

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Jennifer B. McCoy, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

DONALD EUGENE PETERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000828

APPENDIX

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JURY CHARGE

1 advocates in this case either for the State of South
2 Carolina or for this Defendant. You don't serve as jurors
3 to reward your friends nor to punish your enemies.
4 Obviously that would not be a system of justice at all.
5 It would be perverted. You have been selected by both
6 sides in this case to be fair and impartial jurors.

7 It is your duty then by your joint deliberations to
8 determine the truth of this case, giving to this Defendant
9 the benefit of every reasonable doubt on each and every
10 issue, and then to the facts which you determine to be
11 true take the law that I've just given you and arrive at a
12 verdict which will speak the truth in this case.

13 And that's what the word verdict means. It means a
14 truthful saying. And once you have done that you will
15 have fulfilled the oath that you took before you began the
16 trial of this case to well and truly try this case and to
17 render a true verdict according to the law and the
18 evidence so help you God.

19 We have every reason to expect that you will do just
20 that, and that you will do nothing less than that.

21 I want to instruct you now as to what the forms of the
22 verdict are in this case. And I'm going to ask Al if
23 you'll give this to the Forelady right there. She's the
24 person who's got to fill it out.

25 Ladies and gentlemen, the verdict forms which I'm

JURY CHARGE

1 giving you right now were given to the Forelady for her
2 inspection because she's got to fill this out. There are
3 three possible verdicts, three -- excuse me. Three
4 separate indictments and so you'll write a verdict as to
5 each indictment separately.

6 Your verdict in one charge does not necessarily
7 determine your verdict in another. This Defendant can be
8 convicted or acquitted on each and every charge contained
9 in those indictments. You're to consider the evidence as
10 to each charge separately from that of the other.

11 The order in which I have written those possible
12 verdicts down, that doesn't mean a thing in the world. I
13 simply write them in the order that I find easiest to
14 explain.

15 The first possible verdict form deals with the charge
16 of burglary in the first degree. And it says as to that
17 particular indictment number the charge of burglary in the
18 first degree: We, the jury, unanimously find the
19 Defendant, Donald Eugene Peters -- and the two possible
20 choices are, guilty, if the State has met its burden of
21 proof as to that charge; not guilty, if it has not met its
22 burden of proof.

23 And so, ladies and gentlemen, you will consider and
24 deliberate and consider the evidence in that charge or the
25 lack of evidence in that charge, and you'll arrive at a

JURY CHARGE

1 verdict to that particular count.

2 If you find that the State has met its burden of proof
3 you would indicate that by putting a check or an X mark,
4 Madam Forelady, in the space that you see we provided
5 there by the word guilty.

6 If you find that the State has failed to meet its
7 burden of proof, you'll put an X or a checkmark in the
8 space designated not guilty.

9 And those are the same choices that apply to each of
10 the other two charges. And you'll arrive at your verdict
11 and likewise express your opinion as to whether or not the
12 State has met its burden of proof by putting a checkmark
13 or X mark in either the guilty or the not-guilty blank
14 according to whether or not you think the State has met
15 its burden of proof.

16 The verdict form indicates, and I remind you that the
17 verdict has to be unanimous. All 12 of you have to agree
18 as to what the verdict's going to be. And, Madam
19 Forelady, you're not authorized to write that verdict form
20 or to sign it until all 12 Of you have agreed as to what
21 the verdict should be.

22 I'm going to send you to your jury room right now,
23 ladies and gentlemen, but I ask that you wait one last
24 time before you finally begin talking about this case
25 among yourself.

1 I've got to talk with the lawyers to see if I've left
2 out anything or if I've misstated anything, and if I have
3 I'll bring you back out to correct that.

4 But if we don't have to bring you back out we will
5 send in the items of evidence. And once the items of
6 evidence have arrived, that will be your signal to begin
7 your deliberations. You will begin your deliberations
8 then but not until then.

9 And once you have begin your deliberations you will
10 deliberate until you have reached a verdict at which time,
11 Madam Forelady, you will fill out that form and sign it
12 and knock on the door and let the bailiffs know. We'll
13 bring you out to receive the verdict at that time.

14 Ms. Alman, Ms. Stewart I'm going to ask you to stay.
15 You're going to have to get out of there so everybody else
16 can get out but don't leave the courtroom right now and
17 I'll talk with you in just a moment.

18 Ms. Alman and Ms. Stewart will remain here. The rest
19 of you ladies and gentlemen will retire to your jury
20 room.

21 (Jury exits courtroom at 3:58 p.m.)

22 THE COURT: Ms. Bannon, are there any exceptions or
23 requests for additional charge from the State?

24 MS. BANNON: No, Your Honor.

25 THE COURT: Thank you. Mr. Haight, other than

1 previously noted are there any additional requests or
2 exceptions from the defense?

3 MR. HAIGHT: Nothing additional, Your Honor.

4 THE COURT: Thank you. Folks, if you all will get
5 together and assemble and make sure we got all the
6 evidence is together and once you're satisfied, then we
7 can take it in to the jury and tell them they can start.

8 (Attorneys comply.)

9 THE COURT: Ms. Alman, Ms. Stewart, ladies you
10 obviously realize what your role in this trial is as
11 alternate jurors.

12 I know exactly how you feel. I used to practice all
13 week and I didn't get to play in the ball game either. So
14 that's kind of in essence what you all have been doing.

15 Your role as alternates, obviously, is to take the
16 place of any of those other 12 if they had not been able
17 to complete this trial. The significance of your coming
18 here today even though you don't get to deliberate is
19 this. If any of those 12 had not been able to show up and
20 if we didn't have you all here, we'd have to start this
21 whole thing over from scratch and everything else would
22 have been wasted up until that point.

23 So when we knew that you were here each day, we knew
24 we were going to be able to finish this trial. And you've
25 given us that peace of mind. And you're just as capable

1 as any of those folks. You paid as good attention as they
2 did. You could do the same job they could do if you were
3 asked to do it but you're not asked to do it.

4 I'm going to let you go. We've taken enough of your
5 time but I do want to express our gratitude to you for
6 your patience this week, for your promptness, for your
7 attention for what you have been doing.

8 And even though you don't get to deliberate and decide
9 this case, I hope you've gained a different appreciation
10 of how important folks like you are to this service.

11 You don't have to serve as a juror for the next three
12 years. You shouldn't even get called.

13 And you'll get a small check in the mail sometime in
14 the next couple weeks. It's not going to begin to pay you
15 for the time you've spent with us, but please add our
16 gratitude to the small amount of the check. I hope you've
17 been compensated in some way for what you've done.

18 And you can leave. You don't have to come back and
19 you don't have to call back. Your services are through
20 and with our gratitude. Thank you.

21 THE JUROR: Thank you.

22 (Alternates exit courtroom.)

23 THE COURT: If you'll instruct them they can begin
24 their deliberations and we'll be at ease in this case
25 until we hear from the jury.

QUESTION FROM JURY - FURTHER INSTRUCTIONS BY THE JUDGE

1 (Thereafter, deliberations commenced at 4:03 p.m.,
2 other matters were heard by the Court until 4:25 p.m.,
3 when the trial resumed as follows:)

4 THE COURT: Ladies and gentlemen, the jury has sent a
5 question out. I think this sets some sort of record for
6 the earliest questions I've ever received.

7 What again are the definitions of burglary in the
8 first degree, armed robbery and assault and battery in the
9 first degree.

10 I will tell them again what the definitions of those
11 things are and we'll move from there.

12 (Thereupon, note from jury was marked as Court's
13 Exhibit No. 1, and received into the record.)

14 THE BAILIFF: May I approach, Your Honor?

15 THE COURT: We have another question from the jury.

16 This question is: Is there an actual statement from
17 Donald Peters Doobie or recorded message or some sort of
18 document saying he was there that night, June 28th-29.
19 They're talking about written, talking about actual -- if
20 they're talking about written the answer is no. I'll
21 confirm the answer to that question before I go.

22 MS. BANNON: Your Honor, the State would ask that
23 you -- because there is an oral statement from him.

24 THE COURT: That's right.

25 MS. BANNON: So just to answer no to that would be,

QUESTION FROM JURY - FURTHER INSTRUCTIONS BY THE JUDGE

1 the State would object to that.

2 THE COURT: You're right. And I'll have to clarify
3 that. Thank you. I was going to say there's no written
4 statement.

5 Bring them out quickly before we get another question.

6 MR. HAIGHT: No objection, Your Honor.

7 (Thereupon, a note from the jury was marked as Court's
8 Exhibit No. 2, and was received into the record.)

9 (Jury enters courtroom at 4:28 p.m.)

10 THE BAILIFF: Jury is entering , Your Honor.

11 THE COURT: Thank you.

12 THE BAILIFF: Jury's seated, Your Honor.

13 THE COURT: Thank you. Ladies and gentlemen, I have
14 received two questions -- or two sets of questions from
15 you. I'll answer the second one first because it's the
16 shortest.

17 The question is: Is there an actual statement from
18 Donald Peters Doobie or recorded message or some sort of
19 document saying he was there that night June 28-29.

20 There is no written statement. There is no recorded
21 statement. There is no documentation insofar as that
22 answers your question.

23 As to whether there's an actual statement, that is a
24 matter of fact that you have to determine because there is
25 the testimony of officer -- Investigator Rice and

QUESTION FROM JURY - FURTHER INSTRUCTIONS BY THE JUDGE

1 Investigator Gobel that statements were made. So that
2 creates a factual question as to whether or not those
3 statements were made that you all have to decide.

4 But there is no written or recorded documentation in
5 that regard.

6 Does that answer your question? Everybody understand
7 that?

8 THE JUROR: Yes.

9 THE COURT: Okay. Now, the next question is: What
10 are the definitions of the three crimes in this case;
11 burglary first degree, armed robbery, assault and battery
12 first degree.

13 Let me go over those briefly. I need not emphasize to
14 you again the burden is on the State to prove these
15 elements beyond a reasonable doubt. You understand that.
16 You've not asked me again for the burden of proof. So I
17 will simply focus on the elements of the charges
18 themselves.

19 Let's start with burglary in the first degree. There
20 are three elements that have to be proven as a threshold
21 matter for any burglary.

22 And they are that somebody, in this case the
23 Defendant, enters a dwelling without consent with the
24 intent to commit a crime. So there has to be an entry.
25 In this case, an entry of a dwelling. It has to be

QUESTION FROM JURY - FURTHER INSTRUCTIONS BY THE JUDGE

1 without consent and it has to be with the intent to commit
2 a crime.

3 Now those are the threshold things that have to be met
4 in almost any burglary.

5 Now is there any question about any of those three
6 elements? Do all of you understand those three elements?
7 Okay. Does anybody have any questions that they want to
8 ask me about any of those three elements?

9 The entry. I can't tell you whether those elements
10 have been satisfied, you understand. That's a question
11 you all have to decide. All I can tell you is what the
12 elements are.

13 All right. So you understand that the State has to
14 prove then that the Defendant entered the dwelling, that
15 he entered it without consent, and that he entered it with
16 the intent to commit a crime. Now that's burglary.

17 Now what makes a burglary burglary in the first
18 degree? Well, you have to have an additional element
19 before it becomes burglary in the first degree. And it
20 can be one of these things. It doesn't have to be all of
21 them but any one of them.

22 In addition to those three things the State has to
23 also prove that either while he was going into the
24 dwelling or getting out of the dwelling or while he was in
25 the dwelling he was armed with a deadly weapon. That's

QUESTION FROM JURY - FURTHER INSTRUCTIONS BY THE JUDGE

1 one thing. Does everybody understand that as possible --
2 another element. Does everybody understand that?

3 Or that he caused physical injury to somebody who was
4 not participating in the crime. Does everybody understand
5 that?

6 Or that he used or threatened the use of a dangerous
7 instrument. Everybody understand that? Any questions
8 about that?

9 Or that he entered or remained in the dwelling in the
10 nighttime. Everybody understand what that means?

11 Okay. So you got the first three. You understand
12 now? You got to prove all three of those. Those other
13 four I gave to you, only have to prove one, not all four,
14 not three, not two, just one in order to satisfy that.

15 Does anybody have any questions about any of those
16 things? Everybody understand that? Everybody
17 understand?

18 THE JUROR: (Nods head.)

19 THE COURT: Okay. Thank you. All right.

20 Now, lets talk about armed robbery.

21 Armed robbery in its simplest terms is robbery while
22 using a deadly weapon. That means taking of somebody's
23 personal property from that person or from their presence
24 by the use of fear or violence, and with -- by the use of
25 a deadly weapon or what purports to be a deadly weapon.

QUESTION FROM JURY - FURTHER INSTRUCTIONS BY THE JUDGE

1 So the State has to prove that the property that was
2 taken in this case was the property that could be stolen,
3 personal property like money.

4 It has to prove that when it was taken it was taken
5 with the wrongful intent to carry it away and keep the
6 owner from having it anymore, and changing it over to the
7 use and possession of the person who takes it.

8 They have to prove that it was taken from the person
9 or the presence of the owner either by actual violence or
10 by putting that person in fear of violence, and that it
11 has to be taken while armed with a deadly weapon.

12 Do you have any questions about any of those things?
13 Everybody understand all of that?

14 Okay. Let's talk about assault and battery in the
15 first degree. Assault and battery in the first degree
16 occurs if someone unlawfully, that means against the law,
17 injures another person. That's the first element. Does
18 everybody understand that?

19 And, and that the injury occurred while the crime of
20 robbery or burglary or theft was occurring. Does
21 everybody understand that? Both of those. Has to be an
22 injury and it has to occur during the commission of either
23 a robbery or a burglary or a kidnapping or, excuse me, or
24 a theft I should say. Does everybody understand that?

25 Do you think that satisfies your questions in that

QUESTION FROM JURY - FURTHER INSTRUCTIONS BY THE JUDGE

1 regard?

2 THE BAILIFF: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 (Off-the-record discussion.)

5 THE COURT: Now, folks, if you've got any more
6 questions about any of this, I'll be glad to answer it now
7 before you go back there. Does everybody understand the
8 response?

9 First of all, about the elements charges that I just
10 gave you does anybody have any questions about that? Does
11 everybody understand the response to the question about
12 the statement? Everybody understand that?

13 Ma'am, do you understand?

14 THE JUROR: I do understand.

15 THE COURT: All right.

16 THE JUROR: But I don't know if -- I don't know --

17 THE COURT: If you'll do this for me.

18 THE JUROR: Okay.

19 THE COURT: If there's a part that you don't
20 understand, if you'll put it down in writing, we'll have
21 to deal with it that way. Okay?

22 THE JUROR: Okay.

23 THE COURT: We can't have a dialogue out here for
24 obvious reasons. But let me just go over the questions
25 again and see if I can't maybe head it off.

QUESTION FROM JURY - FURTHER INSTRUCTIONS BY THE JUDGE

1 I understood your question to be, was there an actual
2 statement from the Defendant in this case. Now, I take it
3 when you said actual, you all meant was there in evidence
4 some document because that's what everything else seemed
5 to indicate, recorded or some document saying that he was
6 there that night.

7 And my answer to you was no document has been entered
8 into evidence and so all you and I have got to go on is
9 what's in evidence. As I told you during my charge you
10 have to restrict your deliberations to the evidence that's
11 been offered, what's been offered into evidence either by
12 way of testimony or by way of exhibit.

13 And so, while there's no documentary evidence of a
14 statement like a recorded statement, or a signed statement
15 or a videotape of a statement or anything like that, there
16 is testimony of the two officers about a statement.

17 Now you all have to decide whether the statement was
18 actually made and if so what it was. That falls on yu.
19 And it's up to you to make those decisions. All I can
20 tell you is what is in evidence. You have to decide what
21 to do with the evidence. That's up to you.

22 But, if you need further inquiry in that regard if
23 you'd write it down and send it out, that would be good.

24 THE JUROR: I understand.

25 THE COURT: All right. Thank you.

1 All right, folks. If you'll retire to your jury room
2 and continue your deliberations. Let me know if we can
3 help you. Thank you.

4 (Jury exits courtroom at 4:39 p.m.)

5 THE COURT: Any exceptions to those remarks,
6 Ms. Bannon, from the State?

7 MS. BANNON: No, Your Honor.

8 THE COURT: Thank you. Mr. Haight, from the defense?

9 MR. HAIGHT: No, Your Honor.

10 THE COURT: Thank you. Now, let me scratch around and
11 try to find that other Court's Exhibit.

12 All right, folks. We'll stand aside.

13 (Deliberations continued until 5:09 p.m., when the
14 trial resumed:)

15 THE COURT: Ladies and gentlemen, we're advised that
16 the jury has reached a verdict. Are both sides ready to
17 receive the verdict? Is the State ready?

18 MS. BANNON: Yes, Your Honor.

19 THE COURT: Thank you. Is the defense ready?

20 MR. HAIGHT: Yes, Your Honor.

21 THE COURT: Ladies and gentlemen, the jury's going to
22 by brought in momentarily and the jury's verdict will be
23 announced and received. I understand we've got many
24 spectators out here. I'm not sure what interest some you
25 might have in the case. I imagine you have more than a

VERDICT & SENTENCING

1 passing interest or you would not have been here
2 throughout the trial.

3 None of us knows exactly what the verdict's going to
4 be at this point in time. And I imagine that one side
5 might feel some relief, and one side might feel some
6 anguish at the announcement of the verdict.

7 I just simply tell you that if you feel like you might
8 not be able to control your emotions when the verdict is
9 announced, I ask you to leave now, please, before the
10 verdict is announced because if you choose to remain we'll
11 expect you to use the same respect and dignity and decorum
12 that you've shown throughout the course this trial.

13 So I'll give you this opportunity at this time if
14 you'd like to, to step outside. Otherwise we'll expect
15 you to do just like you've been doing. Thank you.

16 Bring us the jury, please.

17 (Pause.)

18 THE BAILIFF: Jury entering, Your Honor.

19 THE COURT: Thank you.

20 (Jury enters courtroom at 5:12 p.m.)

21 THE BAILIFF: And the jury is seated, Your Honor.

22 THE COURT: Thank you, sir.

23 Ladies and gentlemen, I understand that you have
24 reached a verdict. Was the verdict unanimous, Madam
25 Forelady?

VERDICT & SENTENCING

1 MADAM FORELADY: Yes, sir, Your Honor.

2 THE COURT: Thank you. If you'll hand it to the
3 bailiff, please.

4 MADAM FORELADY: (Complying.)

5 THE COURT: Thank you. Madam Clerk, if you'll publish
6 the verdict, please.

7 THE CLERK: Yes, sir.

8 In the State of South Carolina versus Donald Eugene
9 Peters, Indictment Number 2011-GS-07-01456, 2011-GS-
10 07-01457 and 2011-GS-07-01458.

11 As to the Indictment Number 2011-GS-07-01456, the
12 charge of burglary first degree, we the jury unanimously
13 find the Defendant, Donald Eugene Peters, guilty.

14 As to the Indictment Number 2011-GS-07-01457, the
15 charge of armed robbery, we the jury unanimously find the
16 Defendant, Donald Eugene Peters, guilty.

17 As to Indictment Number 2011-GS-07-01458, the charge
18 of assault and battery first degree, we the jury
19 unanimously find the Defendant, Donald Eugene Peters,
20 guilty.

21 I certify that this is the unanimous decision of the
22 jury. Madam Forelady, ladies and gentlemen of the jury,
23 if is your verdict, if you'll indicate by raising your
24 right hand, please.

25 THE JURY: (Complies.)

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1 THE CLERK: Thank you.

2 THE COURT: Thank you. The record will reflect that
3 all have raised their hand.

4 Mr. Haight, does the Defendant desire polling of the
5 jury?

6 MR. HAIGHT: Yes, please, Your Honor,

7 THE COURT: All right. Ladies and gentlemen, we're
8 going to ask that you polled now. The clerk will call
9 your numbers and ask you to stand in place. She will ask
10 you: Are these your verdicts and still your verdicts.
11 And if you'll give whatever the appropriate answer is to
12 those questions, please. Madam Clerk.

13 THE CLERK: Juror Number 81, Christopher Fabian. Is
14 this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Thank you. Juror Number 49, Darla
19 Coleman. Is this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Thank you. Juror Number 41, Karl
24 Campbell. Is this your verdict?

25 THE JUROR: Yes.

VERDICT & SENTENCING

1 THE CLERK: Is it still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Thank you. Juror Number 280, John Smunk.

4 Is this your verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Thank you. Juror Number 277, Kindall

9 Smith. Is this is verdict?

10 THE JUROR: Yes.

11 THE CLERK: It still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Thank you. Juror Number 307, Karen Van

14 Vliet. Is this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Thank you. Juror Number 102, Annie

19 Grant. Is this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Thank you. Juror Number 211, Shirley

24 Parker. Is this your verdict?

25 THE JUROR: Yes.

VERDICT & SENTENCING

1 THE CLERK: Is it still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Thank you. Juror Number 289, Tracye
4 Stormer. Is this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Thank you. Juror Number 313, Teresa
9 Verroi. Is this your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Thank you. Juror Number 51, Cynthia
14 Colleran. Is this your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Thank you. And Juror Number 9, Cristy
19 Anderson. Is this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Thank you.

24 THE COURT: Is there anything further before the jury
25 is dismissed, Mr. Haight, from the defense?

VERDICT & SENTENCING

1 MR. HAIGHT: No, Your Honor.

2 THE COURT: Thank you. Ladies and gentlemen of the
3 jury, I want to thank you now for your service as jurors
4 in this particular case. And I'm going to dismiss you and
5 you don't have to come back and you don't have to call
6 back.

