONG drug program. During the Applicant's testimony he alleged that he never spoke with Mr. Locklair about the evidence in the case or the possible defenses. Applicant also testified to the fact that there were communication issues throughout the representation, with both in-person meetings with Mr. Locklair resulting in heated arguments. The Applicant also alleged that there was no discussion of a potential plea deal, the issue of life without the possibility of parole, and post-trial options.

On cross-examination, Applicant testified that he discussed the evidence with Mr. Locklair, specifically the blood and fingerprints found at the scene. He also testified that he was aware that he was facing life without parole, due to his being served with those papers. The Applicant further testified on cross-examination that he never asked Mr. Locklair to negotiate a

plea on his behalf.

Applicant's counsel was not available to testify, as nobody is aware of his current whereabouts. The State called Assistant Solicitor Stephanie Linder, who was able to testify about her interaction with Applicant's trial counsel. Ms. Linder testified that she extended a plea offer to Applicant's original trial counsel Robert King which was summarily rejected. Ms. Linder also testified that once the plea offer was rejected she served the life without parole notice, which meant that no offers would have been made to Applicant while he was represented by Mr. Locklair. Ms. Linder testified that Mr. Locklair's defense strategy was to try to knock out the dwelling prong of burglary first, she felt that this was likely the strongest defense Mr. Locklair could have presented under the circumstances. Ms. Linder also recalled how strong the case was against the applicant: DNA from blood found on the scene, fingerprint matches, witness identification, and comments by the Applicant stating he was at the scene.

IV. Applicable Law

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. *Id.*; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

“reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

Applicant argued that his counsel was ineffective for failing to discuss with him the following; possible defenses, the evidence in the case, possible plea deals, post-trial options, and the possibility of life without parole.

Based on the Court’s observation of Applicant’s inconsistent testimony at the hearing, the Court finds Applicant’s testimony not credible. Conversely, the Court finds the testimony provided by Assistant Solicitor Stephanie Linder to be consistent and credible. Applicant

testified on direct examination that Mr. Locklair did not review any of the evidence with him before the trial. The Applicant later testified on cross examination that Mr. Locklair did in fact review evidence with him including the blood and fingerprint evidence found on scene. The Applicant testified on direct examination that he was not aware that if he was found guilty he would be sentence to life without parole. On cross examination, the Applicant testified that he was aware of the life without parole notice and signed it when it was served on him.

The remaining allegations were refuted by the credible testimony of Assistant Solicitor Stephanie Linder. Ms. Linder testified that a plea offer was made to Applicant's prior counsel and that it is office policy that once an LWOP notice has been served no other offers will be made. This Court finds that Applicant's counsel was not deficient for not asking the solicitor to reinstate the offer, because the solicitor would have been under no obligation to revive the rejected offer. The Applicant's allegation of ineffective assistance of counsel due to the failure to communicate the plea offer fails both prongs of the test in Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

The Applicant alleged that his counsel was ineffective for failing to discuss with him potential defense strategies in his case and for not recovering the crime scene photos that would have shown it was all a setup. Ms. Linder testified that Mr. Locklair presented the best possible defense when he attacked the dwelling prong of the burglary first charge and that many of the crime scene photographs were entered into evidence along with the photographer being put on the stand. This Court finds that little evidence was presented on the allegation that the chain of custody was not challenged, but that the record reflects that witnesses were called to verify the chain and that the evidence was admitted thereafter. This Court finds that Applicant's trial counsel presented a proper defense and that Applicant failed to show what additional evidence

counsel could have presented to support this defense. Jackson v. State, 329 S.C. 345, 352, 495 S.E.2d 768, 771 (1998).