7 Before I let you go, let me tell you a few things.
8 Restrictions that were previously imposed upon you
9 obviously no longer apply. That is to say if someone
10 should ask you about this case now and if you wish to
11 discuss it with them, you have a right to do that. But
12 you still don't have to if you don't want. So if somebody
13 asks you about this case and you don't care to talk with
14 them about it, just tell them that and they'll stop.

15 In the unlikely occasion, if they continue to try to
16 talk with you about it after you've made that plain to
17 them, please let us know about that and we'll take care of
18 that.

19 In the final analysis, ladies and gentlemen, you only
20 have to answer to your own conscience for the decisions
21 that you make in cases like this. And I've heard
22 everything that you've heard and I can tell you that you
23 don't need to fear your conscience for the decision you've
24 made in this particular case.

25 You will get a check in the mail sometime in the next

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1 week or two. It's not going to begin to pay you for the
2 time that you've spent with us and for the contribution
3 that you've made to our system, leaving your homes and
4 your jobs and doing other things that you'd rather be
5 doing to help us do the things we have to do here.

6 If you'll add to the relatively small amount of that
7 check the gratitude that each of us feels for the
8 opportunity to have worked with you and to have seen the
9 value of your work and your promptness, and in your
10 attention, your punctuality, your good humor.

11 I don't comment upon the verdicts that juries reach
12 because I'm glad that you all have the difficult jobs of
13 making those decisions, but I comment upon the quality of
14 your service. You were on time and you were attentive
15 while you were here. And you were thoughtful in your
16 deliberations. You had questions that you wanted to ask
17 before you got into your deliberations. You wanted to be
18 certain about what you were going before you did it.

19 And that's what we expect jurors to do, and we
20 appreciate the fact that you've done that.

21 I hope that you will gain a better appreciation by
22 virtue of your service this week as jurors of how
23 important you folks like you are to the system of justice
24 that we all are affected by, impacted by. Whether we work
25 within this courtroom or not, it impacts us all.

VERDICT & SENTENCING

1 And you all have been an integral part of that this
2 week and we appreciate that.

3 I hope you never find yourself caught up in this
4 system. I hope you never find yourself seated over in
5 this side of the courtroom where the victims are seated or
6 on this side of the courtroom where the defendants and
7 their families are seated.

8 I hope you never find yourself seated there. But if
9 you ever do, if you ever get caught up in the system and I
10 can tell you, you don't have to volunteer to get caught up
11 in it. You can get caught up in it whether you want to or
12 not.

13 And if that should ever happen to you and you're in
14 that big courtroom where we were yesterday and you're
15 sitting inside the rail, either on the side where the
16 victims sit or on the side where the defendants sit, when
17 you turn around in your chair to look out into the faces
18 of the people that you see we have been able to summon as
19 jurors to try your case, that is a case that you have a
20 direct and personal interest in, you're going to hope that
21 you look into the faces of people just like yourselves.

22 The last thing in the world that you want us to do to
23 get jurors to try your case, a case that you have an
24 interest in, is to wander around the streets of Beaufort
25 and see if we can't scrape up 12 people who don't have a

VERDICT & SENTENCING

1 better thing in the world to do than to come and help .try
2 your case.

3 You don't want that kind of juror. Nobody wants that
4 kind of juror. They want people like you. People who do
5 have better things to do and things that you would rather
6 be doing but who are willing to put aside the things that
7 you had planned to do and the things that you would rather
8 be doing to help us do the things that we have to do. You
9 have given us that type of juror and we're grateful for
10 that.

11 You're free to go now. If you'll leave your badges
12 and your tags and whatever else you need to leave here.
13 We'll give them to some other unfortunates next week and
14 set about to get them involved in our system.

15 I still have matters of motions and sentencing to do,
16 but that does not necessarily involve you all. Thank you
17 all. You don't have to call back. You don't have to come
18 back. Thank you all.

19 FORELADY OF THE JURY: Thank you.

20 (Jury exits courtroom at 5:22 p.m.)

21 THE BAILIFF: Jury's clear, your Honor.

22 THE COURT: Thank you.

23 Mr. Haight, I'll be glad now to hear any additional
24 motions from the defense.

25 MR. HAIGHT: Your Honor, it's my understanding we have

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1 ten days in which to file motions.

2 THE COURT: Motions can be made within ten days. I
3 will note today the renewal of all motions which were made
4 at the conclusion of the State's case and renew all my
5 earlier rulings in that regard.

6 We will proceed, however, to the matter of
7 sentencing. I will not withhold sentencing for the
8 ten-day period. If we need to deal with that afterwards
9 then --

10 MR. HAIGHT: Well, certainly we would renew all
11 motions that have already been made.

12 THE COURT: Right. And I'll note the renewal of
13 those. And as I've said, I will simply renew my earlier
14 rulings in that regard to preserve the record in that
15 matter.

16 As a practical matter, there's not a whole lot of
17 additional motions in a criminal case that apply at the
18 conclusion of, other than arrest of judgment perhaps and
19 I'm not sure what else there are. There are matters of
20 course having to do with reconsideration and things of
21 that nature that can be made within ten days.

22 MR. HAIGHT: All right.

23 THE COURT: Is the State ready to proceed to the
24 matter now of sentencing, Ms. Bannon?

25 MS. BANNON: We are, Your Honor.

VERDICT & SENTENCING

1 THE COURT: All right. Mr. Peters, come around,
2 please, or do you stay in place right here? Is that how
3 you all do the sentencing? Okay. Thank you.

4 All right. Ms. Bannon, let me hear from you on the
5 matter of sentencing, please.

6 MS. BANNON: Thank you, Your Honor. I won't go too
7 far into the facts of the case. You're well aware of the
8 facts of the case.

9 THE COURT: Right.

10 MS. BANNON: However, I do think it's important to
11 highlight that Mr. Peters started his life of crime when
12 he was 17 years old. And from -- just looking at his rap
13 sheet, I see no way he could have had any other productive
14 job to contribute to society as he's been in and out of
15 prison on a series of increasingly serious and violent
16 crimes since 17.

17 When he was 17 in 1991 he was convicted of
18 shoplifting. Four years later he was convicted of
19 receiving stolen goods. Then in 1998 and '99, separately,
20 he was convicted of criminal domestic violence. 2000,
21 petty larceny. He was convicted of grand larceny value
22 over \$5,000 and public disorderly conduct in 2001.

23 And then in 2001 he was convicted of federal bank
24 robbery for which he received a sentence of 55 months
25 followed by five years probation. He wasn't actually able

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1 to complete probation, and it was converted to time at
2 which time I believe he got done with his federal sentence
3 around 2008.

4 He was back in the court system in 2006 for drinking
5 alcohol in public conveyance prior to the revocation and
6 he received a breach of trust with fraudulent intent value
7 greater than a thousand but less than \$5,000 in 2009.

8 Your Honor, I have copies of all certified prior
9 convictions which have previously been disclosed to
10 Mr. Haight which I will hand up now to be included as part
11 of the record.

12 THE COURT: Thank you. Mark those as State's Exhibit,
13 please.

14 (Thereupon, State's Exhibit No. 79, criminal history
15 record, was marked and received into evidence.)

16 MS. BANNON: Given the pointless nature, the
17 self-serving nature and clearly the drug-fueled nature of
18 this crime, Your Honor, the State believes a considerable
19 sentence is appropriate in this instance.

20 As Your Honor is aware, the minimum is 15 years and
21 all the way up to life. Given his bank robbery prior
22 which was actually rather recently, Your Honor, the
23 violent use of a weapon, the vicious beating and what
24 appears to be solely the motivation for helping his
25 druggy-prostitute girlfriend get more money for drugs and

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1 for the lack of remorse shown by Mr. Peters, the State
2 feels a considerable amount of time is appropriate.

3 Even in plea considerations, the lowest plea offer
4 ever extended, I believe, was 20 years.

5 MR. HAIGHT: That's correct.

6 MS. BANNON: Given the thorough presentation of
7 evidence as well as some additional testimony that was
8 received from Mr. Edwards and Ms. Baughman through the
9 preparation of this, the State feels that 20 would not be
10 appropriate anymore and a much higher sentence would be
11 appropriate.

12 THE COURT: All right. Thank you. Anything further
13 from the State?

14 Does the victim wish to be heard any further?

15 MS. BANNON: No, Your Honor.

16 THE COURT: All right. Thank you.

17 Mr. Peters, now I'll be glad to hear from you or
18 Mr. Haight, certainly from you or anybody else on his
19 behalf.

20 MR. HAIGHT: Your Honor, if I could first address
21 that. Drug fueled is correct. My client has had a drug
22 problem. There's no question about that. That's what's
23 gotten him into trouble.

24 I would point out, however, that really, particularly
25 in the last decade or so, you know, he really doesn't have

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1 a history of violence. For example, you know, he does
2 have a most-serious charge that we've talked about which
3 is the bank robbery.

4 My understanding of the facts from that bank robbery
5 were that in 2002 while he was on drugs he went into a
6 bank, simply handed the teller a bag and asked her to put
7 money in it. He did not have a weapon. He did not intend
8 to have a weapon.

9 And those matters were taken into consideration by
10 Judge Blatt in sentencing him to five years which is what
11 he was sentenced to on that. Obviously he has continuing
12 problems with drugs, are what caused him to have to go
13 serve time later in connection with that.

14 Certainly the other offenses that have been, you know,
15 in the last decade or so have been ones of petty thievery
16 really, the breach of trust, fraudulent intent, and
17 larceny, those types of things.

18 He does not historically have a history of violence
19 that -- the CDV charges, though arose out of issues
20 between he and his wife at the time who both had drug
21 problems and they would get into fights. And that's how
22 the police would deal with it. You know, and ultimately
23 that is the problem he has had, a long problem with
24 substance abuse. And that is what's gotten him into
25 trouble.

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1 And as to the current, the current problem, as the
2 State has indicated, you know, this was not anything that
3 was of any long standing plan. This was more of a spur of
4 the moment kind of thing, you know, fueled unfortunately
5 by substance abuse and to whatever extent he was involved.

6 He does have family members who are here today
7 supporting him; his sister, his daughter, his mother and
8 others. And, you know, we would ask that the Court take
9 into consideration he is a local kid, you know, he's lived
10 here all his life. His family is here. He has worked
11 productively in the past when he stays away from drugs,
12 you know, he's worked construction-type jobs, you know,
13 installing septic tanks and things of that nature and can
14 do well at that when he stays away from illicit
15 substances.

16 Certainly, 20 years is an incredibly long period of
17 time. We realize that the statutory minimum is 15. We
18 would ask for 15, Your Honor. Certainly nothing more than
19 what had been previously offered, certainly not anything
20 like life.

21 He does not have a history of that kind of thing. He
22 does not have prior burglaries. This is the first time
23 he's convicted or pled guilty to anything of that
24 seriousness. And we would ask the Court to bear that in
25 mind.

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1 I don't know if he has anything he'd like to say.

2 THE COURT: I'll be glad to hear from Mr. Peters or
3 from anybody on his behalf if they would like to speak for
4 him.

5 MR. HAIGHT: I don't know if his mom has anything to
6 say. They're too overwhelmed, I think, Your Honor.

7 THE COURT: I understand.

8 Mr. Peters, would you like to add to anything that's
9 been said on your behalf by Mr. Haight?

10 THE DEFENDANT: No, sir.

11 THE COURT: Ms. Bannon, do you have sentence sheets
12 prepared?

13 MS. BANNON: I do, Your Honor. I believe I handed
14 them to Mr. Haight.

15 THE COURT: Thank you.

16 I don't disagree, Mr. Haight, that substance abuse
17 obviously has been apparently the driving force in
18 Mr. Peters' life for sometime.

19 The evidence in this case is more compelling that it
20 was a driving force, certainly in the co-defendants as
21 well. And of course if Mr. Peters testified I might have
22 learned that he had the same drug background that they had
23 had.

24 The difficulty in this case of course is the impact
25 that drugs have on the lives of other people, that is,

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1 people who are not the direct users of the drugs
2 themselves. That's a problem. We can look on drug crimes
3 as -- somewhat incorrectly, but sometimes looked on as
4 crimes without victims other than the victims themselves
5 who are using the drugs.

6 But in a case like this we have a separate victim that
7 has been impacted by the choices that Mr. Peters and
8 others have made in this particular case. And that's
9 where the difficulty comes in. That's where this rises
10 above the sort of thing that Mr. Peters has been involved
11 in up to this point, its impact on other folks.

12 And so I have to take that into account obviously. It
13 weighs very seriously, regardless of the victim's nature
14 himself, and his own habits and things of that nature.

15 As far as the law is concerned and as far as these
16 charges are concerned, he's an innocent victim. He had
17 every right to be there, I suppose, doing what he had been
18 doing for all these years if he chose to do it without the
19 sort of harm that came to him as a result of the actions
20 of all these people.

21 It is unfortunate that Mr. Peters over the years has
22 either not had the chance or has not taken advantage of
23 the chances that were his to try to get rid of his drug
24 problem. I find it difficult to believe that at some
25 point in time, in his time in all of the federal or state

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1 systems that he has not tried to avail himself of drug
2 programs or things of that nature or when he's been out
3 he's not tried to avail himself of those things to try to
4 make his situation better, but he did not.

5 And now, he has the consequences of those things. And
6 these are serious crimes in every sense of the word.
7 They're most-serious crimes, some of them, under our
8 category. They're no parole, two of them are no-parole
9 offenses. And I'm mindful of that, but I can't ignore the
10 history, Mr. Peters, that you have created over the years.

11 Perhaps it's relatively not as serious as what you're
12 here today on, but it is a fact of an increasing and
13 accelerating pattern, unfortunately. And I have to take
14 that into account as well and I do.

15 On Indictment Number 1458, Mr. Peters, charging you
16 with assault and battery in the first degree, you're to be
17 committed to the Department of Corrections for a period of
18 ten years. You're to undergo drug and alcohol counseling
19 and treatment through the Addiction Treatment Unit if
20 you're eligible for it before you're released back into
21 this community.

22 On Indictments Number 4956 and 1457 charging you,
23 respectively, with burglary in the first degree and armed
24 robbery, you're to be committed to the State Department of
25 Corrections on each of these two charges to run concurrent

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1 to each other with credit for time served to 23 years in
2 prison.

3 Once again, you're to receive counseling and testing
4 and ATU treatment.

5 All of these sentences run concurrent to each other
6 with credit for time served.

7 Thank you.

8 We'll stand in recess until 9:30 tomorrow morning.

9 END OF DAY: 05:38 P.M.

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MOTIONS

1 ON FRIDAY, MARCH 1, 2013 AT 9:55 A.M.:

2 MS. BANNON: Judge, can -- we can put the motions for
3 the trial on the record, if you don't mind? Mr. Peters?

4 MR. HAIGHT: Good morning, Your Honor.

5 THE COURT: Let me get the notes on this case back up.

6 (Pause.)

7 Ms. Bannon, what do we have?

8 MS. BANNON: Your Honor, we are back on the record in
9 the trial that we did this week for Mr. Donald Peters so
10 Mr. Haight can put several motions on the record.

11 THE COURT: All right. Mr. Haight, I'll be glad to
12 hear from you.

13 MR. HAIGHT: Thank you, Your Honor.

14 Your Honor, the first motion is one for a new trial in
15 this matter. There are two primary bases for that.

16 The first one arises out of the victim's salute to the
17 jury as he was exiting the witness stand. And he made
18 some remarks. I don't know that I heard, but I think it
19 was -- well, but it was something to the effect of do
20 justice. The bell had been rung. So I didn't object
21 because I didn't see that I would do anything other than
22 highlight it.

23 THE COURT: Right.

24 MR. HAIGHT: But still in my view it was completely
25 inappropriate. And that would be our first, our first

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1 grounds for the new trial.

2 THE COURT: All right. He did -- I wasn't watching
3 him, but I recall now that he said something about, I
4 think he said something about do justice.

5 Quite frankly at that juncture Mr. Lanier's testimony
6 had been -- it had been less offensive than I had been led
7 to believe it possibly could have been and so I was sort
8 of relieved to see him get off the stand, frankly, and I
9 didn't raise the issue myself.

10 But the jury was aware that he was a former Marine,
11 that he was a crusty old guy, and of course he made not
12 secret about that during his stay on the stand as well.
13 And some of his answers were somewhat unpredictable,
14 perhaps not as responsive as Ms. Bannon would have liked
15 in certain respects, but overall he obviously made his
16 point in this case.

17 And I think he was, you know, he was pretty candid
18 about the fact that he didn't recognize who had hit him.
19 As a matter of fact, my recollection is that he didn't do
20 a whole lot of harm to your client from his testimony on
21 the stand.

22 MR. HAIGHT: Well, certainly, Your Honor, he was not
23 able to identify my client. I believe he did testify
24 that -- I'll get to later that, he thought both of the
25 assailants hit him.

MOTIONS

1 couldn't ever identify who attacked him.

2 And as Your Honor said in sentencing Kurtis Edwards
3 yesterday, I think we can all agree that Kurtis Edwards
4 was not 100 percent truthful in his testimony and I do
5 believe probably both defendants did hit and beat
6 Mr. Lanier.

7 As far as the assault and battery not charging assault
8 and battery second, I stand by my previous argument made
9 when Mr. Haight raised it that, of assault and battery
10 second is not a lesser-included under the subsection of
11 assault and battery first which was charged in the
12 indictment because there are separate elements to prove.

13 THE COURT: Regarding the record however, the tape of
14 the proceedings did pick up the reference to do justice.
15 And so I think when the final transcript comes out, it
16 will have that on it.

17 But the fact that the court reporter was not able to
18 hear it and, frankly, I wasn't sure what he said. I heard
19 him say something but I wasn't sure, because he was up, he
20 was away from the microphone and I think he was off the
21 stand. And it was not easy to hear. That's the reason we
22 have microphones, of course.

23 MR. HAIGHT: And, Your Honor, I think my point is I
24 had difficulty hearing him as well but he was in the
25 process of walking passed the jury, stopped, saluted,

MOTIONS

1 spoke to them so whether the court reporter heard it or
2 not, it's clear that the jury heard it.

3 THE COURT: And it's in the record. There's no
4 question about that.

5 And they -- I assume that they did hear it.

6 But once again, if you take the statement that he made
7 in that fashion, it was a rather benign statement frankly
8 and it was in essence the core of the jury's oath. They
9 just heard it from Mr. Lanier in addition to hearing it
10 from the clerk as they were sworn.

11 It was not the sort of thing that was inflammatory
12 that said, you know, put him in jail, throw the key away
13 and all these other things.

14 And, as I say, given the entirety of his testimony and
15 the fact that none of it pointed directly at your client
16 in that regard, I don't think that it inflamed the jury.
17 I don't think that it tainted the proceedings quite
18 frankly.

19 In essence, Mr. Lanier used a lot of language as a
20 former Marine or perhaps just as a cantankerous old guy
21 that we don't normally hear on the stand.

22 Except for the fact that he was a victim, I probably
23 wouldn't let him get away with a whole lot of that stuff
24 but I didn't reign him in because I realized that he was
25 victimized in this case and I thought that that would

MOTIONS

1 cause undue attention. And perhaps if I did that would
2 taint the proceedings for sure.

3 I don't find that that statement in and of itself so
4 tainted these proceedings that it deprived Mr. Peters of a
5 fair trial in this particular case so I must respectfully
6 deny the motion on that basis.

7 As to the failure to include the lesser included --
8 excuse me, the lesser charge of assault and battery
9 second, I simply reaffirm my earlier rulings that I don't
10 think that it is a lesser included of assault and
11 battery. It contains elements that are not contained in
12 the larger charge which seems to me to be -- it is a
13 Blockburger test, quite frankly, for determining whether
14 or not something is a lesser included.

15 So I would simply renew my earlier rulings in that
16 regard and deny the motion for a new trial on that basis
17 as to that charge.

18 All right, sir. And then I'll be glad to hear
19 additional motions.

20 MR. HAIGHT: Okay. Your Honor, the next motion is one
21 for reconsideration of the sentence in this case. It's my
22 understanding that yesterday Kurtis Edwards pled -- well,
23 was sentenced. He had pled guilty earlier, was sentenced
24 and received concurrent sentences of 18 years while my
25 client received concurrent sentences of 23 years. Kurtis

MOTIONS

1 Edwards was charged with the three charges that my client
2 was charged with plus an additional burglary second charge
3 plus a drug charge.

4 Certainly they both have prior records for bank
5 robbery. Certainly the facts as I heard them pointed to
6 Lauren Baughman as being the organizer of this
7 enterprise. And if somebody was kind of the next
8 organizer it would be Kurtis.

9 And with regard to any claim that Mr. Edwards might
10 have that he didn't participate in hitting Mr. Lanier,
11 it's clear from Mr. Lanier's testimony that both of the
12 assailants hit him.

13 So I'm questioning, Your Honor, the disparate
14 treatment where I don't see what distinguishes my client
15 from Mr. Edwards other than the fact that Mr. Peters
16 asserted his right to a jury trial.

17 THE COURT: Thank you. Ms. Bannon, if you want to
18 address that.

19 MS. BANNON: Certainly, Your Honor.

20 As discussed at Mr. Peters' sentencing, his criminal
21 record goes back to when he was 17. He's now 40, and he
22 pretty much picked up a new charge every year, every other
23 year since then.

24 Mr. Edwards only had a bank robbery charge. And so I
25 think that's a big distinguishing feature as well as the

MOTIONS

1 fact that Mr. Edwards testified against Mr. Peters.

2 I was frankly expecting that he would receive a lower
3 sentence in exchange for his testimony. And I think if he
4 had testified completely truthfully he would have. The
5 fact that there's only a five-year difference between the
6 two sentences, given the fact that Mr. Edwards
7 substantially aided in convicting Mr. Peters and also has
8 a much smaller record than Mr. Peters, I think completely
9 supports the difference in the sentences.

10 THE COURT: Thank you.

11 Looking at my notes in regard to the record, my
12 understanding is that Mr. Edwards only had a single bank
13 robbery charge. Mr. Peters had that and numerous other
14 charges that went back for many years. That is one
15 distinguishing term.

16 And Mr. Edwards' cooperation of course and testifying
17 is entitled to some consideration, certainly. Not a whole
18 lot, but some.

19 Even though the testimony of Mr. Lanier was that he
20 was struck by, he thought by both people the testimony
21 throughout was that only Mr. Peters had a baton at least
22 while the striking was going on.

23 And, and according to Ms. Baughman he had it in his
24 possession before and I think after as well. But the main
25 impetus of that of that appeared to be the fact that

MOTIONS

1 Mr. Peters was the one who did the majority of the damage
2 to Mr. Lanier.

3 But, one of the primary considerations that we take
4 into account as sentencing judges in every case is a
5 criminal record or a lack of a criminal record of a
6 defendant. It, for obvious reasons, carries significant
7 weight. The number of charges, the length of time that a
8 person has been involved in the criminal justice system,
9 the age of the individual at the time; all of those things
10 are factors that you take into account.

11 They are legitimate areas of concerns. They are
12 recognized, as a matter of fact, in the federal sentencing
13 guidelines as one of the primary determinants of what a
14 sentence should be.

15 In addition, obviously, to the crime itself. The fact
16 that Mr. Edwards also pled guilty to a drug charge was a
17 relatively insignificant charge, quite frankly. I don't
18 know what it carried but it was a small amount of time
19 comparatively speaking. The burglary second carried 15
20 years, of course.

21 But, all of those events, the burglary second done in
22 a vacant spot somewhere entitled that to concurrent
23 treatment and quite frankly had Mr. Peters pled guilty to
24 stealing the scrap iron he would have gotten the same
25 treatment on that charge.

1 It was the larger charges that was the focus of my
2 sentence in that regard. The sentences were different,
3 five years different. I do not feel that they were
4 disparate given the differences in these individuals'
5 criminal record and their involvement in the crime as I
6 saw it and the cooperation of Mr. Edwards in addition.

7 For that reason I respectfully note but must deny your
8 motion for reconsideration in the sentence.

9 MR. HAIGHT: Thank you.

10 THE COURT: Thank you, Mr. Haight.

11 MR. HAIGHT: I believe that's all we have, Your Honor.

12 THE COURT: Thank you, Mr. Haight. I enjoyed working
13 with you this week on the case. Thank you.

14 Mr. Haight, I've explained to Mr. Peters his right to
15 appeal within ten days.

16 MR. HAIGHT: Yes, Your Honor. Thank you.

17 END OF CASE: 10:09 A.M.

18 * * * * *

19 CERTIFICATE OF REPORTER

20
21 STATE OF SOUTH CAROLINA)

22 COUNTY OF AIKEN)

23 I, Cheri L. Young, Registered Professional Reporter
24 and Official Court Reporter for the State of South

25 ~~Carolina, Second Circuit At Large, do hereby certify that~~

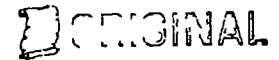
1 the foregoing is a true, accurate and complete transcript
2 of record of the proceedings had and evidence introduced
3 in the hearing of the captioned case, relative to appeal,
4 in the Court of General Sessions for Beaufort County, on
5 the 26th and 27th of February, and the 1st day of March,
6 2013.

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

9 I have hereunder set my hand this 8th day of May,
10 2013.

A handwritten signature in black ink, appearing to read 'Cheri L. Young', is written over a horizontal line.

11
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13 Cheri L. Young, RPR
14 Official Court Reporter
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SEP 26 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONALD EUGENE PETERS,

APPELLANT

APPELLATE CASE NO. 2013-000492

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in finding that assault and battery in the second degree is not a lesser included offense of assault and battery in the first degree and refusing to instruct the jury on the lesser included offense of assault and battery in the second degree?

STATEMENT OF THE CASE

In July of 2011, the Beaufort County Grand Jury indicted Appellant Peters for burglary first degree, armed robbery, assault and battery first degree and safecracking, indictments #2011-GS-07-1456, 1457, 1458, 1459. On February 25, 2013, Peters proceeded to jury trial before the Honorable G. Thomas Cooper. Attorney Ehrick K. Haight represented Peters at trial. Attorney Meredith Bannon prosecuted the case on behalf of the State. At the close of the State's case the judge directed a verdict of acquittal on the safecracking charge. The jury returned verdicts of guilty on the other charges. Judge Cooper sentenced Peters to twenty three (23) years for burglary first degree, a concurrent twenty three (23) years for armed robbery and a concurrent ten (10) years for assault and battery first degree. A timely notice of intent to appeal was served on March 4, 2013. This appeal follows.

STATEMENT OF FACTS

Ron Lanier was an ex-marine who operated Ron's Barber Shop right around the corner from his house in the Bon Aire subdivision in Beaufort County. (R. 124, lines 6-21; R. 135, lines 6-10). Lanier would pay Lauren Baughman and Ashley Pierce to do odd jobs around the house and to have sex with him. (R. p. 124, line 22 – p. 125, lines 1-14). Lauren's parents lived across the street from Lanier. (R. p. 243, lines 6-16). Lauren was addicted to prescription pills and had a \$300 dollar a day pill habit, taking 29 – 30 pills a day. (R. p. 244, lines 3-13). Lauren would clean house and have sex with Lanier in order to get money to support her pill habit. (R. p. 243, line 17 – p. 244, lines 1-21).

In June of 2011, Lauren was living with her boyfriend Kurtis Edwards (R. p. 245, lines 1-8). During this time Lauren was also in a sexual relationship with the appellant, Donald "Doobie" Peters. (R. p. 246, lines 2-25). The boyfriend, Edwards, was unaware that Lauren was sleeping with Lanier and Peters. (R. p. 247, lines 5-8). Peters and Lanier both knew that Lauren was sleeping with Edwards. (R. p. 247, lines 1-4; 9-12). Edwards testified that he met Lanier on two occasions through Lauren. Lanier testified that he knew "Doobie" from the neighborhood. (R. p. 138, lines 8-20).

On June 28, 2011, Lauren woke up with no pills, no money and a \$2,000.00 fine to pay. (R. p. 248; lines 7-24). Lauren went to Lanier's house in the hopes of getting money, as she had done in the past. (R. p. 267, lines 12-24). Ashley Pierce testified that Lauren called her and asked her to come to Lanier's house. (R. p. 220, lines 20-22). Ashley testified, "He [Lanier] liked girls to mess with each other in front of him, and he had money." (R. p. 220, lines 22-23). This time, however, Lauren was unsuccessful in obtaining money from Lanier. (R. p. 221, lines 4 – p. 222, lines 1-8; p. 251, line 17 – p. 252, lines 1-

16). Before leaving Lanier's house, Lauren testified that she unlocked the front door. (R. p. 251, lines 17-25). According to Lauren, she left Lanier's house, met Edwards and Peters and discussed robbing Lanier. (R. p. 252, lines 12-16).

Lanier testified that after Lauren and Ashley left his house two men burst in demanding his keys, money and beating him. (R. pp 126 – 131). Lanier testified that Lauren knew that he kept cash in a locked safe in the closet. (R. p. 132, lines 5-18). Lanier was unable to identify the men who entered his house. (R. p. 138, lines 18-23). Lanier claimed that the men took about nine thousand five hundred (\$9,500.00) dollars. Lanier admitted drinking whisky that night. (R. p. 126, lines 5-8). After the robbery Lanier went to his neighbor, Eugene Smith's house and Smith called 911. Smith is Lauren's step dad. (R. pp. 86-88). Smith testified that Lanier smelled of alcohol. (R. p. 88, lines 6-9). Lanier was not cooperative with law enforcement, emergency medical technicians who responded or with hospital staff. (R. pp. 134-136). Lanier was eventually handcuffed, placed in an ambulance and transported to the hospital where he refused treatment. (R. p. 135, line 17- p. 136, lines 1-8).

At trial Lauren admitted that she planned the robbery of Lanier and claimed that she asked Edwards and Appellant Peters to help her. (R. p. 268, lines 2-25). Lauren testified that prior to the break in at Lanier's house, Edwards broke into Lanier's barber shop in search of money. (R. p. 276, lines 20-24). At trial Edwards admitted breaking into the barber shop. (R. p. 330, lines 20-21). Edwards testified that while he was breaking into the barber shop, Lauren drove Appellant Peters to Whitmore Plumbing where he took some scrap metal. (R. p. 330, lines 12-25). According to Edwards, he and Peters broke into Lanier's house about two hours after the break in at the barber shop. (R. p. 342, lines 4-24).

Edwards testified that Lauren drove them to Lanier's house where he and Peters went in the front door Lauren unlocked earlier. (R. pp. 320-323) Lauren told Edwards Lanier kept money in a safe in the closet and he kept the keys to the closet around his neck. (R. p. 319, line 20 – p. 320, lines 1-13). According to Edwards, Peters took Edwards' police baton inside with him to protect against Lanier's dog. (R. p. 321, line 21 – p. 322, lines 1-20). The baton was later recovered from Edwards' closet. (R. p. 175, line 25 – p. 176, lines 1-5). Lanier's blood was found on the baton. (R. p. 354, lines 19-20). Edwards claimed that once inside Peters punched Lanier above the left eye. (R. p. 324, line 18 – p. 325, lines 1-5). Edwards testified that he took the keys out of Lanier's pocket and opened the safe but found no money in the safe. (R. p. 326, lines 3-17). Edwards eventually found Lanier's wallet and removed approximately three thousand (\$3,000.00) dollars. (R. pp. 327- 329).

According to Edwards, he and Peters left Lanier's house and Lauren picked them up. (R. p. 328, lines 18-24). The three bought some pills and then drove to Hardeeville where they spent the night in one hotel room. (R. pp. 333-335) The next day Peters sold the scrap metal he had taken from Whitmore Plumbing to M&J Metal Recycling in Hardeeville for two hundred twelve dollars and sixty seven cents (\$212.67). (R. pp. 229-232).

During trial the State presented a power point presentation summarizing text messages between Lauren, Edwards and Peters. The State also added audio to the text messages. (R. p. 209, lines 1-22). During pre-trial and again at trial Appellant objected to the admission of the power point presentation as hearsay. (R. p. 49, lines 3-12; Tr. pp. 49-50). The judge overruled the objection both pre-trial and again at trial. (R. pp 49-54, Tr. pp. 49-53). As to the added audio portion, trial counsel stated, "And, your Honor, I'm a little old fashioned. I don't know that I'm used to computers reading off testimony which is

what I'm told is going to happen. They say that it's non-emotional, but also these are text messages where, you know, many of us don't even understand what some of these things are supposed to be that are being said." (R. p. 149, lines 4-10). Trial counsel also stated, "I'm not quite sure how that's going to sound and whether I object to it or not" (R. p. 149, lines 12-13).¹

After interviewing Lanier and learning that Lauren and Ashley had been at his house prior to the robbery, Investigator Andrew Rice with the Beaufort County Sheriff's Department interviewed Lauren. (R. p. 169, lines 1-21). As a result of the interview Lauren was arrested, Edwards was interviewed and arrested and Peters was interviewed and arrested. (R. pp. 169 – 174). According to Investigator Rice, Peters denied going inside Lanier's house and denied involvement with taking money or beating Lanier but stated that he merely served as a lookout in the front yard. (R. p. 174, lines 18-21). The statement was not audio or video taped and was not reduced to writing.

¹ Trial counsel's failure to object to the State's interpretation of the text messages through the summary and added audio may be an issue to be explored in post conviction relief

ARGUMENT

The trial judge erred in finding that assault and battery in the second degree is not a lesser included offense of assault and battery in the first degree and refusing to instruct the jury on the lesser included offense of assault and battery in the second degree.

The jury found Appellant guilty of burglary first degree, armed robbery and assault and battery first degree. During the charge conference counsel for Appellant requested a charge on the lesser included offense of assault and battery second degree. (R. p. 380, lines 23-24). Counsel stated, "But certainly on the assault and battery charge, we would request a lesser included if at all possible." (R. p. 381, lines 5-6). The State objected arguing that assault and battery second degree was not a lesser included offense of assault and battery first degree. The prosecutor stated, "I object to the inclusion of assault and battery second. I don't believe it's actually a lesser included of it because it contains the separate elements that the State has to prove. And I think if you look at legislative intent, this is a higher degree of assault because you did it while committing this other crime." (R. p. 383, lines 3-9).

The judge agreed with the prosecutor and stated, "That's right And that's true. The question is whether or not the greater includes all of the elements of the lesser. And it seems to me that the lesser includes additional elements that is not in the greater. And that is the distinction between the degree of injury I'll look that up further, but I will – if I change my mind I'll charge the lesser and if I don't I'll let you know before we go to the jury." (R. p. 383, lines 10-18). Prior to the charge the judge stated, "On reconsideration, I've decided not to charge the lesser included of assault and battery second degree." (R. p. 385, lines 7-9). At the close of the jury charge the judge asked for any exceptions or additions to the charge stating, "Thank you. Mr. Haight [trial counsel for Appellant Peters], other than

previously noted are there any additional requests or exceptions from the defense?" (R. p. 443, line 25 – p. 444, lines 1-2). Trial counsel answered, "Nothing additional, Your Honor." (R. p. 444, line 3).

During post trial motions counsel moved for a new trial based on the failure to charge the lesser included offense of assault and battery second degree. (R. pp. 474-475). Counsel argued, "The other ground, Your Honor, that we would have is with regard to the assault and battery where the Court charged first but refused to charge second. (R. p. 475, lines 2-4). The State again argued that assault and battery second is not a lesser included under the subsection of assault and battery first which was charged in the indictment. (R. 476, lines 7-12). The judge denied the motion for a new trial stating, "As to the failure to include the lesser included – excuse me, the lesser charge of assault and battery second, I simply reaffirm my earlier rulings that I don't think that it is a lesser included of assault and battery. It contains elements that are not contained in the larger charge which seem to me to be – it is a Blockburger test, quite frankly, for determining whether or not something is a lesser included. So I would simply renew my earlier rulings in that regard and deny the motion for new trial on that basis as to that charge." (R. p. 478, lines 7-14). The trial judge erred in finding that assault and battery second degree is not a lesser included offense of assault and battery first degree.

The indictment alleges, "That in Beaufort County, South Carolina, on or about June 29, 2011, the Defendant, Donald Eugene Peters, did commit and assault and battery constituting an unlawful act of violent injury to the victim, Ronald Lanier, accompanied by circumstances of aggravation, to wit: did cause injury to the victim during a robbery; all in violation of the Common law of South Carolina and Section 17-25-30(C/L) of the code of

Laws of South Carolina (1976, as amended)” (R. p. 489). The other side of the indictment references assault and battery 1st degree and lists S.C. Code §16-3-600(C)(1). (R. p. 485).

S.C. Code §16-3-600(C)(1) defines assault and battery **first** degree and provides:

A person commits the offense of assault and battery in the first degree if the person unlawfully:

(a) injures another person, and the act:

(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or

(b) offers or attempts to injure another person with the present ability to do so, and the act:

(i) is accomplished by means likely to produce death or great bodily injury; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

S.C. Code §16-3-600(D)(1) defines assault and battery **second** degree and provides:

A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

(a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or

(b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

S.C. Code §16-3-600(D)(3) specifically states that assault and battery in the second degree is a lesser included offense of assault and battery in the first degree providing:

Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

The judge erred in finding that assault and battery in the second degree is not a lesser included offense of assault and battery in the first degree when the statute specifically states that assault and battery in the second degree is a lesser included offense of assault and battery in the first degree. The judge erred in refusing to charge the jury with the lesser included offense of assault and battery in the second degree.

The law to be charged is determined by the evidence presented at trial. State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986). A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense. Brightman v. State, 336 S.C. 348, 350-351, 520 S.E.2d 614, 615 (1999). Conversely, a trial judge does not err by refusing to charge a lesser included offense where there is no evidence tending to show the defendant was guilty only of the lesser offense. State v. Funchess, 267 S.C. 427, 429, 229 S.E.2d 331, 332 (1976).

There is evidence in the record from which the jury could infer that Appellant committed assault and battery in the second degree. The judge correctly instructed the jury that they could believe a small portion of the testimony of a single witness and disbelieve the larger portion of the testimony. (R. p. 424, lines 21-25). Investigator Rice testified that while Appellant denied going inside Lanier's house, he also denied being involved with any burglary, robbery/larceny. (R. p. 123, lines 18-21). Edwards testified that Appellant punched Lanier above the left eye. (R. p. 324, line 18 – p. 325, lines 1-5). The jury could believe Appellant's statement that he was not involved with any burglary,

robbery/larceny but disbelieve his denial of going into the house, believing Edwards' testimony that Appellant punched Lanier. The jury could have found that a punch, not thrown during the commission of a robbery, burglary, kidnapping, or theft could, constituted assault and battery in the second degree.

CONCLUSION

Based on the above argument, the conviction for assault and battery in the first degree should be reversed and the case remanded.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

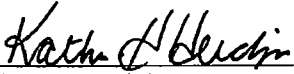
ATTORNEY FOR APPELLANT

This 26th day of September, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 26, 2014



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ORIGINAL⁵⁶¹

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Thomas E. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2013-000492

THE STATE, ...RESPONDENT

v.

DONALD EUGENE PETERS, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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RECEIVED ATTORNEYS FOR RESPONDENT

SFP 1 1 2014

SC Court of Appeals

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly declined Appellant's request to charge the jury on the lesser included offense of assault and battery in the second degree where no evidence was presented at trial from which it could be inferred only the lesser, rather than the greater, offense was committed.

STATEMENT OF THE CASE

Donald Eugene Peters (Appellant) was indicted at the July, 2011 term of the grand jury for Beaufort County for burglary in the first degree (2011-GS-07-1456), armed robbery (2011-GS-07-1457), assault and battery in the first degree (2011-GS-07-1458), and safecracking (2011-GS-07-1459). Appellant was represented by Ehrick K. Haight, Esquire, of the Beaufort County Bar. The State was represented by Assistant Solicitors Meredith Bannon and Mary Jordan Lempesis of the Fourteenth Circuit Solicitor's Office (R p 64). On February 25-27, 2013, Appellant proceeded to trial by jury before the Honorable Thomas W. Cooper, Jr. At the end of the State's case, the trial judge granted Appellant's motion for a directed verdict on the safecracking charge; however, the jury ultimately found him guilty of first-degree burglary, armed robbery, and first-degree assault and battery. Appellant was sentenced to twenty-three (23) years' imprisonment for first-degree burglary, twenty-three (23) years' concurrent imprisonment for armed robbery, and ten (10) years' concurrent imprisonment for first-degree assault and battery, for an aggregate sentence of twenty-three (23) years' imprisonment. (R p 484-496, R p 472, line 15-p.473, line 9). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

In the early morning hours of June 29, 2011, 69-year-old Ronald Lanier (the victim) was sitting in a chair in his kitchen when two men wearing hoodies came rushing in from his living room. They started beating him with something that felt like a pipe and demanded his keys. The victim put up his hands to try to protect his head, but the intruders continued to beat his arms, neck and shoulders until he was unconscious. When the victim woke up a short time later, he was bleeding from the head and discovered all of the telephones in his house had been disabled. He went to a neighbor's house and asked him to call 9-1-1. The victim testified the assailants took approximately \$9,500 from his locked safe which was located behind the locked door to his closet. The victim was not able to identify the two male intruders because he never saw their faces (R p.123, line 15-p 139, line 2). During the subsequent investigation the police developed Appellant, Kurtis Edwards (Edwards), Lauren Baughman (Baughman), and Ashley Pierce (Pierce) as suspects in the home invasion and ultimately charged each of the four co-conspirators in regard to his or her participation in the burglary, assault and battery, and armed robbery of the victim.

Trial

At trial, the State made an opening statement setting forth its theory of the case. The solicitor said Appellant, Edwards, and Baughman made a plan to rob the victim because he was old, lived alone, and had lots of money on hand as a result of his barbering business. Baughman knew about the money because she frequently visited the victim's house where she exchanged sexual favors and/or housecleaning for cash. The solicitor said that in the early hours of June 29, 2011, Baughman drove Appellant and Edwards to the victim's house. Appellant was armed with a metal baton when he and

Edwards entered the house and beat the victim until he gave up the keys to his closet and safe. They ransacked the house and stole all the money they could find, leaving the victim unconscious. The solicitor said Appellant, Baughman, and Edwards then spent the next 12 hours living-it-up in a hotel room. (R.p.75, line 10-p.77, line 21).

Next, Appellant's counsel made an opening statement. He told the jury the victim would not be able to identify Appellant as one of the assailants and that although the police recovered a baton likely used in the assault, the forensic evidence from the crime scene would not link Appellant to that baton. He acknowledged Appellant made a statement to the police that he was involved in the crimes but was only a lookout; however, he criticized the fact that Appellant's alleged statement was not written or recorded. Counsel explained Appellant's theory of the case was that Baughman and Edwards committed the crimes with another man, but had decided to identify Appellant as their "fall guy" so they could make deals with the State for lower sentences in exchange for their testimony against Appellant. (R.p.77, line 25-p.80, line 22).

The State then called Melanie Smith, the Beaufort County Communication Coordinator who oversees 9-1-1 calls, and Eugene Smith (Smith), the victim's neighbor who made the distress call to 9-1-1, to the stand. Smith explained he is Baughman's step-father and had been the victim's neighbor for approximately six years. He described waking up on the morning of June 29, 2011, when his dogs started barking, coming outside, and encountering the victim. The victim was bleeding from the head and wobbly, and said some people had broken into his house, beaten him up, and robbed him. (R p 81, line 18-p.88, line 16).