Finally, the Court finds that this PCR was predominately based on the fact that Mr. Robinson's trial counsel was subsequently disbarred and part of his disbarment was based on this case. Following the trial, Mr. Locklair failed to properly file Mr. Robinson's appeal. Mr. Robinson's representation was eventually taken over by the Division of Appellate Defense. Mr. Robinson was able to file a timely notice of appeal, which was perfected by the Office of Appellate Defense. The solicitor who tried this case testified at the hearing that she never had any problems dealing with Mr. Locklair during trial preparation or during trial. She testified that Mr. Locklair told her he had some issues communicating with his client. Little evidence was presented on the claim that the elements of the offense were not explained. Ms. Linder testified that the burglary first was based on prior convictions and that they had someone from the clerk of court's office testify to that fact. This Court finds the record reflects that an employee from the Clerk of Court's Office testified as to the prior convictions, therefore, there was not prosecutorial misconduct for charging Applicant with Burglary first degree based on those past convictions. Based on the disbarment opinion, it appears that Mr. Locklair was deficient in failing to properly file the appeal. However, because Appellate Defense took over and Mr. Robinson was able to appeal his case, he was not prejudiced. This Court also finds that Applicant has failed to present any testimony concerning his allegation that he was denied due process due to any sort of false testimony presented, therefore, this allegation is dismissed with prejudice as being abandoned by the Applicant.

VI. CONCLUSION

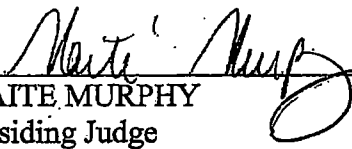
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 18 day of March, 2019.


 MAITE MURPHY
 Presiding Judge
 Ninth Judicial Circuit

St. Henry, South Carolina

State of South Carolina
County of Charleston

Otis Maurice Robinson
Applicant

v.

State of South Carolina
Respondent

THE STATE OF SOUTH CAROLINA 445
IN THE SUPREME COURT

Appeal From Charleston Court
of Common Pleas

Maite Murphy: Circuit Court Judge

CASE NO: 2016-CP-10-5451

MOTION FOR EXTENSION

I Otis Robinson the above listed Appellant do hereby move before this court to respectfully request for an extension because of the deprivations of the right I have to access to the courts, in meaning to that, I am being denied the right to access to the Law Library in which for the Appellant thus to prepare my case, I been Lock-down since this appeal had commence pre notice per Austin v. State 305 S.C. 453 (1991) said notice was submitted on the 18th day of March 2019

May 30, 2019

DATE

Otis Robinson
SIGNATURE

CC:
The South Carolina Supreme Court

FILED
2019 JUN -3 PM 2:50
JULIE J. ARMSTRONG
CLERK OF COURT

LEGAL MAIL

State of South Carolina
County of Charleston

In the Court of Common Pleas
) For The 9th Circuit
) INDICT. # 2011-GS-10-5416

Otis maurice Roberson # 288206

) Case No. 2016-CP-105451

vs.

) Motion To Amend Pursuant
) S.C. Code ANN 17-27-90
) RULE 59 e

State of South Carolina

FILED
2019 JUN -3 PM 2:51
JULIE J. ARMSTRONG
CLERK OF COURT

(A) Ineffective Assistance of Counsel (B) Denied Due Process
(C) Failed To Challenge Prior Conviction (D) Un-Counsel Con-
viction (E) Prosecutor Misconduct

(1). Challenging Validity of (2) prior uncounsel conviction,
that were used to enhance defendants sentence on burglary char-
ges.

(2). The right to counsel under Alabama v. Shelton, applied
retroactively on post conviction review that one of the (2)
prior un-counsel conviction were invalid, and could not be use
to enhance subsequent sentence, for which defendant did not
face possible incarceration.

(3). Denial of due process, The right to meaningful review on
appeal, because the trial attorney mischaracteried and failed
adequately to address the merits of each of my arguments ac-
cording to Fletcher V. Dickhaut,.

(4) My trial attorney Wesly Locklair III, admitted that he was
on drugs for several of years an by his conduct in connection
with his representation of his client Mr. Otis Robinson, he
violated the following provisions of the rules of professional
conduct Rule - 407, SCACR. Rule - 1.3 (Lawyer shall act with
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to inform about status of matter and promptly comply with and
to make efforts to expedite litigation consistent with in-
terest of client, and Rule - 8.4 (e) it is a professional mis-

conduct for a lawyer to engage in conduct prejudicial to administration of justice. " Violation of 6th Amendment "

(5). The right to allocution was denied according. State v. Muhammad, 478 F.3d 247, It could be possible that the defendant could have personally persuaded court to impose a lesser sentence by acknowledging wrong doing and expressed remorse, emphasizing changes in his personal circumstances State v. Hadden, 475, F.3d at 667, before imposing sentence. The District Court must address the defendant personally in order to permit him to speak or present any information to mitigate the sentence, This rule is not satisfied by merely affording the defendant counsel the opportunity to speak.