Next, the state called several witnesses who responded to the crime scene including Beaufort County EMT David Kendrick, Lance Corporal John Ferguson of the Beaufort County Sheriff's Office, and Staff Sargent Daniel Langford of the Sheriff's Office, who was serving as the patrol shift supervisor on the night of the incident. Kendrick was qualified as an expert in emergency medicine. He testified the victim was bleeding from head wounds, which in his opinion were serious. Kendrick said the victim told him he had been beaten with a baton-type weapon. He testified the victim had injuries consistent with being beaten with a baton. The victim had bruising on his upper body and lacerations on his head. (R.p.90, line 7-p.94, line 23). Ferguson confirmed the victim was bleeding from head wounds and was stumbling around. He entered the victim's house where he found blood on the kitchen floor, splattered on the kitchen counter, and down the front of the cabinets. Ferguson also found a pair of eyeglasses in a puddle of blood on the counter and a chair with blood smeared on it. He noticed a closet door that was open and saw a safe inside the closet. Ferguson described several rooms as being in complete disarray, while other rooms were not touched, as if the intruders were looking for something specific. (R.p.96, line 2-p.102, line 11). Langford testified there was blood everywhere in the victim's house and the house in shambles. He noted the victim's telephone had been disconnected from the wall and was lying in the middle of the floor. (R.p. 104, line 3-p.117, line 9).

The State then called the victim to the stand. He testified he had lived in his house for 35 to 40 years, was a barber, and runs "Ron's Barber Shop" right around the corner from his house. The victim had known Pierce and Baughman for years and described them both as "friends." He said Pierce and Baughman would come to his

house to do odd jobs and have sex with him, and he would pay them for sex. On the evening of June 28, 2011, Pierce and Baughman were hanging out at the victim's house drinking but they eventually left, leaving him home alone. The victim testified he normally only used the door beside his carport to go in and out of his house rather than the front door. He explained how he used a rope to secure the front door and that it couldn't be opened unless somebody cut the rope from the inside of the house. In the early morning hours of June 29, 2011, the victim was sitting in a chair in his kitchen when two men wearing hoodies came rushing in from his living room. They started beating him with something that felt like a pipe and demanded his keys. The victim put up his hands to try to protect his head, but the intruders continued to beat his arms, neck and shoulders until he was unconscious. When the victim woke up a short time later, he was bleeding from the head and discovered all of the telephones in his house had been disabled. He went to a neighbor's house and asked him to call 9-1-1. The victim testified the assailants took approximately \$9,500 from his locked safe which was located behind the locked door to his closet. He noted that because of his relationship with Baughman, she knew he kept a lot of cash in the safe in his closet. The victim was not able to identify the two male intruders because he never saw their faces. (R p.123, line 15-p 139, line 2)

The State subsequently called criminal investigator Andrew Rice of the Sheriff's Office to the stand. Rice initially went to the emergency room to interview the victim, and later went to the incident scene where he was able to talk the victim a second time. Rice saw blood all over the victim's kitchen and saw that the telephone had been pulled from the wall. He said the victim was unable to identify or precisely describe the two

intruders because they were wearing masks but had an idea Baughman and Pierce were connected to the crimes since they had been in his house earlier that evening. The only other person the victim could think of that had been in his house before the robbery was a man named Steve who had done work there, but the victim didn't know Steve very well. Rice said the sole description the victim was able to give of the intruders was that one was younger and the other was older, and that based on their speech he believed the younger one was black and the older one was white. (R.p.163, line 2-p.168, line 25).

After speaking with the victim, Rice located and interviewed Pierce and Baughman. Baughman admitted some involvement in the crimes and produced \$2,130 in cash which she claimed came from the home invasion. At the end of the interview Rice placed Baughman under arrest for the crimes against the victim. Next Rice located and interviewed Edwards, who was also placed under arrest. Based on these interviews, Rice determined Appellant was an additional suspect. Rice then obtained consent from Baughman and Edwards to search a bedroom and common area in the trailer where they were living. When Rice and Sergeant John Gobel arrived at the trailer, Edwards' roommate, Ronald Hopkins, answered the door, and advised them Appellant was also inside. Rice placed Appellant under arrest, advised him of his Miranda rights, and questioned him about the home invasion. At first Appellant denied everything, but after Rice told Appellant they had already talked to Edwards and Baughman, he stated he never went inside the house, was not part of taking the money or beating the victim, and merely served as a lookout in the front yard. Appellant told Rice that Baughman had driven him and Edwards to the victim's house, let them out, waited in the car until they were done, and drove them back to Edwards and Baughman's residence. Rice then

searched the residence. In Edwards and Baughman's bedroom he found an expandable baton similar to the kind police officers carry as well as several items of clothing that appeared to have bloodstains on them (R.p.169, line 1-p.176, line 9).

Rice testified he ultimately returned the money produced by Baughman to the victim and that at the time the victim was still hurting pretty badly from the injuries he received during the assault. Rice noted that during the course of interviewing the suspects he determined cell phones were a key form of communication in planning the home invasion. He obtained a cell phone from Baughman and although he was able to learn the cell phone numbers of all four suspects, he was only able to recover specific information and text message content pertaining to Baughman's phone. Rice identified the messages between Baughman and the other individuals and prepared a PowerPoint presentation displaying those texts. He also prepared an audio recording of two women and two men reading the actual text messages to and from Baughman's phone. (R p.176, line 10-p.181, line 24). Both the PowerPoint presentation and the audio recording of those slides were later introduced into evidence over Appellant's objection. (R.p.209, lines 8-22) Rice went on to describe the rest of his investigative efforts including obtaining buccal swabs from Appellant, Edwards, and the victim for purposes of DNA testing, submitting evidence to the DNA lab, taking photographs of the victim's injuries, taking photographs from Baughman's and Edwards' residence, taking photographs from the hotel in Hardeeville where the Appellant, Edwards and Baughman stayed after the home invasion, obtaining surveillance video from that hotel, and obtaining surveillance video from a metal recycling business in Hardeeville where the three were seen together near the time of the home invasion. (R.p.181, line 25-p.210, line 14).

Next, the State called the three other participants in the home invasion to the stand. Pierce, Baughman, and Edwards, each gave detailed and largely consistent accounts of Appellant's active participation in the planning and execution of the burglary, assault and battery, and armed robbery of the victim. First, Pierce described the sexual relationship she and Baughman had with the victim and how on the evening of June 28, 2011, Baughman hatched a plan to set the victim up to be robbed later that night. She testified Baughman said she was going to get help from Edwards and Appellant for the actual robbery, and then unlocked the front door while Pierce was talking to the victim in the kitchen. Pierce also described seeing Baughman, Edwards, and Appellant in a car together after the robbery and said she accepted one hundred dollars in "hush money" from them. (R.p.219, line 14-p.227, line 17).

Next, Baughman testified at length about her relationship with the victim, as well as her relationships with Pierce, Edwards, and Appellant. Baughman described how she and Edwards decided to rob the victim, and then secured Appellant's agreement to assist with the plan. She testified Appellant entered the victim's house with Edwards, and that he later told her he was the one who held the victim in the kitchen while Edwards broke the phones and got the money from the closet. Baughman testified Appellant had blood on his hands when he returned to the car and admitted he hit the victim with the baton. She testified Appellant was the intruder who beat the victim during the robbery and he and Edwards were the only two people who went into the house. She described what happened after the robbery and that she and Edwards gave Appellant two hundred dollars in exchange for his help. (R.p. 242, line 8-p.297, line 16).

Finally, Edwards testified in detail about his role in the home invasion and Appellant's active participation in the crimes. He explained his relationship with the other suspects, and described how Baughman came up with the plan, asked him to help, and later asked Appellant to help. Edwards testified he went into the victim's house first, with Appellant right behind him. After they were inside he witnessed Appellant and the victim wrestling in the kitchen, at which point Appellant hit the victim on the side of the head with his fist. He said Appellant was holding the baton in his fist and that upon being hit, the victim began to bleed and surrendered. Edwards testified he and Appellant were the only two people in the house when the victim was injured and that Appellant was the one carrying the baton (R.p 314, line 14-p 338, line 9).

The State also called Mauricio Jimenez, a worker at M&J Metal Recycling Center in Hardeeville, Rontak Patel, the manager of the Quality Inn in Hardeeville; John Donahue, DNA technical leader in the Beaufort County Sheriff's Office Forensic Laboratory, and Detective Sergeant John Gobel of the Sheriff's Office, to fill in additional details regarding the investigation and the events prior to and after the home invasion. (R.p.229, line 9-p.237, line 4; p.306, line 4-p.314, line 8; p.344, line 20-p.359, line 4; p 359, line 12-p 369, line 5) Gobel was present when the victim and the suspects were questioned, and he testified neither the victim, Baughman, nor Edwards indicated there was a third person besides Edwards and Appellant who entered the victim's house. He testified Appellant denied beating the victim and insisted he did not even go into the victim's house (R.p.364, line 13-p.366, line 5).

Motions and Charge Conference

After the State rested, Appellant moved for a directed verdict on all charges. The trial court granted a directed verdict on the charge of safecracking but denied the motion as to the remaining charges. After questioning Appellant outside of the presence of the jury in regard to his right to testify, the trial judge explained what law he intended to charge to the jury. (R.p.369, line 8-p.379, line 3).

In regard to the injury to the victim, the trial judge noted he would charge assault and battery in the first degree and said: "There appears to me to be no lesser included in this connection." He then asked the parties if they had any requests for additional charges or exceptions. Appellant stated: "Certainly, Your Honor, we would like a lesser included on the assault and battery charge, similarly on the burglary charge." The trial judge discussed the relatively new statutory definitions of assault and battery in the first and second degree, and the elements of those crimes and said he would take Appellant's request under consideration over the lunch break. The solicitor objected to a charge on assault and battery in the second degree, arguing she did not believe it is a lesser included offense because it has separate elements. The trial judge agreed that the typical test for determining whether an offense is a lesser included offense is whether the greater includes all of the elements of the lesser, and agreed the elements seemed different here, but advised he would further consider the request and make a ruling before the jury returned. (R.p 379, line 8-p.383, line 23). After the lunch break the trial judge ruled: "On reconsideration, I've decided not to charge the lesser included of assault and battery second degree." (R p 385, lines 5-9).

Closing Arguments, Jury Charge, and Verdict

During closing arguments, the solicitor claimed the evidence was sufficient to firmly convince the jurors that Appellant knew about the burglary, went into the victim's house to help commit the burglary, beat the victim, and took his money. She noted Appellant's own statement to the police admitting he went to the crime scene and served as a lookout. The solicitor explained the "hand of one hand of all" theory of accomplice liability and argued Appellant was guilty even if he wasn't the one who actually beat the victim and took the money. She described the circumstantial evidence linking Appellant to the crimes as evidence he was an accomplice, as well as the direct testimony from Baughman and Edwards that Appellant was an active participant in the planning and commission of the crimes (R.p.387, line 20-p.407, line 21). In response, Appellant's counsel noted the lack of fingerprints or DNA evidence which could link Appellant to the crimes and questioned the credibility of Baughman and Edwards. He argued Appellant's statement to the police was not knowing and voluntary, and that even in that statement Appellant emphatically denied any involvement with actually going into the victim's house. Counsel argued that while there was evidence someone accompanied Edwards into the victim's house, there was no credible evidence it was Appellant. (R.p.408, line 1-413, line 22)

The trial judge charged the jury on the State's burden of proof, the presumption of innocence, the defendant's right not to testify, the roles of the judge and jury, direct evidence and circumstantial evidence, expert witnesses, credibility of witnesses, criminal intent, accomplice liability, mere presence, and the elements of first-degree burglary,

armed robbery, and first-degree assault and battery. (R.p.413, line 24-p.443, line 21). In regard to first-degree assault and battery the trial judge charged the jury as follows:

Finally the Defendant in this case is charged with assault and battery in the first degree. Our law says that a person who commits the offense of assault and battery in the first degree if the person unlawfully, number one, injures another person. That's the first element, the unlawful injury of somebody else. And the injury occurred during the commission of a robbery or burglary or theft.

So in order for the State to meet its burden of proof in this particular case, it has to convince you beyond a reasonable doubt that Mr. Peters injured somebody else, and that the injury occurred during the commission of a robbery or burglary or theft.

(R.p.432, line 24-p.433, line 11). Upon completion of the jury charge, the trial judge asked, "... other than previously noted are there any additional requests or exceptions from the defense?" Counsel stated: "Nothing additional, Your Honor." (R.p.443, line 25-p 444, line 3).

After deliberating for approximately twenty minutes, the jury sent out two questions, including one asking for the definitions of the crimes. The trial judge re-charged the elements of the three offenses. (R.p.446, line 1-p.452, line 25) At the end of trial, the jury found Appellant guilty of first-degree burglary, armed robbery, and first-degree assault and battery. The trial court sentenced him to twenty-three (23) years' imprisonment for first-degree burglary, twenty-three (23) years' concurrent imprisonment for armed robbery, and ten (10) years' concurrent imprisonment for first-degree assault and battery. (R.p.484-496; R.p.472, line 15-p 473, line 9) Appellant renewed all motions he had previously made and the trial court renewed its earlier rulings. (R.p 464, lines 10-15).

ARGUMENT

I.

The trial court properly declined Appellant's request to charge the jury on the lesser included offense of assault and battery in the second degree where no evidence was presented at trial from which it could be inferred only the lesser, rather than the greater, offense was committed.

Appellant argues the trial court erred in finding that assault and battery in the second degree is not a lesser included offense of assault and battery in the first degree. He further argues the trial court then erred in failing to charge the lesser included offense of assault and battery in the second degree because there was evidence in the record from which the jury could infer he committed only this lesser offense rather than assault and battery in the first degree. He contends the jury could believe he injured the victim when he entered the victim's house and punched the victim in the head while the burglary and armed robbery were being committed by Baughman and Edwards, but also believe the punch was **not** thrown "during the commission of" that very same burglary and armed robbery. The State disagrees and submits Appellant's argument is without merit.

A person commits assault and battery in the first degree if the person unlawfully "injures another person," and the act occurred "during the commission of a robbery, burglary, kidnapping, or theft," regardless of the severity of that injury. S.C. Code Ann. § 16-3-600(C). A person commits assault and battery in the second degree if the person "unlawfully injures another person" and "moderate bodily injury to another person results." Here, no evidence was presented at trial to support a charge on the lesser included offense of assault and battery in the second degree. Indeed, regardless of which theory of the case prevailed, Appellant could not have been guilty of **only** the lesser charge. For the same reason, even if the trial court's charging decision was error, it was

harmless because the jury's verdict reflected it could not have convicted Appellant of second degree assault and battery even if the option had been available. The jury specifically determined Appellant was guilty of committing both a burglary and a robbery, which means that any injury Appellant inflicted upon the victim resulted from his act during the commission of those crimes and was necessarily an assault and battery in the first degree. Given the verdict, Appellant's act of injuring the victim simply could not have been **only** assault and battery in the second degree. For these reasons, Appellant's convictions should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The law to be charged to the jury is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993).

"A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). "The mere

contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

Analysis / Discussion

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 substantially overhauled the state's criminal law in regard to assault and battery offenses. State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014). It codified attempted murder in section 16-3-29 and four degrees of assault and battery in section 16-3-600. S.C. Code Ann. §§ 16-3-29 & 16-3-600 (Supp. 2013). The new degrees of assault and battery are, in descending order of severity, assault and battery of a high and aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees. Middleton, 407 S.C. at 315, 755 S.E.2d at 434. Under the statute, ABHAN is a lesser-included offense of attempted murder. S.C. Code Ann. § 16-3-600(B)(3). Assault and battery in the first degree is a lesser-included offense of both attempted murder and ABHAN. S.C. Code Ann. § 16-3-600(C)(3). Further, assault and battery in the second and third degree are each lesser-included offenses of every preceding offense. S.C. Code Ann. § 16-3-600(D)(3) & (E)(3).

At trial, the judge ruled “I’ve decided not to charge the lesser included of assault and battery second degree.” (R.p.385, lines 5-9). Appellant contends this was error. In relevant part, the statute provides:

(C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:

(a) injures another person, and the act: (i) involves nonconsensual touching of the private parts . . with lewd and lascivious intent, or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft, or

(b) offers or attempts to injure another person with the present ability to do so, and the act (i) is accomplished by means likely to produce death or great bodily injury; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

S.C.Code Ann. § 16-3-600(C)(1) (Supp. 2013) (emphasis added). It goes on to provide:

(D)(1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

(a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or

(b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

....

(3) Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

S C Code Ann § 16-3-600(D) (Supp. 2013) (emphasis added).

Initially, the State submits that although the solicitor argued that assault and battery in the second degree is not a lesser included offense, and the trial judge entertained the merits of that argument, the trial court appears to ultimately have found it

is indeed a lesser included offense, but nevertheless declined to charge it because it was not supported by the evidence. Specifically, the court held: "I've decided not to charge **the lesser included** of assault and battery second degree" (R p.385, lines 7-9) (emphasis added). Arguably, the trial judge's later comments during the post-trial ruling suggest the initial ruling was based on the conclusion assault and battery in the second degree is not a lesser included offense; however, the clear and unambiguous statement during trial belies this argument. Whatever the case, even if the basis of the trial court's decision was erroneous, the ultimate ruling was proper and should be affirmed

Under subsection (a), any injury constitutes assault and battery in the first degree if it occurs during the commission of a robbery, burglary, kidnapping, or theft. Here, the trial judge properly declined to instruct the jury on assault and battery in the second degree because the evidence presented during trial **only** supported a conclusion the victim was injured during the commission of a burglary and robbery. To the extent Appellant participated in the burglary and robbery and the victim was injured, he was guilty of first degree assault and battery and could not be guilty of assault and battery in the second degree. To the extent Appellant did not participate, as he argued, he would not be guilty at all. There is no logically consistent way he could have committed an assault and battery alone, without it being connected to the other crimes. Indeed, Appellant's own theory of the case rejects this scenario. His only argument was that his statement to the police was not knowing and voluntary, and that even in that statement he emphatically denied any involvement with actually going into the victim's house. Counsel argued that while there was evidence someone accompanied Edwards into the victim's house, there was no credible evidence it was Appellant (R p.408, line 1-413, line 22). In other

words, Appellant's sole claim is that he did not commit any assault and battery, not that he committed an assault and battery outside the scope of the burglary and armed robbery.

Based on the evidence and this theory of defense, the jury could only find that Appellant committed assault and battery in the first degree, or was not guilty. See State v. Mallory, 270 S.C. 519, 523, 242 S.E.2d 693, 695 (1978) (“[I]t is not error to refuse to submit the question of simple assault and battery to the jury under an indictment for assault and battery of a high and aggravated nature, unless there is testimony tending to show that the defendant is only guilty of a simple assault and battery.” (emphasis added)); see also State v. Small, 307 S.C. 92, 94, 413 S.E.2d 870, 871 (Ct. App. 1992) (“The evidence does not warrant the charge of the lesser offense of simple assault. Small was guilty of assault and battery of a high and aggravated nature or not guilty. Accordingly, there is no merit to his claim that the court erred in refusing to give the requested charge.”).

The evidence established either Appellant injured the victim during a burglary and robbery, or he did not injure, rob, and burglarize the victim at all. If Appellant only acted as a lookout, he is guilty of the burglary and the armed robbery under the “hand of one is the hand of all” theory of accomplice liability. See State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (discussing a jury instruction on accomplice liability). If Appellant simply entered the house and unlawfully injured the victim, he committed a first degree burglary even if he didn't participate in the armed robbery. See State v. Gilliland, 402 S.C. 389, 397, 741 S.E.2d 521, 526 (Ct. App. 2012) (“A person is guilty of first-degree burglary if he “enters a dwelling without consent and with intent to commit a crime in the dwelling” and either enters or remains in the dwelling during the

nighttime. S.C.Code Ann. § 16-11-311(A) (2003) Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling.”). As a consequence, any injury occurred while that burglary and/or the armed robbery was being committed, and Appellant is guilty of assault and battery in the first degree. Because no evidence was presented supporting a finding the assault and battery on the victim constituted an assault and battery in the second degree, the trial judge did not err in declining to instruct the jury on the lesser included offense Appellant’s convictions should be affirmed.

Harmless Error

Errors are considered to be harmless when they could not reasonably have affected the result of the trial. State v. Adams, 354 S C 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) “It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him ” State v. Hariott, 210 S C 290, 298, 42 S E.2d 285, 288 (1947). When considering whether an error with respect to a jury instruction was harmless, the appellate court must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict. Middleton, 407 S.C. at 317, 755 S E.2d at 435. In making a harmless error analysis, the inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered. Id Thus, whether or not the error was harmless is a fact-intensive inquiry Id

In the instant case, the evidence adduced at trial demonstrates that, notwithstanding the failure to charge the lesser-included offense, the only conclusion established by the evidence is that Appellant was guilty of assault and battery in the first degree, given the facts that Appellant was found guilty of burglary and armed robbery, and the victim was injured during the commission of those crimes. The State submits there is no other way to construe the evidence in this case but that Appellant “injured another person, and the act . . . occurred during the commission of a robbery, burglary, kidnapping, or theft ” S.C Code Ann. § 16–3–600(C)(1) (Supp. 2013) Therefore, any error in failing to charge the lesser-included offense was harmless because the erroneous instruction did not contribute to the verdict beyond a reasonable doubt Middleton, supra; Adams, supra Appellant’s conviction for assault and battery in the first degree should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, convictions, and sentence of the lower court be affirmed.

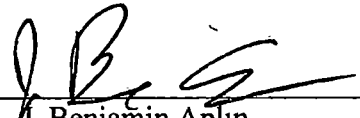
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
September 11, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Thomas E. Cooper, Jr., Circuit Court Judge

Appellate Case No 2013-000492

THE STATE,.....RESPONDENT

v

DONALD EUGENE PETERS,

APPELLANT

CERTIFICATE OF COUNSEL

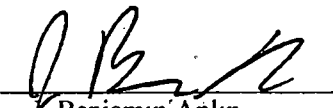
The undersigned hereby certifies that the Final Brief of Respondent complies with Rule
211(b), SCACR

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
September 11, 2014

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SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Donald Eugene Peters, Appellant.

Appellate Case No. 2013-000492

Appeal From Beaufort County
Thomas W. Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-247
Submitted February 1, 2015 – Filed May 13, 2015

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General John Benjamin Aplin, both of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Gilmore*, 396 S.C. 72, 77, 719 S.E.2d 688, 690 (Ct. App.
2011) ("In criminal cases, we review the decisions of the trial court only for errors

of law. Therefore, in the context of a trial court's decision not to charge a requested lesser-included offense, [this court] review[s] the trial court's decision de novo." (internal quotation marks omitted)); S.C. Code Ann. § 16-3-600(D)(3) (Supp. 2014) ("Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree . . ."); *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) ("Errors, including erroneous jury instructions, are subject to harmless error analysis."); *State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004) ("The law to be charged is determined by the evidence presented at trial. A trial [court] must charge a lesser[-]included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense. Conversely, a trial [court] does not err by refusing to charge a lesser[-]included offense where there is no evidence tending to show the defendant was guilty only of the lesser offense." (citations omitted)); *Gilmore*, 396 S.C. at 77, 719 S.E.2d at 691 ("[T]here must be evidence the defendant committed [the lesser offense] *instead of* [the greater offense]."); *State v. Geiger*, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006) ("The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty only of the lesser offense.").

AFFIRMED.¹

SHORT, LOCKEMY, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 05, 2015

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Donald Eugene Peters
Lower Court Case No. 2011GS0701456, 2011GS0701457, 2011GS0701458
Appellate Case No. 2013-000492

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Kathrine Haggard Hudgins, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire
Isaac McDuffie Stone, III, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of BEAUFORT)DONALD EUGENE PETERS #316642)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015 CP 07-2251

APPLICATION FOR

POST-CONVICTION RELIEF

2015 SEP 18 PM 3:43
CLERK OF COURT
J. S. B.**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 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 LEE CORRECTIONAL INSTITUTION: 990 WISACKY HIGHWAY;
ELLENBOROUGH, S.C. 29010
2. Name and location of Court which imposed sentence BEAUFORT COUNTY GENERAL
SESSION: P.O. 12297 BEAUFORT S.C. 29511
3. Name(s) of co-defendant(s) (if any) ASHLEY PIERCE, LAUREN BAUGHMAN,
KURTIS EDWARDS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-07-1456 BURGLARY FIRST DEGREE
 - (b) 2011-GS-07-1457 ARMED ROBBERY

- (c) 2011-GS-07-1458 ASSAULT & BATTERY FIRST DEGREE
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Feb. 27, 2013 23 YEARS CONCURRENT WITH ARMED ROBBERY
- (b) Feb. 27, 2013 23 YEARS CONCURRENT WITH BURGLARY FIRST DEGREE
- (c) Feb. 23, 2013 10 YEARS
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty XX
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. CONVICTION AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. SUBMITTED FEB. 1, 2015; FILED MAY 13, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 220(b); 268(d); 215; SCARC
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

10.) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Defense counsel's failure to prepare and present a defense to Applicant's charges where the benefit of retaining the right to the last argument was significantly outweighed by the need to explain circumstances and evidence that were readily explainable and which, left unrefuted, were highly prejudicial to the defense constituted deficient performance.

(b) Defense counsel's failure to make a pretrial motion to suppress any and all evidence obtained from Kurtis Edwards residence where defense counsel was aware that none of the evidence linked Applicant to the crime constituted deficient performance.

(c) Defense counsel's failure to research and present an argument pertaining to a defense of third party guilt where, on the demonstrable facts of this case such a defense was a viable option constituted deficient performance.

(d) Defense counsel's failure to lodge objections to evidence and testimony concerning text messages between Lauren Baughman and Kurtis Edwards where the content of said messages was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate.

(e) Defense counsel's failure to lodge objections to evidence and testimony concerning the burglary of Ron's barber shop where the content of testimony was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate.

(f) Defense counsel's failure to lodge objections to evidence and testimony concerning Whitmore Plumbing where the content of testimony was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate.

(g) Defense counsel constituted deficient performance in his representation of Applicant during the sentencing phase of Applicant's trial inasmuch as he strongly argued to the sentencing judge that Applicant's long problem with substance abuse is what's gotten him into trouble, and implied Applicant can do well when staying away from illicit substances when the record unequivocally reveal the crime was committed due to Lauren Baughman's long problem with substance abuse.

(h) Appellate counsel's failure to argue Direct Verdict an Appeal constituted deficient performance based on the fact Appellate counsel was aware there wasn't a scintilla of evidence in support of argument.

11.) State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel failed to adequately cross examine all the State's witness, and failed to adduce evidence that could have refuted the State's case.

(b) State's exhibits 47 Baton, 48 knife, 57 A-B black jeans, grey shirt, 58 five bandanas.

(c) The record unequivocally reveal Lauren Baughman took money from Ron's wallet a week prior to robbery, and the evening of the robbery she attempted a second time to burst through the wall to get to Ron's safe but was unsuccessful.

(d) Lauren's testimony that she was arguing with Kurtis because he took his money to pay bills and didn't give her any, Lauren arguing with Kurtis about a

lady on facebook, Kurtis arguing about Lauren's friend Josh, Lauren arguing with kurtis about another female as he was going through a divorce, Kurtis and Lauren arguing about the money she took from Ron's wallet, and Kurtis going to Ron's barber shop to see if any money was in there.

(e) Such evidence was used to simply invite the jury to infer criminal disposition of Applicant and Lauren dropping Kurtis Edwards off to look for money in the barber shop while Applicant was stealing copper.

(f) State's exhibit 60-70 such evidence was used to simply invite the jury to infer criminal disposition because the evidence had marginal if any probative value and a high potential to persuade the jury to decide the case on emotion rather than evidence.

(g) The record unequivocally reveal by Lauren Baughman's own testimony that she needed money for drugs in addition she testified Ron was going to give her 35 dollars but it wasn't enough to get her drugs so she planned to rob him.

(h) The record unequivocally reveal the officers only explanation for failing to follow procedures was the fact that Applicant was very angry in addition the forensic evidence contradicted the witnesses testimony.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) "SEE ATTACHMENT"
- (b) "SEE ATTACHMENT"
- (c) "SEE ATTACHMENT"
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) "SEE ATTACHMENT"
- (b) "SEE ATTACHMENT"
- (c) "ATTACHMENT"
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. DIRECT APPEAL
- ii. PRE-TRIAL MOTIONS IN LIMINE
- iii. DIRECTED VERDICT MOTION
- iv. POST TRIAL MOTION & MOTION TO RECONSIDER SENTENCE
- (b) the name and location of the Court in which each was filed:
- i. SOUTH CAROLINA COURT OF APPEALS: 1330 LADY STREET, SUITE 401;
- ii. COLUMBIA S.C. 29201-3332
- iii. BEAUFORT COUNTY GENERAL SESSIONS; P.O. DRAWER 1128; BEAUFORT
- iv. S.C. 29901

(c) the disposition thereof:

- i. CONVICTION AFFIRMED
- ii. TEXT MESSAGES ADMITTED UNDER HEARSAY EXCEPTIONS
- iii. GRANTED IN PART DENIED IN PART
- iv. DENIED JUDGE FELT SENTENCES WEREN'T DISPARATE

(d) the date of each such disposition:

- i. SUBMITTED FEB. 1, 2015; FILED MAY 13, 2015
- ii. FEBRUARY 26, 2013
- iii. FEBRUARY 27, 2013
- iv. FEBRUARY 27, 2013

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

- i. 220(b); 268(d) 2; 215; SCARC
- ii. RULE 801(d) (2) (e)
- iii. RULE 19 Crim.P
- iv. RULE 29(a) Crim.P

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?

YES

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

(a) which grounds have been presented:

- i. MOTION IN LIMINE AS TO HEARSAY
- ii. DIRECTED VERDICT MOTION
- iii. _____
- iv. _____

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

- i. PRE TRIAL PRIOR TO COMMENCEMENT OF TRIAL
- ii. POST TRIAL AT THE CLOSE OF ALL EVIDENCE
- iii. _____

Revised 3/2003

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) THIRD PARTY GUILT; DEFENSE COUNSEL FAILED TO INVESTIGATE
 (b) PRIOR BAD ACT EVIDENCE; COUNSEL FAILED TO TIMELY OBJECT
 (c) SUPPRESSION OF EVIDENCE FROM RESIDENCE; FAILED TO MOTION

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

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

DIRECTED APPEAL; POST TRIAL; PRE TRIAL; DIRECTED VERDICT

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. ERIC K. HAIGHT; ESQUIRE; P.O. BOX 6067; HILTON HEAD ISLAND,
S.C. 29933

- ii. KATHLEEN MARGARET HUGHES APPELLATE DEFENDER; DIVISION OF

APPELLATE DEFENSE; 1530 LADY STREET, SUITE 401 CHARLOTTE S.C. 28201-3332

- iii. _____

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

- i. TRIAL AND SENTENCING

- ii. DIRECT APPEAL

- iii. _____

Revised 3/2003

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

~~CASE REVERSED AND REMANDED FOR A NEW TRIAL WITH INSTRUCTIONS TO
SUPPRESS STATEMENT AND EVIDENCE FROM SEARCH OF KURTIS EDWARDS RESIDENCE~~

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of BISHOPVILLE)

I, Donald Peters, 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 at this time for vacating, setting aside or correcting the convictions and sentence attacked in this application; and that the matters and allegations therein set forth are true and correct.

Donald Peters

SWORN to and subscribed before me this 15th
day of September 2015

Quint J. Duggere (L.S.)
Notary Public

My Commission Expires: 11-05-2019

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

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

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

Donald Peters

Applicant

SWORN or affirmed to and subscribed before me this

15th day of September 2015

Lee Corr., Inst.,
990 Wisacky Highway
Bishopville, SC 29010-1775

Janet J. Briggs
Notary Public

My Commission Expires: 11-05-2019

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Donald Eugene Peters, #316642,

2015-CP-07-2251

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on September 13, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the July 2011 term of the Beaufort County Grand Jury for one (1) count of Burglary, First degree, one (1) count of Armed Robbery, and one (1) count of Assault and Battery, First Degree (2011-GS-07-1456, -1457, -1458). Ehrick K. Haight, Esquire, represented him. On February 26, 2013, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted on all charges. The Honorable Thomas W. Cooper, Jr. sentenced the Applicant to confinement for twenty-three (23) years for the count of Burglary, First Degree, twenty-three (23) years for the count of Armed Robbery, and ten (10) years for the count of Assault and Battery, First Degree. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to

Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Peters, Op. No. 2015-UP-247 (filed on May 13, 2015). The Remittitur was issued on June 5, 2015.

II.

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

1. "Ineffective Assistance of Trial Counsel"

- a. "Failure to prepare and present a defense to Applicant's charges where benefit of retaining the right to the last argument was significantly outweighed by the need to explain circumstances and evidence that were readily explainable and which, left unrefuted, were highly prejudicial to the defense"
 - i. "Failure to adequately cross examine all the State's witness (sic), and failed to adduce evidence that could have refuted the State's case"
- b. "Failure to make a pretrial motion to suppress any and all evidence obtained from Kurtis Edwards (sic) residence where defense counsel was aware that none of the evidence linked Applicant to the crime"
- c. "Failure to research and present an argument pertaining to a defense of third party guilt where, on the demonstrable facts of this case such a defense was a viable option"
- d. "Failure to lodge objections to evidence and testimony concerning text messages between Lauren Baughman and Kurtis Edwards where the content of said messages was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate."
- e. "Defense counsel's failure to lodge objections to evidence and testimony concerning the burglary of Ron's barber shop where the content of testimony was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate."
- f. "Failure to lodge objections to evidence and testimony concerning Whitmore Plumbing where the content of testimony was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate."
- g. "Deficient performance during the sentencing phase as he strongly argued

that the Applicant's long problem with substance abuse is what's gotten him into trouble, and implied Applicant can do well when staying away from illicit substances when the record shows the crime was committed due to Lauren Baughman's long problem with substances abuse"

2. "Appellate counsel's failure to argue Direct Verdict on Appeal"

a. "There wasn't a scintilla of evidence in support of the argument"

For the purpose of this Return, the Respondent incorporates the application, the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's first allegations as alleging ineffective assistance of trial counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115,

386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

{Signature on Next Page}

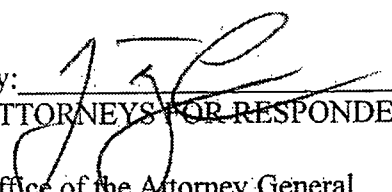
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

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

MAY 13th, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DONALD EUGENE PETERS, #316642,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-07-2551

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Donald Eugene Peters, #316642
Lee Correctional Institution
990 Wisacky Hwy
Bishopville, SC 29010-1775

DATED this 13th day of May, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS
COUNTY OF BEAUFORT	)	2015-CP-07-02251
Donald E. Peters	)	
	)	
Applicant,	)	
	)	
Vs	)	Transcript of Record
	)	
State of South Carolina,	)	December 4, 2018
	)	
Respondent.	)	
	)	

B E F O R E:

Honorable Jennifer McCoy
Beaufort County Courthouse
Beaufort, South Carolina

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

James Falk, Esquire
Attorney for Applicant

Christian Saville, Esquire
Attorney for Respondent

Sallie Beth Todd
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Ehrick Haight

BY Mr. Falk	6		18	
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BY Mr. Saville		12		
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Kathrine Hudgins

BY Mr. Falk	22			
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BY Mr. Saville		25		
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Certificate of Court Reporter	31
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E X H I B I T S

(There were no exhibits marked during the hearing.)

1 **MR. SAVILLE:** May it please the Court, Your Honor?

2 **THE COURT:** Yes.

3 **MR. SAVILLE:** This is the case of Donald Peters versus
4 the State of South Carolina, docket number 2015-Common Pleas-
5 07-2251. Mr. Peters was indicted in July of 2011 in Beaufort
6 County for one count of first-degree burglary, one count of
7 armed robbery, and one count of assault and battery first
8 degree. Ehrick K. Haight, Esquire represented him at trial
9 and on February 26th, 2013 he received a jury trial before the
10 Honorable Thomas W. Cooper, Jr. and was found guilty as
11 indicted on all charges. He was sentenced to confinement for
12 23 years for first degree burglary, 23 years for armed
13 robbery, and 10 years for assault and battery first degree all
14 to run concurrent. Your Honor, there is a mistake in the
15 State's Return that was filed that indicates an Anders Brief
16 was filed in this case. That is incorrect. Kathrine Hudgins
17 actually filed a Merits Brief in this case. The South
18 Carolina Court of Appeals did affirm his conviction and
19 sentence on May 13th, 2015. Mr. Peters filed an application
20 for post-conviction relief on September 13, 2015. It's my
21 understanding that Mr. Falk has an amendment and the State
22 would give him the opportunity to enumerate the allegations on
23 which he wishes to proceed today.

24 **MR. FALK:** Your Honor, this is a case that involves
25 several parties related to an armed robbery and at one point

1 in the trial the State reconstructed text messages from three
2 telephones, well maybe four telephones, and they had prepared
3 a power point presentation of the text messages that they
4 played for the jury. That was State's exhibit number 74. And
5 where we have a concern is that the next step was then they
6 animated the exhibit, they narrated the exhibit, they had four
7 people speak the words in the text message in an audio
8 presentation and that audio presentation was played for the
9 court and that's trial exhibit number 75. That's the exhibit
10 -- I guess we're having both of the exhibits brought over but
11 that is the exhibit that I think the Court needs to hear. It
12 would be our position that although trial counsel did lodge
13 several objections about whether or not exhibit number 74 and
14 probably number 75 were hearsay testimony. We believe that
15 there was a whole separate analysis that should have gone on
16 about whether or not this demonstrative evidence was more
17 prejudicial than probative. And we believe that following --
18 really primarily the South Carolina case of Clark versus
19 Cantrell which is 339 SC 369 and that affirmed and modified a
20 Court of Appeals opinion at 332 SC 433. The Supreme Court
21 decision was in 2000, the Court of Appeals decision was in
22 '98. And that's where they go forward and sort of
23 appreciating and in that case it was an animated version of a
24 car crash that was played and whether or not that accurately
25 depicted the events. But, I think the Court's analysis of

1 those cases sort of go through what type of pre-trial
2 consideration, gate keeping function that the Court should
3 have ruled on and I'm trying to make the comparison that it'd
4 be somewhat similar to a forensic interview in a CSC with a
5 minor case. First the Court's got to make sure that it's not
6 overly prejudicial. There was no showing of that, I believe
7 that trial counsel might have heard that for the first time in
8 court. I'm not sure, but we think that's the analysis that
9 the trial court should have made so that issue could have been
10 preserved for the record. It was not. And so, whether or not
11 we can go forward and you can make a determination later, I
12 know Mr. Haight needs to run. We can sort of do the rest of
13 this, it's really up to you.

14 **THE COURT:** I'm happy to go forward, you know, with what
15 we have now.

16 Are you Mr. Haight?

17 **MR. HAIGHT:** Yes, Mr. Haight.

18 **THE COURT:** Good to see you. How are you?

19 **MR. HAIGHT:** I'm fine. Thank you.

20 **THE COURT:** And are you ready, do you want to go ahead
21 and call him at this time?

22 **MR. FALK:** If it's okay.

23 **THE COURT:** I think it's fine.

24 **MR. FALK:** Please, well call Mr. Haight.

25 **THE COURT:** Okay. Any objection from the State?

1 **MR. SAVILLE:** Your Honor, I just want to clarify for
2 housekeeping matters, is this the only allegation ---

3 **MR. FALK:** Yes.

4 **MR. SAVILLE:** --- on which you are proceeding? Oh okay,
5 thank you.

6 **THE COURT:** Mr. Haight, please come up and take the
7 stand. The clerk will swear you in.

8 **MR. HAIGHT, HAVING BEEN FIRST**
9 **DULY SWORN, TESTIFIED AS FOLLOWS:**

10 **THE COURT:** Alright, Mr. Falk, you may proceed.

11 **MR. FALK:** Just to make this easier on you, I will hand
12 you a copy of the record on appeal which has got the
13 transcript.

14 **DIRECT EXAMINATION OF MR. HAIGHT BY MR. FALK:**

15 **Q:** Mr. Haight, did you spell your name into the record? Have
16 we gotten there yet? I'm sort of jumping around on this one.

17 **A:** First name's Ehrick E-H-R-I-C-K, middle initial K., Haight
18 H-A-I-G-H-T, Junior. I go by Rick though and answer more
19 readily to Rick than to Ehrick.

20 **Q:** Thank you, Rick. Were you appointed in this case or were
21 you retained in this case?

22 **A:** I was appointed, yes.

23 **Q:** Okay. Where are you currently employed or where were you
24 employed at the time?

25 **A:** Where I'm employed today Minor, Haight and Arundell Law

1 Firm on Hilton Head.

2 **Q:** And this was because of a conflict?

3 **A:** I'm trying to remember, yes, as I recall the conflict was
4 with regard to the victim in the case, Mr. Lenier. I think
5 that was the origin of the conflict and that's why the various
6 defendants including Mr. Peters were all appointed counsel.

7 **Q:** So, can you just give us a quick summary of the
8 allegations of the crime that was committed?

9 **A:** A quick summary is what the Solicitor's Office like to
10 call a home invasion where Lauren Baughman, who was a neighbor
11 of Mr. Lenier's also wanted with drug problems. She did
12 cleaning work and performed sexual favors for Mr. Lenier for
13 money to support her drug habit. And she was hard up for
14 money because she needed to pay a fine with, I think, the
15 Sheriff's Office. And according to the testimony of those
16 folks, she came up with the idea of getting her boyfriend
17 Curtis Edwards and Mr. Peters to, after she had cut loose a
18 lock on the door so that it would be accessible so that they
19 could break in and get money from Mr. Lenier who apparently
20 liked to keep cash on hand. He didn't believe in banks, he
21 testified that he didn't believe in banks. And according to
22 their testimony that's what they did, they broke in in the wee
23 hours and Mr. Lenier was beaten, money was taken, the safe was
24 broken into but the actual money that they obtained was not
25 from the safe it was from his wallet. And they then left the

1 scene, went to Hardeeville sold some scrap metal. I mean, the
2 key part of it was the breaking into his home, you know,
3 during the night with a baton that was used to beat him. And
4 the money was taken, there was differing testimony on how
5 much. You know, in Mr. Lenier's testimony I think it was
6 about three times the amount that was actually taken. But, it
7 was around \$3,000, \$3,500 I believe that was taken.

8 **Q:** Alright, so did the State use text messages from
9 telephones that were recovered?

10 **A:** Yes, text messages were a big part of the State's case.
11 They obtained them from Verizon pursuant to a subpoena.

12 **Q:** And how were the text messages introduced into the record?

13 **A:** They called -- I call it the Verizon lady -- they called
14 the lady from Verizon and she authenticated their records,
15 which I've supplied you a copy of those. I mean, they're not
16 in a chronological readable form. You then have to take them
17 and do that yourself assigning the numbers to the different
18 people and arranging them chronologically so you can
19 understand the questioning. The Solicitor's Office and the
20 Sheriff's Office did that on their side. We also did that on
21 our side. You know, we prepared a chronological list of the
22 text messaging back and forth, you know, long before trial.
23 And they got those in through the Verizon lady and then
24 subsequently I think it was Detective Rice who introduced them
25 in the format that they had put together, you know, with this

1 slide show and narration.