(6). On the prior conviction, Direct indictment Indict No. 06-GS-10-04812, Warrant/Citation No. C-10-14-0434 The trial court did not have jurisdiction to accept petitioner guilty plea of second degree burglary. Because the defendant was never indicted for second degree 16-11-312 (B). Burglary under US. v. Dionisio,

The fifth amendment provision prohibiting bringing civilian to trial for infamous crime unless on presentment or indictment of grand jury presupposes investigate body acting independently of either prosecuting attorney or judge who mission is to clear the innocent no less than to bring to trial those who may be guilty, So how can I be on probation for first degree burglary 06-GS-10-04812, When the sentencing sheet shows I been convicted for second degree 16-11-312 (b) for entering a building, This is a false conviction under Carter v. State, and Stone v. U.S., explaining the circuit court does not have subject matter jurisdiction to hear a guilty plea unless (1) There has been an indictment which sufficiently state offense (2) There has been waiver of indictment or (3) charge is lesser included charge of crime charge in indictment.

(7). The prior conviction for burglary 2nd degree 16-11-312 (b), for entering a building to which is a total violation of

5th Amendment according to Odom v. State, (SC 2002) 350, SC. 300, 566 S.E. 2nd. 528 Criminal Key 99 oral waiver of presentment was not sufficient to bestow subject matter jurisdiction on the trial court in absence of an indictment. a written waiver was required, waiver of presentment by grand jury and plea of guilty. In the absence of an indictment. There must be a valid waiver of presentment for the trial court to have subject matter jurisdiction on the offense, under Phillip v. State, State v. Clark, Sunnerall v. State, 278 SC. 255, 294 SE. 2nd 344 (1982), provides upon signing the waiver of presentment the defendant may plea guilty, they have held compliance with these sections is mandatory and further that they require require a written waiver. The charge I got locked-up for offense date - 04/18/2006 Warrant - K 121639 CiT - 16-11-311, Felony Doc - 00-GS-10 First Degree Burglary, Court disposition-Non-conviction,Dismissed at the Preliminary Hearing on Date - 06/20/2006, But they directed indicted the same cnarge, stating that on April 18, 2006. That I enter a dwelling. But I was convicted for a second degree entering a building, to which is not a lesser included offense according to Pittman v. State,.

As pursuant to Wilson v. Linder The element of entry of a building pursuant to 16-11-311 (A) are different from the elements of entry of a building pursuant to 16-11-312 (B) applicant was never indicted for entry of a building and he did not waive indictment for entry of a building and most importantly under the due process clause he was never put on "Notice" He was pleading to entry of a building, nor did the court advise him, and according to the fifth amendment that no person shall be held to answer for a capital or other infamous crime unless on a presentment or indicted of a grand jury, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case, nor be deprived of life, liberty, or property with out due process of law, My fifth amend-

Under penalty of perjury I certify that the information gave by me on this affidavit is true and correct and I understand that I will be subject to civil, and/or criminal penalties if I knowingly furnish false information.

The relief I am asking for is the prior burglary conviction to be vacated, and a new trial, and to be release.

Subscribe and sworn to before me on

This 21st day of May, 2019

Jermye Washington
Notary Public For South Carolina

My Commission Expires: March 3, 2023

Otis Maurice Robinson

Otis Maurice Robinson # 288206

Date: May 23, 2019

11AM 1007

ment rights were violated and my fourteenth amendment were violated, because no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united states, nor to deny to any person within its jurisdiction the equal protection of the law. according to Strickland v. Washington for ineffective assistance of counsel.

Applicant to proceed without payment of cost and affidavit in support thereof.

I Otis Maurice Robinson # 288206, hereby apply for leave to proceed in this action without prepayment of fees or cost or security there for 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 entitle to redress.

(2). Because of my proverty I am unable to pay the cost of said proceeding or give security thereof.

SUBSCRIBE AND SWORN TO BEFORE ME ON

THIS 21st DAY OF May 2019

Camille Washington

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES March 8, 2028

OTIS MAURICE ROBINSON ^{#288206} May 23 2019

APPLICANT DATE

Otis Maurice Robinson
Otis Maurice Robinson

CIA NO. 2016-CP-10-5451

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I HAVE SERVED THE
MOTION TO AMEND PURSUANT TO S.C. CODE ANN
17-27-90 UPON THE FOLLOWING COUNSEL OF RECORD
BY PLACING IN THE UNITED STATES MAIL WITH
SUFFICIENT POSTAGE AFFIXED THERE TO.

DATE 5-21-19

Otis Robinson
OTIS ROBINSON

FILED
2019 JUN -3 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT

CC: ATTORNEY GENERAL

CHIEF ADMINISTRATIVE

LEGAL MAIL

State of South Carolina
County of Charleston

In the Court of Common Pleas
) For The 9th Circuit
) INDICT. # 2011-GS-10-5416

Otis maurice Roberson # 288206

) Case No. 2016-CP-10540

vs.

) Motion To Amend Pursuant

) S.C. Code ANN 17-27-92

) Rule 59e

State of South Carolina

FILED
2019 JUN -7 PM 2:32
CLERK OF COURT
JULIE K. STROHME

(A) Ineffective Assistance of Counsel (B) Denied Due Process
(C) Failed To Challenge Prior Conviction (D) Un-Counsel Con-
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Subscribe and sworn to before me on

This 21st day of May 2019

Jennifer Washington

Notary public for South Carolina

My Commission Expires: March 8 2028

Otis Maurice Robinson

Otis Maurice Robinson

DATE: May 21, 2019

C/A NO: 2016-CP-10-5451

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I HAVE SERVED THE MOTION
TO AMEND PURSUANT TO S.C. CODE ANN 17-27-90 UPON THE
FOLLOWING COUNSEL OF RECORD BY PLACING IN THE UNITED
STATES MAIL WITH SUFFICIENT POSTAGE AFFIXED THERE TO.

DATE MAY 21, 2019Otis Robinson
OTIS ROBINSON

CC. ATTORNEY GENERAL
CHIEF ADMINISTRATIVE

Jennifer Washington 5-21-19
NOTARY PUBLIC

Commission Expires: March 8, 2028

FILED
2019 JUN -7 PM 2:32
JULIE J. ARMSTRONG
CLERK OF COURT
RY

LEGAL MAIL

SAV20110603432

WITNESSES

Roger Owen

Charleston City Police Department

AGENCY CASE NUMBER

1108929

ARREST WARRANT NUMBER

M611652

DATE OF ARREST

May 31, 2011

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

SEP 12 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1005416

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

OTIS MAURICE ROBINSON

DOB: 1969

B/M

Indictment for

Burglary First Degree

FILED

9/28/2011 9:29:38 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 12, 2011 the Grand Jurors of Charleston County present upon their oath:

Burglary First Degree

That in Charleston County, South Carolina, on or about May 31, 2011, the Defendant OTIS MAURICE ROBINSON, did enter the dwelling of James Fabian, located [REDACTED] St. Andrews Blvd., without consent and with the intent to commit a crime therein. That, in addition, the defendant was convicted of two prior burglaries; 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.


DALE SAVAGE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.Otis Maurice Robinson

AKA:

Race: BLACK Sex: M Age: 44DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 1st degreeINDICTMENT/CASE#: 2011GS1005416
A/W#: M611652
Date of Offense: 5/31/2011
S.C. Code §: 16-11-0311 MAR 28 2014
CDR Code #: 0079SC Court of Appeals
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 w/minor 1st or Levld Act) ☐ §17-25-45The 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.ATTORNEY: Stephanie B. [REDACTED] 72156 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 life w/o parole 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)	\$30	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

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: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Amanda Henderson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 6245Sentence Date: 29 Oct 12

ATTORNEY: A TRUE COPY
JULIE C. FARMSTRONG (SEA)
BY [Signature]
DEPUTY CLERK