2 **Q:** Had they provided you a copy of their power point exhibit
3 prior to the trial?

4 **A:** My recollection is that I seen the power point
5 presentation previously, you know, in printed form. But, the
6 narration bit they had not previously provided.

7 **Q:** I represented to the Court based on my reading of the
8 transcript that you sort of heard it for the first time in the
9 courtroom.

10 **A:** That's my recollection, yes.

11 **Q:** At some point I think you represent to the Judge that the
12 Solicitor assured you that they're read in a none emotional
13 form.

14 **A:** Yeah, after our conversation earlier today I looked back
15 at the record and looked for the relevant pages and it looks
16 like it starts in this record at about 148 ---

17 **Q:** Yes.

18 **A:** --- through about 151 and then again at 209 where they
19 were actually introduced. You know, that's where that
20 discussion took place.

21 **Q:** Right. Okay, and as I was -- read the record there, you
22 had made objections obviously because whether or not these
23 test messages were going to be properly authenticated and
24 whether or not they were hearsay. You made those objections;
25 is that right?

1 **A:** I had made those objections earlier and, yeah, those were
2 a continuing objection that I made. I do think I disagreed
3 with you in our conversation earlier, I didn't think that I
4 had made an objection to this presentation. I think I did
5 because I used terms like, well they claim they're not
6 emotional. But then I made the objection and subsequently
7 when they went in on page 209, you know, the Judge noted
8 subject to the objection. Possibly I could have been more
9 clear, but I do think I objected to the presentation, you
10 know, and their means of presentation with the use of what I
11 first thought were going to be some kind of computer generated
12 voices. As it turns out they were people reading these
13 allegedly in a non-emotional way. I think what was her
14 terminology and she claim without any intonation and by her I
15 mean Meredith Bannon, the assistant solicitor at the time.

16 **Q:** Do you have page -- I guess it's 149 on the record of
17 appeal?

18 **A:** Yes.

19 **Q:** So I'm looking at -- can you just -- I'm looking at line
20 12 on page 149. It says, I'm not quite sure how it's going to
21 sound and whether I object to it or not.

22 **A:** That's what I said on page 149, that's correct.

23 **Q:** Okay.

24 **A:** Could I go on?

25 **Q:** Yes, yes, please.

1 **A:** On page 151 I said, it's subject to cross examination I
2 understand that but I still will object.

3 **Q:** Okay. So, then the exhibit was played for the jury?

4 **A:** That's correct.

5 **Q:** And do you recall about how long it was?

6 **A:** I really don't. You know, looking at the record it just
7 says that it was played. You know, I don't recall. I know,
8 and I did look back at the chronology that we prepared, you
9 know, which was really quite lengthy but then a lot of it had
10 nothing to do with the matter at hand. You know, a lot of it
11 had to do with drug purchases or, you know, expressions of
12 affections. Things that had nothing to do with what brought
13 us there. But, no I don't recall exactly how long the
14 presentation was.

15 **Q:** I guess we're gonna hear this when we hear it in here.
16 I'm just curious, you know, what did they do with, you know,
17 text messages all have these acronyms.

18 **A:** They have a lot of acronyms and, you know, we have people
19 here who were using abbreviations that I certainly didn't
20 understand in many instances. But, you know, unfortunately in
21 this case both Lauren Baughman and Curtis Edwards, the two co-
22 defendants both testified and, you know, I guess explained
23 some of those things that maybe reading them you and I
24 wouldn't necessarily understand.

25 **Q:** So, it's your position that you had properly preserved any

1 objection you might have about whether or not the narrated
2 version of exhibit number 74 was more prejudicial than
3 probative?

4 **A:** I think so. Obviously, when you go back and read through
5 these things you think ghee I could have been much more
6 articulate but I do think I did.

7 **MR. FALK:** Your Honor, I have no further questions.

8 **THE COURT:** Alright.

9 **CROSS EXAMINATION OF MR. HAIGHT BY MR. SAVILLE:**

10 **Q:** Good morning, Mr. Haight. How you doing?

11 **A:** Good.

12 **Q:** Thank you for being with us here today. Now, Mr. Haight,
13 I know this trial was, I guess a good while ago but do you
14 recall -- what was your opinion about how the audio recording
15 sounded?

16 **A:** You know, I don't -- sitting here today I don't really
17 recall, you know, it didn't -- maybe it didn't make that huge
18 of an impression if I don't remember, you know, how bad it was
19 or how -- you know, whether it had that emotion that we were
20 opposed to or not. You know, I don't recall.

21 **Q:** Yes, sir. And, I know on direct examination Mr. Falk
22 brought your attention to page 149 of the record of appeal
23 where you say you don't know if you're going to object or not
24 but it is here. I guess have you taken notice that there's
25 been a discussion between yourself, the solicitor and Court

1 and on page 151 it appears that you did in fact ---

2 **A:** That's my recollection and I think that's, I think, worn
3 out by what's in the record.

4 **Q:** Yes, sir. And, then on page 209 when they actually start
5 publishing the text in such a way the Judge actually notes
6 that these are published subject to your objection.

7 **A:** That's correct.

8 **Q:** Now, Mr. Haight, do you think that they would have
9 obtained a conviction even without the text messages?

10 **A:** You know, the text messages I thought -- I thought the
11 text messages were important and I told this to Mr. Falk
12 earlier. But, frankly, I think they became less important,
13 you know, and we were expecting Lauren Baughman to testify and
14 testify against Mr. Peters and be very damaging testimony.
15 Curtis Edwards however, you know, he originally was going to
16 trial but kind of on the eve of trial decided to plead guilty
17 pretty much straight up and agreed to testify. So, with both
18 of them testifying against him I viewed the text messaging as
19 being less important than maybe I thought it was prior to
20 that. It certainly, you know, remained damaging but was
21 cumulative to, you know, what I was expecting them to say on
22 the stand.

23 **Q:** Yes, sir. Because it was Mr. Edwards' testimony that he
24 and Mr. Peters went to the house together and Mr. Peters was
25 the one who beat the victim with the baton.

1 **A:** He did say that. Yeah, it was my opinion that Curtis
2 Edwards was not completely truthful in his testimony. As I
3 recall that was also the solicitor's opinion later as well
4 because, yeah, he tried to say that any beating of Mr. Lenier
5 was solely by the hands of Mr. Peters, when I think the truth
6 was more that they both had a hand in it.

7 **Q:** Yes, sir. And Ms. Lauren Baughman also -- she testified
8 that when Mr. Edwards and Mr. Peters left the car to go into
9 the house that Mr. Peters had the baton.

10 **A:** I think she put the baton in his hand. I think she also
11 testified that when they got to the car after leaving Mr.
12 Lanier's house that he had the baton and he had blood on his
13 hands. Whether that was fully truthful, I don't know but that
14 was her testimony.

15 **Q:** Yes, sir. And the three of them, I believe it was Mr.
16 Peters, Baughman and Edwards, they were all apprehended at Mr.
17 Edwards' house in the following days.

18 **A:** That's correct.

19 **Q:** And in that house, I believe, they found the bloody baton?

20 **A:** Well, let me go back a little bit.

21 **Q:** Sure. Lauren Baughman was arrested with the Sheriff's
22 Office where she had gone to pay the fine. And I think they -
23 - maybe Curtis Edwards was there to pick her up or she had
24 called him, and he went over there so I think they were both
25 arrested at the Sheriff's Office. And then according to their

1 testimony the sheriff's deputies had gotten consent to go to
2 Mr. Edwards house. Well, he lived with somebody else, yeah, I
3 think there were two people in the house and Lauren Baughman
4 had been staying with him there on a fairly regular basis as
5 well. They claimed that they had gotten permission, which I
6 don't think is disputed to go to the house and while they were
7 there they apprehended Mr. Peters who was there at the house
8 and they also searched Mr. Edwards room and that's where they
9 found the baton.

10 Q: Yes, sir. And do you recall that Mr. Peters did give a
11 statement to police in this case?

12 A: The officers testified, that's Rice and Goble, testified
13 that when they initially were apprehending him and they claim
14 that they mirandized him and so forth that he was very angry
15 and according to them said something to the effect of, I
16 didn't go in there I was only a lookout.

17 Q: Sure.

18 A: You know, they never got any written statement from Mr.
19 Peters, they never got any recorded statement from Mr. Peters,
20 you know, either audio or video of any sort. It was simply
21 the officer's testimony that is allegedly what he said.

22 Q: Yes, sir. So, Mr. Peters himself admitted to at least
23 being the lookout, according to the testimony.

24 A: According to the testimony of the officers, yes.

25 Q: Yes, sir. And it was the police officer's testimony that

1 Mr. Peters actually suggested that it was actually a different
2 man that went with Mr. Edwards into the house?

3 **A:** That's correct.

4 **Q:** But that he could not provide any sort of description or
5 identification of this person.

6 **A:** The officer's testified that he gave no description with
7 regard to the third individual ---

8 **Q:** Yes, sir.

9 **A:** --- or second individual.

10 **Q:** Did anyone else testify at trial about this mystery
11 individual?

12 **A:** Well, Mr. Lenier had testified that he couldn't identify
13 who it was because they had a mask on according to him. He
14 thought one was younger and one was older, and he thought one
15 of them was black based, according to the officers, on how he
16 spoke.

17 **Q:** Yes, sir. And the testimony from the co-defendant's at
18 trial indicated that there were just four people in the
19 automobile? Is that correct, sir?

20 **A:** No. The people who testified, Lauren Baughman and Curtis
21 Edwards and Ashley Pierce, you know, said that it was Lauren
22 at the wheel of the car which was owned by Curtis Edwards.
23 Mr. Edwards in the front passenger seat and Mr. Peters in the
24 back seat. I don't recall which side.

25 **Q:** Sure.

1 **A:** But there was no fourth person in the car. And that's
2 what Ashley Pierce testified that when they went by her house
3 to give her some money apparently for her silence that she
4 saw, I think, Lauren Baughman at the wheel, Curtis Edwards and
5 somebody else in the back but she didn't know who it was in
6 the back.

7 **Q:** Yes, sir. And do you recall that in addition to the text
8 messages being published with the audio recording they did
9 also have Mr. Edwards and Ms. Baughman explain the text
10 messages?

11 **A:** They did.

12 **Q:** Well, Mr. Haight, is there anything else you'd like the
13 Court to know about your representation of Mr. Peters?

14 **A:** Nothing more than we took it seriously. We worked hard on
15 it. We tried to do the best job that we could for him. From
16 a practical standpoint, you know, the best offer we got from
17 the Solicitor's Office was 20 years. I think Mr. Edwards got
18 18 years and Mr. Peters got 23 years, which we thought was
19 maybe a bit harsh. But, you know, the best offer you got was
20 20 years so you got an extra 3 years essentially for going to
21 trial. But, we tried to do the best we could for him.

22 **Q:** Yes, sir. And do you think that the State only extended
23 the 20 year offer because they felt they had a strong case
24 against Mr. Peters?

25 **A:** They certainly thought they did. They said that in no

1 uncertain terms.

2 Q: Well, I have no further questions. Thank you so much.

3 MR. FALK: If I may? Just a couple questions.

4 REDIRECT EXAMINATION OF MR. HAIGHT BY MR. FALK:

5 Q: Whether or not this was objected to, it's clear that this
6 exhibit -- the audio exhibit was never played for the Court in
7 camera.

8 A: That's my recollection.

9 Q: Okay. So, you didn't ask for it to be played in camera
10 first?

11 A: I did not.

12 Q: And your objection based -- for the hearsay was -- that
13 testimony was coming in because those people who were making
14 the statements were going to be in the courtroom anyway. Is
15 that correct? I mean that's why the Judge let them in because
16 he said these people are all going to testify. They all can
17 be cross examined on their statements anyways. Is that
18 correct?

19 A: I mean, I can't necessarily speak for what the Judge was
20 thinking but what he said was he was looking to the fact that,
21 you know, the people that were involved in these text
22 messages, mainly Lauren Baughman and Curtis Edwards and Ashley
23 Pierce, really with the exception of Mr. Peters were all going
24 to be testifying.

25 MR. SAVILLE: Objection, just to state for the Court's

1 purposes, I believe what they're talking about, the audio
2 recording the Judge actually provides an additional basis for
3 allowing in the audio recording. In addition to the fact that
4 they're going to be subject to cross examination he references
5 in passing, I believe, a Texas case. Judge Murphy is not
6 extremely specific in why she's allowing it in ---

7 **THE COURT:** Judge Cooper.

8 **MR. SAVILLE:** --- Judge Cooper, sorry. Thank you for
9 that. You have to watch me. And I think that would be on
10 page 151 and 152.

11 **THE COURT:** Noted.

12 **BY MR. FALK:**

13 **Q:** My point here is that the people -- the people who were --
14 who had made the text messages who's voices had actors playing
15 or somebody reading the text messages. All the people were
16 coming in to testify anyway; is that correct?

17 **A:** With the exception of Mr. Peters, yes.

18 **Q:** Any of his text messages could have come in in a statement
19 by admission, whatever statement by the defendant party.

20 **A:** And I did try too, because there was some evidence that
21 Mr. Edwards at one point was charging his phone and said text
22 me on Doobie's phone referring to Mr. Peters. I tried to make
23 the point that, well, we don't necessarily know who's got
24 their hands on the phone as part of my objection initially to
25 the text messages.

1 Q: I guess my question here is what fact does this animated
2 or this narrated exhibit offer to the Court if the evidence
3 isn't cumulative in itself? I mean, why was it even played?
4 All these people were gonna be there, they could have
5 testified to it. I mean, what does this add to the trial. I
6 mean, everybody who -- the text messages were all in evidence.
7 People could have been cross examined by the -- did you say
8 this; what did you mean by this? Why did they have to play
9 the video of it?

10 A: Well, I see what you're saying, I think. They certainly
11 needed to organize them because what you get from Verizon the
12 jury would have a tough time ---

13 Q: Sure.

14 A: --- they'd have to spend many hours, you know, doing what
15 people did which was organizing them so you could understand
16 what the conversation was. You know, I think certainly
17 preparing the power point or something of that nature, you
18 know, should that be sufficient? I'm not necessarily going to
19 disagree with you on that.

20 Q: Thank you.

21 MR. FALK: No further questions.

22 MR. SAVILLE: No further questions, thank you.

23 THE COURT: Mr. Haight, thank you very much. You may
24 step down. Any objection to the witness being excused?

25 MR. SAVILLE: No objection, Your Honor.

1 **MR. FALK:** No. No, Your Honor.

2 **THE COURT:** Thank you, sir.

3 Do you have any other witnesses you'd like to call at
4 this time, Mr. Falk?

5 **MR. FALK:** Kat Hudgins available by phone.

6 **THE COURT:** Okay. At this time we will call Kathrine Hudgins,
7 who the Court understands was appellate counsel for the
8 Defendant; is that correct?

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

10 **MR. SAVILLE:** Yes, Your Honor.

11 (PHONE CALL INITIATED)

12 **MS. HUDGINS:** This is Kathrine Hudgins.

13 **MR. SAVILLE:** Good morning, Ms. Hudgins. This is
14 Christian Saville calling from the Beaufort County courthouse.
15 How are you doing this morning?

16 **MS. HUDGINS:** I am good, thank you. How are you?

17 **MR. SAVILLE:** Doing well, thank you. We are here at the
18 hearing for Mr. Donald Peters ---

19 **MS. HUDGINS:** Yes, sir.

20 **MR. SAVILLE:** --- and Mr. James Falk is just about to
21 call you as a witness.

22 **MS. HUDGINS:** Okay. I'm gonna shut the door to my office
23 real quick and then I'll be right with you if that's okay.

24 **MR. SAVILLE:** Sure, thank you.

25 **MS. HUDGINS:** Thank you.

1 **MR. SAVILLE:** Can everybody hear okay?

2 **MS. HUDGINS:** Okay, I'm back.

3 **MR. FALK:** This is Jim Falk. How are you this morning?

4 **MS. HUDGINS:** Hi, Mr. Falk. I'm fine, thanks. How are
5 you?

6 **MR. FALK:** I'm fine. This is gonna be sort of quick ---

7 **THE COURT:** We need to swear her in even though she ---

8 **MR. FALK:** Oh, I'm sorry. I'm sorry.

9 **THE COURT:** Good morning, Ms. Hudgins. How are you?
10 It's Jennifer McCoy.

11 **MS. HUDGINS:** Good morning, Judge McCoy. I'm fine,
12 thanks. How are you?

13 **THE COURT:** I'm fine. It's a little odd, but out of
14 abundance of caution I'm just going to have the clerk swear
15 you in anyway. So, if you could just ---

16 **MS. HUDGINS:** That's fine.

17 **THE COURT:** Alright, go ahead.

18 **MS. HUDGINS, HAVING BEEN FIRST**
19 **DULY SWORN, TESTIFIED AS FOLLOWS:**

20 **THE COURT:** Thank you very much. Go ahead.

21 **DIRECT EXAMINATION OF MS. HUDGINS BY MR. FALK:**

22 **Q:** I'm back. Do you have a copy of the record on appeal
23 handy?

24 **A:** I do.

25 **Q:** Okay, perfect. Now, what I'm gonna ask you about is this,

1 I'm calling it an animated exhibit that's not the right term.
2 It's State's exhibit 75, which maybe it's a narrated version
3 of State's exhibit 74. Do you know -- are you familiar with
4 what I'm talking about?

5 **A:** I am familiar with what you're talking about.

6 **Q:** And I had some concerns, certainly in light of the South
7 Carolina cases or at least two South Carolina cases, basically
8 Clark versus Cantrell which is -- you know more of this than I
9 do but this is Supreme Court decision 339 SC 369, which it
10 affirmed in part a Court of Appeals decision which was 332 SC
11 433. And that case all deals with introduction of what
12 they're describing as demonstrative exhibits.

13 **A:** Okay. I'm not familiar with that case. So, I'm ---

14 **Q:** So, my point is -- and I'm looking at page eight of your
15 Brief, footnote one. And you're saying that trial counsel's
16 failure to object to the State's interpretation of the text
17 messages through the summary and audio maybe an issue to be
18 explored in post-conviction relief.

19 **A:** Correct.

20 **Q:** Did you feel that his objection was not preserved?

21 **A:** I do. It was difficult. If I remember this right and I
22 reviewed it last week. As I recall there was an objection
23 based on hearsay and then there was an additional sort of
24 objection as to the manner in which it was being published to
25 the jury. Is that pretty accurate?

1 Q: Yeah, and I'm just -- I'm drawing your attention to page
2 151 of ---

3 A: Yeah.

4 Q: --- the record of appeal.

5 A: I've got it right here. It says ---

6 Q: And then when it was finally introduced, he sort of still
7 said subject to my objection when the actual evidence -- when
8 the actual exhibits were introduced. Is that correct?

9 A: That is correct. And I guess the reason for my footnote,
10 I'm sort of guessing now. I guess the reason for my footnote
11 is I was concerned that there wasn't a more detailed objection
12 as to why the automated part of the way it was published to
13 the jury, you know, why that was objectionable. And it was
14 unclear to me whether the renewed objection when it was
15 introduced was that based on the hearsay objection or was that
16 based on the manner in which it was published to the jury?
17 And I guess that's -- I suppose that's the reason for my
18 footnote. Maybe it was but I just don't know.

19 Q: In your opinion, if somebody's making an objection don't
20 they have to give the specific grounds in order to preserve an
21 objection?

22 A: Certainly the Court of Appeals and the Supreme Court both
23 would like for trial objections to be as specific as possible
24 in fairness to the trial Judge in order to make a ruling.

25 Q: Okay. If you thought -- and I guess this is a fair

1 question; had you thought the objection had been preserved
2 would you have raised it on appeal?

3 **A:** Yeah, probably.

4 **Q:** Okay.

5 **A:** I mean, I did end up -- no I didn't. Never mind.

6 **MR. FALK:** I have no further questions.

7 **THE COURT:** Has the State got anything?

8 **MR. SAVILLE:** Very briefly.

9 **CROSS EXAMINATION OF MS. HUDGINS BY MR. SAVILLE:**

10 **Q:** Ms. Hudgins, can you hear me from over here where I am
11 standing?

12 **A:** I can hear you. Yes, sir.

13 **Q:** Okay, great. Now, Ms. Hudgins, do you feel that it was
14 reasonable to conclude that Mr. Haight did preserve this
15 issue?

16 **A:** You know, it's hard to tell. Can you reference me the
17 page where -- let me see if I can find it -- where he renews
18 the objection? And I know we discussed this last week, I
19 think it was unclear in my mind whether the objection was to
20 the hearsay or to the manner in which it was published.

21 **Q:** Right. It would be, let's see, that would be page 209 of
22 the record on appeal, I believe.

23 **A:** Let me look at that real quick if you -- if I may.

24 **Q:** Take your time.

25 **A:** Yes, 209 lines 17 and 18, subject to objection. I think

1 without more it would be difficult for me to raise that not
2 knowing whether it was subject to the hearsay objection or
3 subject to the manner of publication.

4 Q: Yes, ma'am. And in the context of the transcripts these
5 objections are being noted while they're actually playing the
6 video of the text messages?

7 A: If that's what the record reflects, I can quickly look
8 back, but if that's what the record reflects, I would agree.
9 Let me see. Are there specific pages where the objections are
10 lodged?

11 Q: It would just be 209 where the Judge is noting that
12 everything is being published subjection to objection.

13 A: Okay, well, yes. That's what the record reflects.

14 Q: And, Ms. Hudgins, just out of curiosity what would have
15 been your argument had you have raised this issue on appeal?

16 A: Difficult to say given that there wasn't much of a basis
17 given in order -- you know, I wasn't sure what the objection
18 was other than the manner. I was not familiar with the case
19 the Clark versus Cantrell case that Mr. Falk cited to earlier.
20 Perhaps there was something that I could have based it on in
21 that but without more in the record I'm not sure what I would
22 have raised. What my ground would have been.

23 Q: Sure. Ms. Hudgins, I believe that's all the questions I
24 have for you. Thank you very much for joining us.

25 A: Thank you for allowing the telephone testimony I

1 appreciate that very much.

2 **MR. FALK:** No further questions.

3 **THE COURT:** Alright, thank you so much, Ms. Hudgins. We
4 appreciate your time.

5 **MS. HUDGINS:** Thank you, Judge.

6 **THE COURT:** Alright, at this time are there any other --
7 do we just need to take a break for a short period of time?

8 **MR. FALK:** Yes, Your Honor. I have no further witnesses.

9 **THE COURT:** Alright, it's my understanding we are waiting
10 on an order to be signed by Judge Mullen any minute. So,
11 we'll just take a morning break at this time for about 15
12 minutes. We'll reconvene about 11:45, okay.

13 **MR. SAVILLE:** Thank you, Your Honor.

14 (RECESS)

15 **THE COURT:** Alright, we're on the record. For the record
16 we were waiting for a release order which we have not yet been
17 able to obtain but we understand will be obtained later this
18 afternoon. I will be here the rest of the week. Mr. Falk has
19 some other PCR matters on the docket tomorrow. It's my
20 understanding that I will be able to hear that evidence and
21 contemplate it. I'll take this matter under advisement and
22 hear that evidence at a later time in order to make my ruling
23 on the PRC motion. Mr. Falk, I'm happy to hear from you.

24 **MR. FALK:** My -- just as a point, sort of related to Mr.
25 Saville's cross examination of Ms. Hudgins. I think this is

1 an issue whether or not this was played. Now, when we get to
2 the finger pointing whether or not it's ineffective assistance
3 of trial counsel, ineffective assistance of appellate counsel.
4 I'm not -- my point is it should have been played. From my
5 client's point of view it really doesn't make any difference
6 whether or not it's ineffective assistance of appellate
7 counsel. I guess the Court's going to have to make their
8 determination of whether or not they think it was properly
9 reserved and then decide which way it was.

10 **THE COURT:** Okay.

11 **MR. FALK:** I'm saying it's one or the other.

12 **THE COURT:** Okay, I'll certainly consider that. Mr.
13 Saville, do you have anything else you want to add before we
14 conclude the hearing on this?

15 **MR. SAVILLE:** Yes, Your Honor. I think that, of course,
16 as we know Strickland versus Washington requires that
17 applicant prove both deficiency and prejudice and I think
18 we've thoroughly hashed out whether each party thinks it was
19 objected to or preserved or not. But, I wanted to not the
20 case Clark versus Cantrell, which applicant has presented to
21 support this argument is just not applicable to this case.
22 Clark versus Cantrell was actually a civil case but it was
23 analyzing the foundationary requirements of a video animation
24 done by a computer that replicated a car accident. And it was
25 more concerned with the accuracy of the computer animation and

1 the witness who testified, how familiar they were with the
2 actual animation and the facts that the animation was based
3 on. I just don't think that either of those is applicable to
4 words being read without intonation. I think we are clearly
5 able to read the -- of course, when you're submitting a video
6 for reenacting a car crash, we've seen MAIT do that, we've
7 seen other people use that. There's a lot of measurements
8 involved. There's a lot of science that goes into it. This
9 is just people reading text messages. Notwithstanding that
10 fact, the Court in Clark versus Cantrell did say that
11 determining whether a video animation evidence is admissible
12 the trial court must balance the probative value of the
13 animation against it's prejudicial affects. Your Honor, this
14 was not only not a video animation, this wasn't even an
15 animation. It was just a recording of people reading the text
16 messages. So, I do not think this case is on point.
17 Moreover, I think even if the actual audio recording should
18 have been excluded, there's no reasonable probability that the
19 outcome of the trial would have been different anyways. I
20 think when I first talked to Mr. Haight he remarked that F.
21 Lee Bailey would not have won this case, candidly. But I
22 think when you look at all the evidence, all the co-
23 defendant's that testified against Mr. Peters, who put the
24 baton to Mr. Peters hand. The fact that Mr. Peters first
25 denied any involvement then said he was just on the lookout.

1 Then you have all the corroborating testimony from people who
2 saw them at places they later went to and testified to. I
3 just don't think the fact that these text messages, which were
4 gonna come in anyway, I don't think the fact that they were
5 read by four people without intonation could have possible
6 been the thing that swung this trial. And for these reasons
7 we would respectfully request that you deny it.

8 **MR. FALK:** Just in response, whether or not it's with or
9 without intonation is gonna be your decision. My other point
10 is I do think my case is relevant because this is clearly
11 demonstrative evidence. This is not first-hand evidence.
12 This is a recreation of evidence, so it is demonstrative
13 evidence. And also, it requires, or it suggests, or it
14 certainly invites an analysis under 402, 403 whether or not
15 it's more probative than prejudicial, which means the Judge
16 has got to hear it in camera and exercise the gate keeping
17 function before the jury hears it and that did not happen in
18 this case. So, that's the reason why I think that case is
19 relevant.

20 **THE COURT:** Alright. It's an interesting issue. I
21 certainly would like to review that evidence obviously myself
22 and make a determination. This will conclude our docket for
23 today. Is that correct, Mr. Saville?

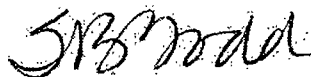
24 **MR. SAVILLE:** Yes, Your Honor.

25 (Adjourned.)

CERTIFICATE

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the interest of Donald E. Peters versus State of South Carolina, held in the Court of Common Pleas for Beaufort County, Beaufort County Courthouse, Beaufort, South Carolina, on December 4, 2018.

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



Sallie Beth Todd, CVR

Official Reporter

July 12, 2019.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
C/A No: 2015-CP-07-2251

Donald Eugene Peters, #316642,

Applicant,

Y.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the July 2011 term of the Beaufort County Grand Jury for one (1) count of Burglary, First degree, one (1) count of Armed Robbery, and one (1) count of Assault and Battery, First Degree (2011-GS-07-1456, -1457, -1458). Ehrick K. Haight, Esquire, represented him on all charges. On February 26, 2013, the Applicant proceeded to a jury trial, pursuant to which he was found guilty as indicted on all charges. The Honorable Thomas W. Cooper, Jr. sentenced the Applicant to confinement for twenty-three (23) years for the count of Burglary, First Degree, twenty-three (23) years for the count of Armed Robbery, and ten (10) years for the count of Assault and Battery, First Degree. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Peters, Op. No. 2015-UP-247 (filed on May 13, 2015). The Remittitur was issued on June 5, 2015.

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II.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Failure to prepare and present a defense to Applicant's charges where benefit of retaining the right to the last argument was significantly outweighed by the need to explain circumstances and evidence that were readily explainable and which, left unrefuted, were highly prejudicial to the defense"
 - i. "Failure to adequately cross examine all the State's witness (sic), and failed to adduce evidence that could have refuted the State's case"
 - b. "Failure to make a pretrial motion to suppress any and all evidence obtained from Kurtis Edwards (sic) residence where defense counsel was aware that none of the evidence linked Applicant to the crime"
 - c. "Failure to research and present an argument pertaining to a defense of third party guilt where, on the demonstrable facts of this case such a defense was a viable option"
 - d. "Failure to lodge objections to evidence and testimony concerning text messages between Lauren Baughman and Kurtis Edwards where the content of said messages was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate."
 - e. "Defense counsel's failure to lodge objections to evidence and testimony concerning the burglary of Ron's barber shop where the content of testimony was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate."
 - f. "Failure to lodge objections to evidence and testimony concerning Whitmore Plumbing where the content of testimony was more prejudicial than probative and should have been suppressed cannot be defended as part of any strategy but are signs that he neglected his duty as an advocate."
 - g. "Deficient performance during the sentencing phase as he strongly argued that the Applicant's long problem with substance abuse is what's gotten him into trouble, and implied Applicant can do well when staying away from illicit substances when the record shows the crime was committed due to Lauren Baughman's long problem with substances abuse"
2. "Appellate counsel's failure to argue Direct Verdict on Appeal"
 - a. "There wasn't a scintilla of evidence in support of the argument"

At the evidentiary hearing, Counsel amended the application to the sole allegation that trial counsel did not properly object to the introduction of the audio text message exhibit

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presented by the State at trial.

III. Summary of Testimony Presented

Trial Counsel

Counsel Haight testified that he was appointed to this case. Counsel testified as to the facts surrounding the charges, to wit: applicant and two co-defendants broke into a house, beat the victim, and stole a sum of money from the home. Counsel testified that text messages between the defendants was a crucial part of the State's case against Applicant. Counsel testified that after the Solicitor's office got the text messages from Verizon, they were put in a PowerPoint and provided to him prior to trial. Counsel testified, however, that the Solicitor's office also had voice actors read the text messages onto a recording and that he did not hear the audio of this recording before the trial. Counsel testified that the Solicitor assured him the text messages were read in a non-emotional tone. Counsel testified that he objected to the text message presentation coming in as being hearsay and believes he objected to the text messages being presented in the audio format. Counsel testified that he objected to the presentation, but that the exhibit was ultimately played for the jury. Counsel testified that the co-defendants who originally authored the text messages testified in this case and explained the various acronyms that they used in the text messages. Counsel testified that he believes that he properly preserved his objection to the introduction of the audio exhibit during trial. Counsel testified that he doesn't believe the audio made that big of an impression, since he does not really recall it. Counsel testified that the court published the exhibit subject to the objection. Counsel testified that he originally thought the text messages were going to be crucial to the case against Applicant, but they became less important when both of the co-defendants ultimately testified against him. Counsel testified that Applicant also gave a statement to police, after being read his Miranda

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rights. Counsel testified that Applicant told police that he did not go in the house, but that he was the lookout. Counsel testified that he worked hard on this case and that the only offer ever extended by the Solicitor's Office was for twenty years. Counsel testified that the audio exhibit was never played for the court *in camera*. Counsel testified that he did not ask for the exhibit to be played for the court *in camera*. Counsel testified that he believes the PowerPoint of the text messages would have been sufficient, but did not consider that at the time.

Appellate Counsel

Counsel testified that she put a footnote in her Brief that trial counsel's failure to object to the State's interpretation of the text messages through the summary and audio may be an issue to be explored in post-conviction relief. Counsel testified that she did not believe the objection to the introduction of the audio exhibit was properly preserved. Counsel testified that the reason for the footnote was that there wasn't a detailed objection specifically as to the manner in which the text messages were published to the jury. Counsel went on to testify that she was *unclear* as to whether the renewed objection was based on the hearsay objection or the manner in which it was published to the jury. Counsel testified that the Court of Appeals and the Supreme Court would like for trial objections to be as specific as possible in fairness to the trial judge making the ruling. Counsel testified that if she thought the objection was properly preserved she would have raised it on appeal.

IV. Findings of Facts and Conclusions of Law

This court has thoroughly reviewed the record in its entirety. Additionally, this court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the court to scrutinize the credibility presented. Furthermore, this court reviewed the PowerPoint presentation of the text messages read at trial and listened to the audio exhibit of

the text message exchange. 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).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, Ehrick Haight. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, the 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, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an 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 an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 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.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins, 539 U.S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial, even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at

694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687; *Harrington*, 562 U.S. 86.

"Surmounting *Strickland*'s high bar is never an easy task." *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689-690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." *Id.* at 689; see also *Bell v. Cone*, 535 U.S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S. at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. *Id.* at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.* at 693,

697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Failure to properly object to introduction of audio exhibit

This court finds that Applicant has failed to show prejudice sufficient to grant the Post-Conviction Relief Application on this ground. Applicant contends that trial counsel was deficient for failing to properly preserve his objection to the introduction of the audio exhibit and appellate counsel was deficient for failing to brief the issue. This court finds that, even if trial counsel did not preserve the objection with enough specificity to be preserved for appellate review, Applicant was not ultimately prejudiced as a result. Trial counsel testified that he objected to the manner in which the exhibit was to be published to the jury, however, the objection was not made with requisite specificity. PCR counsel argues that it is unclear on what basis the trial court allowed the evidence to come in. This court, however, finds that argument is without merit. An objection to the evidence was made, and the court considered that objection when ultimately allowing the evidence in.

As to Petitioner's claim against appellate counsel, Ms. Hudgins stated she was unclear as to what grounds trial counsel's objection was made, therefore, she was unable to brief the issue on appeal. Appellate counsel was not deficient for failing to brief the issue, since this court finds that the issue was not properly preserved by trial counsel. Furthermore, this court finds that even if trial counsel did not properly preserve the issue by specifying upon which grounds he objected to the presentation of the evidence, Applicant was not prejudiced by the introduction of the

evidence as there was overwhelming evidence for the jury to return a guilty verdict. Trial counsel testified that he did not believe the text messages to be crucial to the trial due to the testimony of the co-defendants. Moreover, the co-defendants placed Applicant at the scene and testified in great detail about his involvement in the crime. Trial counsel also testified that the text messages were introduced on their own as well as in a PowerPoint presentation. This court was able to review the audio recordings in question and finds that the tone in which they were read was not improperly prejudicial to Applicant. The failure to properly preserve the issue with more specificity would not have changed the outcome of the trial, as the jury heard other substantial evidence of guilt as to the Applicant. Therefore, this court dismisses this allegation.

V. CONCLUSION

Based on the foregoing, this court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Trial counsel was not deficient, nor was Applicant prejudiced by trial counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 24th day of April, 2019.



JENNIFER MCCOY
Presiding Judge
Fourteenth Judicial Circuit

Text Messages

June 28, 2011

Between

Donald Peters, Kurtis Edwards,
Lauren Baughman and Ashley Pierce

Text Message

Donald Peters to Lauren Baughman:

(1:09 P.M.) "Hello"

Lauren Baughman to Donald Peters:

(1:28 P.M.) "Yo"

Text Message

Lauren Baughman to Kurtis Edwards:(1:56 P.M.) "Now ill have Doby an Randall on
my ass when you leave ISNT that so nice"Kurtis Edwards to Lauren Baughman:(1:56 P.M.) "Uly do hate me so much
rite now"

Text Message

Lauren Baughman to Kurtis Edwards:(1:57 P.M.) "Texting already starting im waiting
for them to be here im sure"

Text Message

Lauren Baughman to Kurtis Edwards:

(2:03 P.M.) "Where you at"

Donald Peters to Lauren Baughman:

(2:04 P.M.) "U give me a ride"

Text Message

Kurtis Edwards to Lauren Baughman:

(2:07 P.M.) "I'm gunna find sum money.. ldk how but ill get sum bfor I come back home"

Lauren Baughman to Kurtis Edwards:

(2:08 P.M.) "Im coming to get you"

Text Message

Lauren Baughman to Kurtis Edwards:

(3:34 P.M.) "What are you doing"

Kurtis Edwards to Lauren Baughman:

(3:35 P.M.) "Layin here playin a game.. Y dnt u tell me u love me over da fone unless ur alone at ur mamas? Im not tryin to start a fite baby I promise im jus kurious"

Text Message

Kurtis Edwards to Lauren Baughman:

(3:37 P.M.) "Its okay baby.. I jus didn't know if u werent usedta sayin or if u didn't want neone to hear u say it.. I love you wit all my heart too babydoll"

Text Message

Lauren Baughman to Kurtis Edwards:

(3:50 P.M.) "I don't care who hears me"

(3:51 P.M.) "Can you bring me a cigg outside"

Text Message

Lauren Baughman to Kurtis Edwards:

(6:27 P.M.) "What you doing"

Kurtis Edwards to Lauren Baughman:

(6:28 P.M.) "Nuthin... missin u"

Text Message

Kurtis Edwards to Lauren Baughman:

(6:48 P.M.) "Damn.. He bein a stubborn ol fuck tonite huh"

Lauren Baughman to Kurtis Edwards:

(6:49) P.M. "Yes he is talking about andy an that guy bc they fucked him up"

Text Message

Kurtis Edwards to Lauren Baughman:

(6:57 P.M.) "9125960136.... N her name is bridgete"

(7:29 P.M.) "She just txt me n asked if u jus texted her.. I said probly.. Den she said geez thanks.. N showed me wat u sent her.. I think I just got a gudbye txt too.. Lmao.. I love you babydoll"

Text Message

Lauren Baughman to Kurtis Edwards:

(7:33 P.M.) "LoI"

(7:39 P.M.) "Answer your phone"

(7:41 P.M.) "FWD: fuck u n ur fagit ass
boyfriend \$Mz. Brown\$"

Lauren Baughman to Kurtis Edwards:

(7:45 P.M.) "Yeah Okay"

Kurtis Edwards to Lauren Baughman:

(7:47 P.M.) "Im serious babydoll.. Wats
dat txt frum Lita?"

Text Message

Donald Peters to Lauren Baughman:

(7:36 P.M.) "Hi miss u and luv u wit all my
heart"

Lauren Baughman to Donald Peters:

(7:48 P.M.) "When what"

Text Message

Lauren Baughman to Kurtis Edwards:

(7:48 P.M.) "Josh"

Kurtis Edwards to Lauren Baughman:

(7:49 P.M.) "Ok n wat wuz it about? Does
he wanna get his ass kiked?"

Text Message

Kurtis Edwards to Lauren Baughman:

(7:53 P.M.) "Sittin here waitin for my sexy
hunny to get home"

Lauren Baughman to Kurtis Edwards:

(8:19 P.M.) "Im trying to leave"

Text Message

Donald Peters to Lauren Baughman:

(7:55 P.M.) "Show me"

Lauren Baughman to Donald Peters:

(7:56 P.M.) "I will I promise"

Text Message

Donald Peters to Lauren Baughman:

(7:56 P.M.) "Dam I want u"

(7:56 P.M.) "Ya"

(7:59 A.M.) "Dam I want u"

Donald Peters to Lauren Baughman:

(8:02 P.M.) "Im going to bed"

Lauren Baughman to Donald Peters:

(8:04 P.M.) "Why are you going to
bed im about to leave Rons house"

Text Message

Lauren Baughman to Donald Peters:
(8:09 P.M.) "What are you doing"

Donald Peters to Lauren Baughman:
(8:10 P.M.) "Thinking of you"

Text Message

Lauren Baughman to Donald Peters:
(8:13 P.M.) "Me to"

Donald Peters to Lauren Baughman:
(8:15 P.M.) "U lie I will lve u alone til
u are done"

Text Message

Lauren Baughman to Donald Peters:
(8:19 P.M.) "Im not lieing"

Donald Peters to Lauren Baughman:
(8:19 P.M.) "O"

Text Message

Lauren Baughman to Kurtis Edwards:
(8:19 P.M.) "Im trying to leave"

Kurtis Edwards to Lauren Baughman:
(8:19 P.M.) "K"

Text Message

Donald Peters to Lauren Baughman:
(8:24 P.M.) "Let me kno when you are done"

Lauren Baughman to Donald Peters:
(8:25 P.M.) "Leavin now"

Text Message

Donald Peters to Lauren Baughman:
(8:26 P.M.) "Go 2 your house"

Lauren Baughman to Donald Peters:
(8:27 P.M.) "I am"

Text Message

Lauren Baughman to Donald Peters:
(8:29 P.M.) "I have no ciggs"

Donald Peters to Lauren Baughman:
(8:32 P.M.) "I get u some"

Text Message

Lauren Baughman to Donald Peters:
(8:32 P.M.) "What are you doin"

Donald Peters to Lauren Baughman:
(8:37 P.M.) "Sitting at ur house"

Text Message

Lauren Baughman to Donald Peters:
(8:38 P.M.) "K on the way"

Donald Peters to Lauren Baughman:
(8:39 P.M.) "K wanting"

Text Message

Lauren Baughman to Kurtis Edwards:
(8:43 P.M.) "What you doing"

Kurtis Edwards to Lauren Baughman:
(8:44 P.M.) "Layin here like I have ben
da last 2 hrs babydoll.. Dunno wat
else to do right now"

Text Message

Lauren Baughman to Donald Peters:
(9:00 P.M.) "Can you for real buy me some
Ciggs"

Donald Peters to Lauren Baughman:
(9:02 P.M.) "U going 2 take me"

Text Message

Lauren Baughman to Donald Peters:
(9:02 P.M.) "Yes"

Donald Peters to Lauren Baughman:
(9:03 P.M.) "K let me know"

Text Message

Lauren Baughman to Kurtis Edwards:
(9:13 P.M.) "Who was you texting"

Kurtis Edwards to Lauren Baughman:
(9:14 P.M.) "Noone.. I wuz dletein
everyone in my facebook dat aint
family n not a guy"

Text Message

Lauren Baughman to Kurtis Edwards:
(9:16 P.M.) "Why are you doing that"

Kurtis Edwards to Lauren Baughman:
(9:17 P.M.) "Wen they text me ill
ignore"

Lauren Baughman to Kurtis Edwards:
(9:17 P.M.) "Yeah"

Text Message

Lauren Baughman to Kurtis Edwards:
(9:18 P.M.) "Its like you like the attention with
the girls ldk its enough dealing with your wife"

Kurtis Edwards to Lauren Baughman:
(9:18 P.M.) "im sry.. Im goin for a
walk.. Im really sry im fuckin up"

Text Message

Kurtis Edwards to Lauren Baughman:
(9:20 P.M.) "U dnt hafta deal wit her or ne other
girls nemore I promise.. ldk jus walkin baby"

Lauren Baughman to Kurtis Edwards:
(9:20 P.M.) "Where you going"

Text Message

Kurtis Edwards to Lauren Baughman:

(9:31 P.M.) "Im sry for payin my bills bfor urs
wit da money u took from ron.. Ill try n pay u
bak"

Lauren Baughman to Kurtis Edwards:

(9:34 P.M.) "Naw u good where u at"

Text Message

Kurtis Edwards to Lauren Baughman:

(9:35 P.M.) "Almost at my mamas. Ill find
sumway to pay u bak.. Im sry for bein selfish n
not beain able to take kare of u"

Text Message

Lauren Baughman to Kurtis Edwards:

(9:36 P.M.) "Why u going there"

Text Message

Lauren Baughman to Kurtis Edwards:

(9:36 P.M.) "When you going to drive me so I
can do Rons"

Kurtis Edwards to Lauren Baughman:

(9:36 P.M.) "Wenever u want"

Text Message

Lauren Baughman to Kurtis Edwards:
(9:37 P.M.) "Come on lets do it"

Kurtis Edwards to Lauren Baughman:
(9:37 P.M.) "im on colonial"

(9:37 P.M.) "Idk.. Started walkin
figured id go put in my app"

Text Message

Lauren Baughman to Kurtis Edwards:
(9:38 P.M.) "Come home"

Kurtis Edwards to Lauren Baughman:
(9:39 P.M.) "K"

(9:41 P.M.) "Ik everythings my fault n
im really sry.. I jus dunno how to make
things rite"

Text Message

Lauren Baughman to Kurtis Edwards:
(9:42 P.M.) "You gonna have to break the
window"

Kurtis Edwards to Lauren Baughman:
(9:42 P.M.) "Then y don't u jus do
it?"

Text Message

Lauren Baughman to Kurtis Edwards:
(9:51 P.M.) "Where u at"

Kurtis Edwards to Lauren Baughman:
(9:52 P.M.) "Im almost there"

Text Message

Kurtis Edwards to Lauren Baughman:
(9:52 P.M.) "Outside"

Lauren Baughman to Kurtis Edwards:
(10:00 P.M.) "K"

Text Message

Lauren Baughman to Kurtis Edwards:
(11:17 P.M.) "Wtf answer"

(11:27 P.M.) "We need pills"

Text Message

Lauren Baughman to Ashley Pierce:
(11:32 P.M.) "Call me ASAP"

Ashley Pierce to Lauren Baughman:
(11:34 P.M.) "I will as soon as I get my charger"

Text Message

Lauren Baughman to Donald Peters:
(11:34 P.M.) "Bc your everything"

Donald Peters to Lauren Baughman:
(11:47 P.M.) "I mis u be care ful love"
(11:59 P.M.) "U going 2 be long"

Text Message

Lauren Baughman to Kurtis Edwards:
(11:37 P.M.) "He got the keys on him"

Kurtis Edwards to Lauren Baughman:
(11:59 P.M.) "So Ashleys gunna gt da
keys frun him n we got \$41.35"

Text Message

Lauren Baughman to Ashley Pierce:
(11:38 P.M.) "Yea come by help me"

Ashley Pierce to Lauren Baughman:
(11:39 P.M.) "lol give me a min. 2 c
wats up wit tha car n I will"

Text Message

Lauren Baughman to Ashley Pierce:
(11:39 P.M.) "I'll come get you"

Text Message

Lauren Baughman to Ashley Pierce:
(11:41 P.M.) "We gotta get em I need the
money bad"

Ashley Pierce to Lauren Baughman:
(11:42 P.M.) "K let me kno when u
get ther wat up"

Text Message

Lauren Baughman to Ashley Pierce:

(11:43 P.M.) "Im here he wants me to come get you hes wasted what up you want me to come get you"

Ashley Pierce to Lauren Baughman:

(11:44 P.M.) "I got the car n ill drive il be ther n 15"

Text Message

Lauren Baughman to Ashley Pierce:

(11:45 P.M.) "OK plz u got 2 help me get the keys"

Ashley Pierce to Lauren Baughman:

(11:46 P.M.) "What if we cnt them we wil jus talk him outta money"

Text Message

Lauren Baughman to Ashley Pierce:

(11:50 P.M.) "Hes talkin indian"

Ashley Pierce to Lauren Baughman:

(11:50 P.M.) "LOL I kno"

Text Message

Lauren Baughman to Ashley Pierce:

(11:53 P.M.) "Plz hurry"

Text Messages

June 29, 2011

Between

Donald Peters, Kurtis Edwards,
Lauren Baughman and Ashley Pierce

Text Message

Lauren Baughman to Donald Peters:
(12:01 A.M.) "No"

Donald Peters to Lauren Baughman:
(12:02 A.M.) "Going home"

Text Message

Lauren Baughman to Ashley Pierce:
(12:01 A.M.) "You want me to open the gate"

Ashley Pierce to Lauren Baughman:
(12:02 A.M.) "Pasn the dump had 2
get gas so yea"

Text Message

Kurtis Edwards to Lauren Baughman:
(12:02 A.M.) "Hey baby.. My fones on da
charger. Im b w duby txt his fone"

Lauren Baughman to Kurtis Edwards:
(12:05 A.M.) "Where yall going"

Text Message

Lauren Baughman to Ashley Pierce:

(12:10 A.M.) "we have to get him in the living room an get the keys from him an I sneak in the room"

Ashley Pierce to Lauren Baughman:

(12:11 A.M.) "whers tha keys"

Text Message

Lauren Baughman to Ashley Pierce:

(12:11 A.M.) "On his neck"

Ashley Pierce to Lauren Baughman:

(12:16 A.M.) "K"

Text Message

Lauren Baughman to Ashley Pierce:

(12:16 A.M.) "We need to get him in the living room with a movie on an you attract him when I go to the room act like we going to fuck him"

Text Message

Kurtis Edwards to Lauren Baughman:

(12:19 A.M.) "Getting a kuple other things.. Lol"

Lauren Baughman to Kurtis Edwards:

(12:21 A.M.) "Ima get the house keys yall gonna grave to do it"

Text Message

Lauren Baughman to Ashley Pierce:

(12:20 A.M.) "Ima get my bf to run in here"

(12:21 A.M.) "Ima get thru his wall in the bathroom you think I should do that to get his wallet"

Text Message

Ashley Pierce to Lauren Baughman:

(12:22 A.M.) "Wat bout undr pilo n rm"

Lauren Baughman to Ashley Pierce:

(12:22 A.M.) "No"

Text Message

Donald Peters to Lauren Baughman:

(12:30 A.M.) "U cant talk 2 me"

Lauren Baughman to Donald Peters:

(12:33 A.M.) "Yes wrkin on everything now"

(12:47 A.M.) "I'm coming to get yall to do it"

Text Message

Lauren Baughman to Ashley Pierce:

(12:36 A.M.) "I can do it in the bathroom but its going to take like 20 mins you want me too"

Ashley Pierce to Lauren Baughman:

(12:37 A.M.) " Yea if he wnt gve us money"

Text Message

Kurtis Edwards to Lauren Baughman:

(12:42 A.M.) "I told u im a badd boy baby.. Lol..
I wuz doin my best to b legit n take kare of u
but dat shit wuznt workin.. I hope u dnt hold ne
of dis against me.. I love you babydoll"

Text Message

Kurtis Edwards to Lauren Baughman:

(12:54 A.M.) "How u doin babydoll?"

Lauren Baughman to Donald Peters:

(12:47 A.M.) "I'm coming to get yall to do it"

Donald Peters to Lauren Baughman:

(12:47 A.M.) "K"

Text Message

Lauren Baughman to Ashley Pierce:

(1:01 A.M.) "Try to lve ima giv you several
hundred"

Ashley Pierce to Lauren Baughman:

(1:02 A.M.) "Im bout 2 leave"

Lauren Baughman to Ashley Pierce:

(1:06 A.M.) "Did you leave"

Ashley Pierce to Lauren Baughman:

(1:16 A.M.) "Hes getn it"

Text Message

Lauren Baughman to Ashley Pierce:

(1:22 A.M.) "They coming now u better leave"

Text Message

Ashley Pierce to Lauren Baughman:

(1:39 A.M.) "U dnt gota gve me ne money its okay"

Lauren Baughman to Ashley Pierce:

(1:41 A.M.) "Why"

Text Message

Ashley Pierce to Lauren Baughman:

(1:44 A.M.) "Dawn is jus tripn she dnt knw wats going on but I think she jus mad cuz he gave me only 30"

Lauren Baughman to Ashley Pierce:

(1:45 A.M.) "Im bring u something fuck that"

Text Message

Ashley Pierce to Lauren Baughman:

(1:46 A.M.) "Have u talkd 2 them"

Lauren Baughman to Ashley Pierce:

(1:50 A.M.) "They in there now just got in"

Text Message

Kurtis Edwards to Lauren Baughman:

(1:50 A.M.) "We in da house"

Lauren Baughman to Kurtis Edwards:

(1:50 A.M.) "K hurry"

Text Message

Ashley Pierce to Lauren Baughman:

(1:51 A.M.) "How u kno?"

Lauren Baughman to Ashley Pierce:

(1:52 A.M.) "Can you call me"

Text Message

Lauren Baughman to Ashley Pierce:

(1:52 A.M.) "just txted they just got in they
about to walk up on him"

Ashley Pierce to Lauren Baughman:

(1:54 A.M.) "He gna cal tha cops u gna hav
2 sho up n make it look like nuthn"

Text Message

Lauren Baughman to Ashley Pierce:

(1:54 A.M.) "I am as soon as they call"

Ashley Pierce to Lauren Baughman:

(2:07 A.M.) "Jus dnt come here Dawn wil
trip"

Text Message

Ashley Pierce to Lauren Baughman:
(2:08 A.M.) "My hmeboy here so il hav him bring me"

Lauren Baughman to Donald Peters:
(2:08 A.M.) "Ok"

Ashley Pierce to Lauren Baughman:
(2:08 A.M.) "ill meet u or sumthn k"

Text Message

Lauren Baughman to Kurtis Edwards:
(2:03 A.M.) "Open the gate"

Text Message

Lauren Baughman to Ashley Pierce:
(2:09 A.M.) "We only got wallet"

Text Message

Lauren Baughman to Ashley Pierce:
(2:09 A.M.) "K"

Text Message

Ashley Pierce to Lauren Baughman:

(2:10 A.M.) "How much was n it"

(2:10 A.M.) "Shutup u serious did u go ther yet"

Lauren Baughman to Ashley Pierce:

(2:11 A.M.) "Running 2 house giv me 10 mins"

Ashley Pierce to Lauren Baughman:

(2:12 A.M.) "K"

Text Message

Ashley Pierce to Lauren Baughman:

(2:38 A.M.) "Lol yea thankx that was easy"

Lauren Baughman to Ashley Pierce:

(2:43 A.M.) "Yes it was"

Text Message

Donald Peters to Lauren Baughman:

(3:18 A.M.) "Love u baby"

Lauren Baughman to Donald Peters:

(3:22 A.M.) "I love you too"

Donald Peters to Lauren Baughman:

(3:23 A.M.) "Ya"

Text Message

Donald Peters to Lauren Baughman:
(3:46 A.M.) "I mis u be care ful love"

Lauren Baughman to Donald Peters:
(3:46 A.M.) "K hunny"

Text Message

Donald Peters to Lauren Baughman:
(3:47A.M.) "Ya"

Lauren Baughman to Donald Peters:
(3:49 A.M.) "Thank you"

Text Message

Donald Peters to Lauren Baughman:
(3:49 A.M.) "Ya"

Lauren Baughman to Donald Peters:
(3:50 A.M.) "I wanna fuck u to this song"

Text Message

Donald Peters to Lauren Baughman:
(3:50 A.M.) "OK"

(3:52 A.M.) "K"

Text Message

Donald Peters to Lauren Baughman:

(3:53 A.M.) "Win"

Lauren Baughman to Donald Peters:

(3:57 A.M.) "I wish tonight"

Text Message

Donald Peters to Lauren Baughman:

(4:05 A.M.) "Ya"

Lauren Baughman to Donald Peters:

(4:06 A.M.) "For real"

Text Message

Donald Peters to Lauren Baughman:

(4:09 A.M.) "O"

Lauren Baughman to Donald Peters:

(4:10 A.M.) "You okay"

Text Message

Donald Peters to Lauren Baughman:

(4:11 A.M.) "Ya and 8tu"

Lauren Baughman to Donald Peters:

(4:12 A.M.) "Yes yes the happiest person
ever"

Text Message

Donald Peters to Lauren Baughman:

(4:11 A.M.) "O"

(4:25 A.M.) "Win"

Text Message

Lauren Baughman to Kurtis Edwards:

(4:13 A.M.) "U shld hand Duby sum money"

Kurtis Edwards to Lauren Baughman:

(4:20 A.M.) "How much.. I ben tryin to ask u"

(4:27 A.M.) "150 or 200 baby?"

Text Message

Lauren Baughman to Donald Peters:

(4:26 A.M.) "I wish right this sec"

Donald Peters to Lauren Baughman:

(4:26 A.M.) "O"

Text Message

Lauren Baughman to Donald Peters:

(4:32 A.M.) "Hi"

Donald Peters to Lauren Baughman:

(4:33 A.M.) "Ya"

Text Message

Donald Peters to Lauren Baughman:

(4:33 A.M.) "No be good ok"

Lauren Baughman to Donald Peters:

(4:34 A.M.) "What you mean be good"

Text Message

Donald Peters to Lauren Baughman:

(4:35 A.M.) "Wat it says"

(4:40 A.M.) "Been good wit your man"

Text Message

Lauren Baughman to Donald Peters:

(4:41 A.M.) "What you mean tell me plz"

Donald Peters to Lauren Baughman:

(4:41 A.M.) "U know"

Text Message

Donald Peters to Lauren Baughman:

(4:44 A.M.) "U and your man have fun"

Lauren Baughman to Donald Peters:

(4:44 A.M.) "When"

Text Message

Donald Peters to Lauren Baughman:

(4:45 A.M.) "2 nite"

Lauren Baughman to Donald Peters:

(4:46 A.M.) "How fuck em"

Text Message

Donald Peters to Lauren Baughman:

(4:47 A.M.) "Wat"

Lauren Baughman to Donald Peters:

(4:50 A.M.) "How u mean have fun"

Text Message

Donald Peters to Lauren Baughman:

(4:54 A.M.) "U know"

(5:02 A.M.) "U seam happy with him"

Lauren Baughman to Donald Peters:

(5:03 A.M.) "I have to be nice"

Text Message

Donald Peters to Lauren Baughman:

(5:04 A.M.) "Watever"

Lauren Baughman to Donald Peters:

(5:05 A.M.) "Duby"

Text Message

Donald Peters to Lauren Baughman:

(5:05 A.M.) "Wat"

(5:16 A.M.) "U seam very happy wit him so be it"

(5:16 A.M.) "Ya"

Text Message

Lauren Baughman to Donald Peters:

(5:17 A.M.) "Im just very happy tonight you don't know how it feels not to go to jail now I wont have to leave my daughter"

Text Message

Donald Peters to Lauren Baughman:

(5:17 A.M.) "Im goin 2 stay away"

Lauren Baughman to Donald Peters:

(5:18 A.M.) "Plz don't stay away"

Text Message

Donald Peters to Lauren Baughman:

(5:18 A.M.) "Ya I know"

Lauren Baughman to Donald Peters:

(5:21 A.M.) "Bc I wont have you in my life"

Text Message

Donald Peters to Lauren Baughman:

(5:19 A.M.) "No be happy please"

Lauren Baughman to Donald Peters:

(5:28 A.M.) "Plz plz"

Text Message

Donald Peters to Lauren Baughman:

(5:21 A.M.) "Sorry"

(5:21 A.M.) "Ya y"

(5:22 A.M.) "Wat"

Text Message

Lauren Baughman to Ashley Pierce:

(5:26 A.M.) "Im headed to Rons yo"

Text Message

Donald Peters to Lauren Baughman:

(5:27 A.M.) "Ya"

(5:30 A.M.) "Plz wat"

Text Message

Lauren Baughman to Donald Peters:

(5:32 A.M.) "Plz don't do this to me"

(5:37 A.M.) "Yes"

Donald Peters to Lauren Baughman:

(5:38 A.M.) "Yes wat"

Text Message

Lauren Baughman to Donald Peters:

(5:32 A.M.) "Don't do this"

Donald Peters to Lauren Baughman:

(5:41 A.M.) "Wat"

(5:43 A.M.) "I wan u 2 be hapy that's all u
seam"

Text Message

Lauren Baughman to Donald Peters:

(5:54 A.M.) "I told you im the happiest person
in the world right now its bc of you"

Donald Peters to Lauren Baughman:

(5:55 A.M.) "No your man did"

Text Message

Donald Peters to Lauren Baughman:

(10:59 A.M.) "No"

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
 STATE VS.
Donald Eugene Peters

AKA:

Race: W Sex: M Age: 40DOB: 1972 SS#:

Address:

City, State, Zip:

DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

15 years to life
 IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0701456A/W#: J349486Date of Offense: 6/29/2011S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bannon, Meredith77415
SC Bar#Donald Peters
DefendantChellum
Attorney for Defendant2446
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 23 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed — years
 and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
 of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on.

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —Recipient: —

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP —— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: ATU

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Misty TaylorCourt Reporter: Cheri Young

SCCA/217 (03/2011)

Presiding Judge Ronald A. PerryJudge Code: 2054Sentence Date: 2/27/13

WITNESSES

Rice/BCSO

ARREST WARRANT NUMBER

J349486

ACTION OF GRAND JURY

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS0701456

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

vs.

Donald Eugene Peters

Indictment for

Burglary / Burglary (After June 20, 1985) - First
degree

SC Code: 16-11-0311

CDR Code: 0079

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

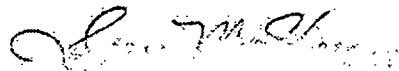
INDICTMENT
2011GS0701456

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of Beaufort County present upon their oath:

Burglary / Burglary (After June 20, 1985) - First degree

That in Beaufort County, South Carolina, on or about June 29, 2011, the Defendant, Donald Eugene Peters, did enter the dwelling of Ronald Lanier, located at [REDACTED], Burton, SC, without consent and with the intent to commit a crime therein. That, in addition, entry and/or remaining occurred at night, 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.



Solicitor

COUNTY OF Beaufort
 STATE VS.
Donald Eugene Peters
 AKA:
 Race: W Sex: M Age: 40
 DOB: 1972 SS#: [REDACTED]
 Address:
 City, State, Zip:
 DL#: SID#:

INDICTMENT/CASE#: 2011GS0701457
 A/W#: J349487
 Date of Offense: 6/29/2011
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Meredith Bannon Donald Peters [Signature] 2446
 Bannon, Meredith SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 23 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: 2/27/13
☒ 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 PTUP —
 Total: \$ — plus 20% fee: \$ —
 Payment Terms: —
☐ Set by SCDPPPS —

Recipient: —

*Fine: \$ —
 § 14-1-206 (Assessments 107.5 %) \$ —
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ —
 § 56-5-2995 (DUI Assessment) \$12 \$ —
 § 56-1-286 (DUI Breath Test) \$25 \$ —
 Proviso 47.9 (Public Def/Prob) \$500 \$ —
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ —
 § 50-21-114(BUI Breath Test Fee) \$50 \$ —
 § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ —
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

— 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: ATU

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Kristy Taylor

Court Reporter: Chris Young

SCCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: 2057

Sentence Date: 2/27/13

WITNESSES

Rice/BCSO

ARREST WARRANT NUMBER

J349487

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS0701457

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

VS.

Donald Eugene Peters

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed**

SC Code: 16-11-0330(A)

CDR Code: 0139

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

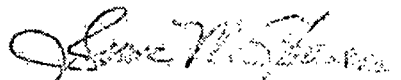
INDICTMENT
2011GS0701457

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That on or about June 29, 2011, in Beaufort County, South Carolina, the Defendant, Donald Eugene Peters, at [REDACTED] Burton, SC, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Ronald Landier with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) 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.



Solicitor

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STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
 STATE VS.
Donald Eugene Peters

AKA:

Race: W Sex: M Age: 40DOB: 1972 SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Assault & Battery 1st Degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0701458A/W#: J349488Date of Offense: 6/29/2011S.C. Code §: 16-03-0600(C)(1)CDR Code #: 3412

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bannon, Meredith77415 SC Bar#Donald Peters DefendantAttorney for Defendant2446 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2/27/13☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning \$ paid to Public Defender FundOther: ATTN

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Kristy TaylorCourt Reporter: Cheri Young

SCCA/217 (03/2011)

Presiding Judge Thomas L. RuffJudge Code: 2059Sentence Date: 2/27/13

WITNESSES

Rice/BCSO

ARREST WARRANT NUMBER

J349488

ACTION OF GRAND JURY

Brandt
Foreperson of Grand Jury
Date: JUL 21 2011

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701458

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

vs.

Donald Eugene Peters

Indictment for

Assault and Battery 1st Degree

SC Code: 16-03-0600(C)(1)
CDR Code:3412

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

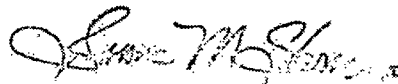
INDICTMENT
2011GS0701458

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of Beaufort County present upon their oath:

Assault and Battery First Degree

That in Beaufort County, South Carolina, on or about June 29, 2011, the Defendant, Donald Eugene Peters, did commit an assault and battery constituting an unlawful act of violent injury to the victim, Ronald Lanier, accompanied by circumstances of aggravation, to wit: did cause injury to the victim during a robbery; all in violation of the Common Law of South Carolina and Section 17-25-30 (C/L) of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor