

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Maite Murphy, Circuit Court Judge

JOE LOUIS BAILEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000957

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON CASE NO. 2015-GS-10-5566
CASE NO. 2016-GS-10-3772

STATE OF SOUTH	)	
CAROLINA,	)	
	)	TRANSCRIPT OF RECORD
PLAINTIFF,	)	
	)	
VS.	)	
	)	OCTOBER 17, 2016
	)	CHARLESTON, SC
JOE L. BAILEY,	)	
	)	
DEFENDANT.	)	

B E F O R E:

HONORABLE DEADRA JEFFERSON, JUDGE.

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

CHARLES CONDON, ESQUIRE
CHRIS LIETZOW, ESQUIRE
Attorneys for the State

LUKE MALLOY, ESQUIRE
JOHN KOZELSKI, ESQUIRE.
Attorneys for the Defendant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

I N D E X

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1 (The following proceedings were held
2 October 17, 2016, Charleston County, South
3 Carolina, @ 11:40 a.m.)

4 (The following proceedings were held
5 outside the hearing of the prospective jurors.)

6 MR. CONDON: In terms of -- Your
7 Honor --

8 THE COURT: They have a made a motion
9 that you might be able to help me. I am trying to
10 figure out what element of burglary first would any
11 of these other burglaries meet.

12 MR. CONDON: Your Honor, this is a
13 burglary first based on a prior burglary because
14 it's a daytime burglary in the second. And becomes
15 a first degree under the statute because he has two
16 or more prior burglaries.

17 THE COURT: You all concede that?

18 MR. MALLOY: We do. It does appear
19 that he has two prior burglaries the solicitor
20 provided me with.

21 THE COURT: That would be the '09
22 burglary second and what other one?

23 MR. CONDON: 2001 burglary.

24 THE COURT: Third degree?

25 MR. CONDON: Yes, Your Honor.

1 MR. MALLOY: That is correct. In our
2 motion we do -- we don't have reason to dispute the
3 existence of those convictions. Our motion is a
4 motion to bifurcate.

5 THE COURT: I understand that, but
6 there's really no basis for that. It's a creative
7 argument, but our Supreme Court has spoken and said
8 that as an element of the offense that's completely
9 admissible.

10 MR. MALLOY: Your Honor, we agree that
11 it is admissible. We are just asking the State not
12 present evidence of it until the jury has
13 determined guilt or innocence of the elements --

14 THE COURT: How can they determine that
15 when one of the elements is burglary?

16 MR. MALLOY: Well, they can simply --
17 the elements would be this entering of the dwelling
18 without consent --

19 THE COURT: They don't have to -- they
20 are not confined to that. They have several
21 options.

22 MR. MALLOY: Your Honor, but I think
23 that it would not prejudice the State's case to ask
24 them to --

25 THE COURT: You cannot direct them how

1 to try their case. The Supreme Court said they
2 can't even be compelled to enter into a stipulation
3 regarding the previous burglary. They certainly
4 aren't confined by how they present their case and
5 how they meet their burden of proof.

6 MR. MALLOY: I think the difference
7 between the stipulation argument and the
8 bifurcation argument is that we are not asking to
9 stipulate to take away the thrust of their case or
10 the way they would present it, Your Honor. They
11 are free to present the prior burglary convictions.
12 We are just asking that they arrange the order in
13 which they --

14 THE COURT: No. They have a burden of
15 proof. They have to prove his guilt beyond a
16 reasonable doubt. And they have certain elements
17 to meet and one of those elements is prior
18 burglaries.

19 MR. MALLOY: Yes, Your Honor. We are
20 not depriving the State -- we wouldn't be depriving
21 the State at all of the ability to prove that to
22 the jury, only the order in which they would prove
23 it in.

24 THE COURT: I don't see any basis for
25 what you have requested. Because the Supreme Court

1 has spoken loudly and clearly about how they are
2 able to do that. And, therefore, there is no basis
3 for this Court to adhere to any arguments regarding
4 the English common law when clearly we have a
5 statute that speaks to the elements of that offense
6 being presented as well as our Supreme Court
7 speaking resoundingly regarding the very issue you
8 raise which is prejudice.

9 The Supreme Court already said there's
10 no prejudice to a Defendant when the purpose of
11 admitting the offense is solely to meet an element
12 of the offense and especially where there is a
13 curative instruction that deals with that. That
14 tells there's -- he is not to suffer any prejudice
15 because of that, that it is merely being presented
16 as an element of the offense of burglary in the
17 first degree.

18 MR. MALLOY: Your Honor, I would ask
19 that -- for the curative instruction that it be
20 provided to the jury at the time these convictions
21 are entered as well as during your general
22 instructions.

23 THE COURT: I am not going to overly
24 enhance anything and I will deal with the
25 instructions at the time that we -- I don't deal

1 with the instructions at the beginning of the
2 trial. I deal with instructions at the end of
3 trial so I can hear what's actually presented
4 because instructions should address what actually
5 has been presented and what you all anticipate will
6 be presented is not often what pans out as the way
7 it was actually presented.

8 Now, of more concern to me, I guess I
9 need to ask this just sort of preliminarily. Other
10 than the prior burglaries which would meet the
11 elements, other than the burglaries that would be
12 presented as an element of the State's case, what
13 other -- the State would not be seeking to
14 introduce any more of a record other than to
15 impeach him if he were to testify, correct?

16 MR. CONDON: Your Honor, I don't know
17 that at this point, but just for the Court's
18 knowledge, he did burglarize the same victim before
19 and the same victim caught him in the act.

20 THE COURT: What was he prosecuted for?

21 MR. CONDON: He was and convicted.
22 That's his burglary second.

23 THE COURT: Which victim?

24 MR. CONDON: Marvin Harrison. So he
25 does know him from that. He caught him again.

1 THE COURT: Which burglary was it?

2 MR. CONDON: It was a 2001 burglary.
3 Originally it was a first degree and it was pled
4 down to burglary third degree.

5 THE COURT: And what element -- would
6 that go to the ID?

7 MR. CONDON: Yes, Your Honor.

8 THE COURT: Because he knew him in the
9 past?

10 MR. CONDON: It would show how he knew
11 him. He literally burglarized the same area of his
12 house.

13 THE COURT: What we'll do is before any
14 of that comes in -- I thought this was the standard
15 motion to exclude prior bad acts. I didn't realize
16 it was that involved. What we'll do is before you
17 introduce anything regarding that you need to make
18 me aware of it so we can take it up in camera and I
19 can create a proffer and rule on it
20 contemporaneously.

21 So don't elicit that in the presence of
22 the jury. Just tell me you have a matter of law
23 you need to take up and then we will excuse the
24 jury and deal with that. That's an interesting
25 issue. All right.

1 Now, the next one I assume we need to
2 have a Biggers? Did they do any kind of lineup
3 other than the show up?

4 MR. CONDON: Yes, Your Honor. The
5 first victim, Ms. Schaffer, was shown
6 identification. The second victim who previously
7 knew the Defendant from being a victim of his did a
8 six pack lineup.

9 THE COURT: So just before you get to
10 that we need to take that up in camera as well to
11 create a proffer in the event if there is some
12 basis to exclude that.

13 Now, we need to deal with this motion
14 to sever. He has two pending burglary first
15 charges and those are indictments 2016-GS-10 --
16 well, one is 2016-GS-10-3772. And that is with the
17 victim Marvin Harrison and 2015-GS-10-5566 which is
18 with the victim Sandra Schaffer. What is the basis
19 of the motion to sever?

20 MR. MALLOY: Thank you, Your Honor.
21 May it please the Court, the factors we're dealing
22 with here in the law of severance are one, whether
23 charges arise of a single change of circumstances;
24 two, whether they are proved by the same evidence;
25 three, are they of the same general nature; and

1 four, if no real right of the Defendant has been
2 prejudiced.

3 And, Your Honor, I want to focus on the
4 second and the fourth factors in support of my
5 argument. I don't believe that these two charges
6 require the same evidence. They are provable on
7 their own. Each charge can stand on their own.
8 There's two different victims. There were
9 different investigations. Mr. Bailey was not
10 charged with those two burglaries at the same time.
11 He was charged first with burglary third degree on
12 Ms. Schaffer. He was not charged in the Harrison
13 burglary at that time. I don't believe the police
14 spoke to Mr. Harrison at that time.

15 There was a follow up involving
16 different officers in the Harrison case who later
17 on originally charged Mr. Bailey with petty larceny
18 on that case, not burglary. It was later indicted
19 for burglary first degree, but involving a totally
20 different investigation. It was not initiated at
21 the same time as the Schaffer case.

22 THE COURT: Let me ask a question. Are
23 you saying that factually that he didn't --
24 assuming the facts as true, basis of the
25 indictment, that he broke into one house and then

1 within minutes broke into another house and when
2 apprehended at that house was then taken back to
3 the first house where a show up was done? Did all
4 this based on what the State -- their response,
5 basically they are alleging this all took place in
6 about ten minutes.

7 MR. MALLOY: They are alleging that,
8 Your Honor. But I still think they can prove both
9 cases.

10 THE COURT: That's not the question.
11 Is that --

12 MR. MALLOY: I agree they occurred
13 within -- the State's view of the case is that it
14 occurred within a short period of time.

15 THE COURT: Well, I mean it either -- I
16 mean that's not a view. I mean either they can --
17 that's what happened or it didn't happen. I don't
18 think you are contesting that your client was
19 stopped and taken for a show up.

20 MR. MALLOY: Correct. We are not
21 contesting that he was brought.

22 THE COURT: You may contest whether Ms.
23 Schaffer is credible and that he broke into her
24 home a few minutes before, but you are not
25 contesting that he was found in this second home or

1 within the vicinity. Based on the memo that I read
2 basically they're saying that the gentleman, two of
3 the family members were home. He then arrived home
4 and saw your client with certain of his items.

5 MR. MALLOY: We contest that he saw my
6 client. We do not --

7 THE COURT: You don't contest the
8 police arrived and then they took him back to the
9 first house and had Ms. Schaffer identify him.

10 MR. MALLOY: We do agree that Mr.
11 Bailey was apprehended and taken to the show up and
12 that was the individual.

13 THE COURT: Okay.

14 MR. MALLOY: And --

15 THE COURT: What case law do you have
16 that would support your contention this was not a
17 string, in other words, continuum of events?
18 Because there's case law that supports the State's
19 position of trying him together which is when you
20 have instances that happened in close proximity of
21 one another, almost contemporaneously that would
22 basically amount to a spree of sorts, that it is
23 appropriate to try them together.

24 MR. MALLOY: Your Honor, my motion I
25 have cited is State v. Middleton, that's 288 S.C.

1 --

2 THE COURT: That just states the
3 elements. That's not factually the same as --

4 MR. MALLOY: I agree we are not dealing
5 with burglary charges, but those offenses occurred
6 within --

7 THE COURT: No, I am talking about
8 factually. Basically that support their
9 proposition that when you have a spree it's
10 appropriate for the State to try them like that.

11 MR. MALLOY: Your Honor, I think they
12 ruled that was not a spree in that case.

13 THE COURT: All these cases are
14 factually driven. You know, if you have one -- the
15 event happened on one day and an event happened the
16 next day, that's different than when you have
17 events that happened within minutes of one another.

18 MR. MALLOY: I understand that is a
19 close proximity --

20 THE COURT: Factually the case that you
21 cite is not close in proximal time.

22 MR. MALLOY: Not as close as Simmons
23 which is the case that the State cites; however, I
24 do think this situation is distinguishable from
25 Simmons due to the fact that Mr. Bailey was not

1 charged with those burglaries.

2 THE COURT: I don't think it really
3 matters, does it? I think this case is developed
4 later.

5 MR. MALLOY: I think it matters
6 regarding whether the cases are provable by the
7 same evidence, Your Honor.

8 THE COURT: Well, clearly they knew it
9 was related or they wouldn't have taken him from
10 that house and took him up the street to another
11 house to have him ID'd, right?

12 MR. MALLOY: Your Honor, they did not
13 -- my understanding is they did not know about the
14 Harrison case until --

15 THE COURT: How did they come in
16 contact with your client?

17 MR. MALLOY: The Schaffer case.

18 THE COURT: No, they picked him up and
19 took him up the street to somebody else's house.
20 So how did that happen? Or I am confused about the
21 facts?

22 MR. CONDON: Your Honor --

23 THE COURT: Because I only know the
24 facts from what you all submitted to me and what I
25 read and of course the indictments are useless in

1 terms of what you can tell the facts are. Tell me
2 exactly what the State contends the facts to be.

3 MR. CONDON: Just briefly. Your Honor,
4 originally this Defendant goes into the utility
5 room.

6 THE COURT: I got that part.

7 MR. CONDON: Of the residence, she puts
8 him at gunpoint. He flees, she watches him go up
9 Octavia towards Cornelia Drive. Once he hits
10 Cornelia Drive he then burglarizes the other
11 victim's house, Harrison's. Meanwhile she has
12 called the police. The Harrisons come home, see
13 him walking down the street with their stuff. Stop
14 him, confront him, get their stuff back. Then Ms.
15 Harrison actually flags down Deputy Tyner who is
16 responding to the first burglary, reports their
17 burglary. He is confused at the time thinking that
18 she is --

19 THE COURT: Reporting the first.

20 MR. CONDON: Exactly. So long story
21 short, she points out the direction that he is
22 walking up Savannah Highway. So the deputy does a
23 U-turn, gets back on Savannah Highway and goes
24 right where she says that he is walking, apprehends
25 him and they go back to the Schaffer residence, do

1 the show up, and it's shift change so then another
2 officer comes on, takes the report from the
3 Harrisons. Meanwhile they haul him off to jail on
4 burglary in the first degree. So we are going to
5 be calling all the same witnesses in both cases.
6 We contend that it's one course of conduct here and
7 they both identify him. This is talking about
8 within minutes. We are talking --

9 THE COURT: According to your memo
10 about 10 minutes give or take.

11 MR. CONDON: Correct, Your Honor.

12 THE COURT: Like 5:50 something and
13 then 6:10 or 6:15. I can't remember the exact time
14 frame that was in there, in your memo.

15 MR. CONDON: That's correct. We would
16 note the case that I find that is on point is State
17 v. Simmons and I have a copy. I can give it to
18 Your Honor.

19 THE COURT: You can save your trees.
20 Y'all sent it to me in advance. I read the
21 advance. I am just trying to -- I think all of
22 these cases are factually driven, depends on the
23 time frame within which that it happens. I think
24 if you have something that -- the Supreme Court is
25 not adopting any kind of bright-line, but clearly I

1 think you could be out of bounds if like one
2 happened one day and one happened the next day, but
3 I think you can talk about minutes. That's a
4 little different scenario. Anything further, Mr.
5 Malloy?

6 MR. MALLOY: I do agree the time frame
7 is not on our side in this argument; however, I do
8 stand on the previous argument. Also would like to
9 point out the prejudice to Mr. Bailey by having two
10 separate allegations presented against him within
11 that close proximity of time. I don't want to
12 sacrifice his right to a fair trial in the interest
13 of efficiency of the State, Your Honor, and I do
14 think they --

15 THE COURT: My concern is that all such
16 -- it's so closely tied because they're going to
17 need the witness from the first one to explain why
18 the police ever came in contact with your client
19 the second time. And so it almost becomes a fable
20 to allow her to testify and not say how she came in
21 contact with him which was in her laundry room.
22 Because how else would you explain he was in the
23 laundry room? Somebody doesn't just wander into a
24 personal space of your residence, at least in the
25 light most favorable to the State as they contend

1 it happened.

2 So then you would be -- basically you
3 have me reduce their witness to a fiction which
4 then bears on the credibility of their witnesses as
5 to how she came in contact with him. I am not
6 certain that it's not so closely tied together that
7 it is not one continuum of events. I have to admit
8 my perception of it changed after hearing argument
9 because when I first read the memo my first thought
10 was what's the harm in trying him separately.

11 But it almost becomes why do it twice
12 when it's that close in proximity and they still
13 have to prove each burglary separately. They can't
14 just say because he did it at her house he did it
15 at this house. They still have to prove each and
16 every element of those burglaries beyond a
17 reasonable doubt. And I probably would craft some
18 instruction that says you have heard about two
19 separate incidents and the State still has the
20 burden of proving each one of those beyond a
21 reasonable doubt and also give a character
22 instruction that you can't hold any of that against
23 him.

24 In other words, he can be acquitted on
25 one, convicted or acquitted on both. So I think

1 the credibility instructions as well as the
2 separate incident instruction and character
3 instructions probably would cure a lot of what my
4 concerns are, but I am going to think about it.

5 MR. CONDON: Your Honor, I point out
6 that the prejudice prong that the Court looks to
7 whether or not the evidence would be admitted under
8 44 (b) as part of their analysis. I would point
9 out that I do think that both these incidents would
10 -- if we were to sever them the information from
11 each would be admissible to show that identity of
12 the Defendant, common scheme or plan and also I
13 would say that the Court also -- the Simmons case
14 was interesting because they directed the verdict
15 on one of the charges because the State failed to
16 meet it. The Court still said it was appropriate
17 to join the charges in that case and the facts of
18 this case are very -- if not almost identical to
19 the facts in our case.

20 And also the Court notes that on res
21 gestae the evidence from both burglaries would be
22 admissible so we believe --

23 THE COURT: That's a unique set of
24 facts because you have an ID issue. You have
25 several, but you have an ID issue, then in addition

1 to that you have an offense. So it sort of becomes
2 when you look at it from an economical standpoint
3 in terms of trying it as well as whether the
4 Defendant suffers any prejudice which is really the
5 paramount consideration and his ability to receive
6 a fair trial. You would still able to admit
7 evidence about your witness because that's how she
8 came into contact with him.

9 The issue then becomes how do you then
10 be fair to you, and I mean the State, in presenting
11 that witness and not create some fiction that she
12 just happened to run into him first in the laundry
13 room.

14 I don't know that it really in terms of
15 a prejudice analysis it would really make any
16 difference because I think people probably -- if I
17 were to follow a prejudice analysis it would be
18 just as prejudicial. I mean if I were looking at
19 it from the defense perspective. What's the
20 difference between him being charged with burglary
21 and being in her laundry room or her finding him at
22 gunpoint in the laundry room. It's all the same.
23 So I am inclined to deny the motion to sever based
24 on Simmons, but I need to think about that a little
25 bit more.

1 MR. MALLOY: Your Honor, if I could
2 just respond to the solicitor's res gestae argument
3 and he has also brought up 44 (b) and while my
4 response to the res gestae is similar to my motion
5 to sever which is that he does not necessarily need
6 one to prove the other.

7 Also, Your Honor, I move under 403 to
8 keep it out. I think that it would be extremely
9 prejudicial to Mr. Bailey, again two separate
10 allegations in close proximity to one another.

11 THE COURT: Relevant hinges on whether
12 some element of the offense is more probable or
13 not. Evidence against somebody is inherently
14 prejudicial. So I don't find any merit in that
15 argument and will deny it based on that on 403
16 analysis. But I need to think about the other.

17 Now, my other question becomes were
18 there any offers extended to the Defendant? I am
19 solely asking that for PCR purposes. And does he
20 wish to have a formal arraignment, Mr. Malloy?

21 MR. MALLOY: No, Your Honor. We would
22 waive the formal arraignment.

23 THE COURT: Perfect. Now, I needed to
24 ask those questions before I forgot. And were
25 there any offers extended to him?

1 MR. CONDON: Yes, Your Honor. Burglary
2 third degree second offense.

3 THE COURT: What does that carry?

4 MR. CONDON: Zero to ten.

5 THE COURT: And it's discretionary,
6 correct? There's no mandatory minimum?

7 MR. CONDON: That's correct.

8 THE COURT: Were you all making any
9 recommendations on sentence?

10 MR. CONDON: We would ask for the
11 maximum sentence on that.

12 THE COURT: With them having the
13 ability to argue for less?

14 MR. CONDON: That's correct.

15 THE COURT: And how long has he been in
16 jail, Mr. Malloy?

17 MR. MALLOY: Since his arrest.

18 THE COURT: Which is?

19 MR. MALLOY: I haven't added it up.

20 THE COURT: So that was since the date
21 of this offense which was April?

22 MR. MALLOY: Booking date was
23 April 19th.

24 THE COURT: 2015. Has he -- did he
25 reject that offer on the record?

1 MR. CONDON: Yes, Your Honor, twice.

2 THE COURT: When was that?

3 MR. CONDON: Recently at the status
4 conference. I don't have the exact date.

5 THE COURT: Do you remember, Mr.
6 Malloy?

7 MR. MALLOY: Your Honor, I don't think
8 -- he did reject that offer on the record when he
9 was transported to plea court at one time. I only
10 think he rejected it once.

11 THE COURT: Have y'all had a status
12 conference?

13 MR. CONDON: Yes.

14 THE COURT: I guess it is October,
15 isn't it?

16 MR. MALLOY: Your Honor, I didn't
17 perceive that to be on the table at the status
18 conference. That was actually --

19 THE COURT: So he was transported for
20 plea court and rejected it so you perceived that
21 the offer culminated at that point.

22 MR. MALLOY: Yes, we did reject. But
23 at that time the second -- the Harrison burglary
24 had not been indicted I don't believe. Mr. Condon
25 did not discover that until we were prepping for

1 trial on the Schaffer case so that did not
2 contemplate the second burglary first.

3 THE COURT: So the offer you extended
4 him was only on the first case?

5 MR. CONDON: That's correct, but --

6 THE COURT: So did you make him an
7 offer on both?

8 MR. CONDON: I am trying to recall the
9 procedure. I feel like we -- the information came
10 out, was that not correct?

11 MR. MALLOY: Not before he came to plea
12 court. We were getting ready for trial when you
13 came across the --

14 MR. CONDON: Your Honor, we haven't
15 discussed anything. My understanding is he does
16 want not to plea to anything.

17 THE COURT: Well, you know, people's
18 opinions often change when trial is a theory versus
19 reality. That's why I asked these questions on PCR
20 because it doesn't matter to me whether he pleads
21 or not. I don't have a position. But I don't want
22 -- hindsight is always 20/20 and I don't want him
23 coming back later to say my lawyers never fully
24 explained the offer to me and I never really
25 understood what was being offered. And therefore I

1 could not freely and voluntarily reject it. That's
2 why I get PCR's all the time that say I want my
3 deal back. So that's why I asked these questions.
4 Not because I care one way or the other or that I
5 have a position one way or the other or that the
6 Defendant will be prejudiced by having a trial
7 because he will not. And I don't want it to be
8 perceived in that way. But my question I guess
9 then becomes if you extended to him a burglary
10 third second offense on one charge, then have you
11 ever extended to him an offer on both offenses?

12 MR. CONDON: No, Your Honor, I have
13 not.

14 THE COURT: Okay. Are you all
15 interested in discussing that or is that an
16 exercise in futility, Mr. Malloy? I just want him
17 to be clear about that because again I don't want
18 him to come back and file a PCR against you and say
19 my lawyer never pursued this on my behalf.

20 MR. MALLOY: Your Honor, we are dealing
21 with two burg firsts. I don't think that Mr.
22 Bailey is going to be entering a plea.

23 THE COURT: You have explained to him
24 the significant departure in the sentence? You
25 have explained to him what a burglary first degree

1 carries?

2 MR. MALLOY: Yes.

3 THE COURT: You have explained to him
4 the potential for a life sentence?

5 MR. MALLOY: Yes, Your Honor.

6 THE COURT: You believe he understands
7 all that?

8 MR. MALLOY: Yes, Your Honor, we
9 have --

10 THE COURT: You have explained to him
11 the distinction between a burglary third second
12 degree which carries a maximum of ten years?
13 What's the minimum mandatory in burg first? I
14 don't remember.

15 MR. CONDON: Fifteen to life.

16 THE COURT: Fifteen to life, right?

17 MR. CONDON: Not parolable.

18 THE COURT: It's day for day, right?

19 MR. CONDON: I believe it's 85 percent.

20 THE COURT: That's day for day
21 basically.

22 MR. MALLOY: Yes, Your Honor, I did
23 discuss that with him prior to him coming to court
24 to reject the offer on burglary second.

25 THE COURT: But at the time did he know

1 that was like considering both of these charges or
2 just one?

3 MR. MALLOY: He didn't know.

4 THE COURT: Because that's a
5 substantial difference. That's a difference. You
6 are talking about one charge and now you are
7 talking about two.

8 MR. MALLOY: I agree. I agree. He has
9 not come to plea court with an offer since he was
10 indicted on the second one.

11 THE COURT: But that's why I am asking
12 whether y'all feel it's an exercise in futility to
13 talk about it.

14 MR. MALLOY: I can talk to him.

15 THE COURT: Or whether we just want to
16 go ahead and pick the jury.

17 MR. MALLOY: Your Honor --

18 THE COURT: I just always like to know
19 that people are completely fully informed of
20 whatever collateral consequences there are. I
21 don't like doing things twice. I like doing them
22 good and well one time.

23 (Attorney confers with client.)

24 MR. MALLOY: Your Honor, Mr. Bailey is
25 not interested in entering a plea.

1 THE COURT: Sir, if you would stand for
2 me, please, and raise your right hand to be
3 sworn.

4 JOE BAILEY

5 having been duly sworn, testifies as follows:

6 THE COURT: Tell me your name for the
7 record.

8 THE DEFENDANT: Joe Bailey.

9 THE COURT: Mr. Bailey, has your lawyer
10 fully explained to you the nature of the plea offer
11 that was extended to you by the State?

12 THE DEFENDANT: He just did.

13 THE COURT: You understand that
14 originally when it was offered you only had one
15 burglary first pending, but now you have two
16 pending?

17 THE DEFENDANT: Right.

18 THE COURT: You understand the
19 potential and it's likely that the Court is going
20 to go forward with both of those indictments this
21 morning?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you wish to accept
24 or reject any plea offer extended to you by the
25 State?

1 THE DEFENDANT: Reject.

2 THE COURT: Sir, are you doing that
3 freely and voluntarily and of your own will?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you suffering from any
6 mental disabilities or under the influence of any
7 drugs or alcohol?

8 THE DEFENDANT: No.

9 THE COURT: Do you feel like you are
10 being forced in any way to reject this offer?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: And you understand, sir,
13 that your exposure on the plea deal was a maximum
14 of ten years with your lawyers having the ability
15 to argue for less time than that?

16 THE DEFENDANT: Right.

17 THE COURT: And you understand that the
18 minimum mandatory time on burglary first degree is
19 15 years and a maximum of life?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that they
22 are classified as most serious offenses?

23 THE DEFENDANT: Yes.

24 THE COURT: And violent offenses?

25 THE DEFENDANT: Right.

1 THE COURT: You understand that that is
2 basically under our system day for day?

3 THE DEFENDANT: Yes.

4 THE COURT: And knowing all that you
5 wish to reject the offer?

6 THE DEFENDANT: Yes.

7 THE COURT: Sir, do you understand that
8 the Court is only asking you these questions for
9 post-conviction relief purposes? You know what a
10 PCR is, right?

11 THE DEFENDANT: Yes.

12 THE COURT: A PCR is when somebody
13 files a pleading in the civil court which basically
14 says my lawyers didn't do a good job. They didn't
15 explain the offer to me or either they were
16 deficient in some way in representing me.

17 THE DEFENDANT: Right.

18 THE COURT: And that's why I am asking
19 these questions. You understand that, so we will
20 have a contemporaneous record that you freely and
21 voluntarily rejected any plea offers and that you
22 fully understood them?

23 THE DEFENDANT: Can I talk to you about
24 my lawyer?

25 THE COURT: Sure. I know Mr. Malloy

1 very well and I am certain he is prepared for
2 trial.

3 THE DEFENDANT: He has doesn't nothing
4 on my case yet.

5 THE COURT: What is it you expected him
6 to do -- and I don't want you to tell me anything
7 that is privileged because you are oath and
8 anything you say can be used against you. Mr.
9 Malloy, are you ready for trial?

10 MR. MALLOY: I am, Your Honor.

11 THE COURT: And you talked to everybody
12 he asked you talk to?

13 MR. MALLOY: Yes, Your Honor.

14 THE COURT: Investigated every lead he
15 gave you?

16 MR. MALLOY: Yes, Your Honor.

17 THE COURT: Okay. What else is it, sir
18 -- you want me to excuse the other lawyer so you
19 can tell me what it is he hasn't done?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Okay. What is it you feel
22 he hasn't done?

23 THE DEFENDANT: He hasn't done anything
24 I told him about the case from day one.

25 THE COURT: Like what? You got to be

1 specific. I need to know what it is you say he
2 didn't do.

3 THE DEFENDANT: I told him I went to
4 Mr. Harrison's house --

5 THE COURT: I don't want you to say
6 anything that is going to prejudice you now.
7 Things are privileged. In other words, what you
8 say to your lawyer is privileged. But once you
9 start talking about it to me under oath the State
10 can use it against you.

11 THE DEFENDANT: I ain't saying nothing.

12 THE COURT: All right. You are ready?

13 MR. MALLOY: I am ready.

14 THE COURT: All right. Sir, I am
15 denying your motion to relieve your lawyer. I
16 can't discern any basis for your lawyer to be
17 relieved. He has a duty to tell you any deals that
18 are extended to you. It would be malpractice for
19 him not to. It would be unethical.

20 THE DEFENDANT: I am dealing with my
21 life.

22 THE COURT: I understand that, sir.
23 That's why I am asking you these questions. And
24 the only way I would be able to do anything is if
25 you have a lawyer you are ready to hire. Because I

1 can't appoint someone else to you. You get
2 competent counsel, not counsel of your choice
3 unless you are paying and hiring them. So that's
4 why I am asking all these questions. I want you to
5 also be clear that the Court is not going to punish
6 you in any way for having a trial. I am a great
7 believer in the system and I don't punish people
8 for having jury trials. It's your constitutional
9 right. You shouldn't be penalized for exercising
10 it. Okay? So knowing all that do you wish to
11 accept or reject any attempts to resolve this case
12 on your behalf short of what you are facing right
13 now? I am sorry if I inartfully stated that.

14 THE DEFENDANT: I am trying to
15 understand what I am facing.

16 THE COURT: What you're facing if you
17 are convicted on each of these burglary first
18 degree offenses, you are facing a minimum of
19 15 years and a maximum of life on each offense.
20 What the State is offering you is -- are y'all
21 still willing to offer burglary third with a max of
22 ten?

23 MR. CONDON: I didn't officially make
24 my offer, but I would have to speak to Ms. Wilson.

25 THE COURT: Give him the best case

1 scenario.

2 MR. CONDON: Potentially burg second
3 violent, two of them.

4 THE COURT: That's about the same
5 penalty.

6 MR. CONDON: Essentially the same, zero
7 to 15.

8 THE COURT: Y'all would be arguing for
9 the 15, they can argue for less?

10 MR. CONDON: Correct.

11 THE COURT: Sir, so basically Mr.
12 Condon needs to check with his superiors, but what
13 he is looking at right now is offering a burglary
14 second on each of these violents with a maximum
15 penalty of 15 years each, but your lawyers would
16 have the ability to argue for less because that
17 doesn't have any mandatory time. I don't think a
18 burg second violent has mandatory time. I was
19 thinking of armed robbery.

20 MR. CONDON: It is parole eligibility
21 after a third.

22 THE COURT: That's what I was thinking,
23 which is better than a lot of them.

24 MR. CONDON: Than non-parole.

25 THE COURT: So, sir, do you understand

1 what we are talking about or do you need more time
2 to talk about that with your lawyer?

3 THE DEFENDANT: More time to talk about
4 it.

5 THE COURT: Okay. I'm going to let you
6 go right in here and talk for a moment. And then
7 y'all let me know when you're ready and just for
8 purposes of y'all's discussion I am not inclined to
9 grant the severance.

10 So then you can have a worst case
11 scenario discussion with him. If I change my mind
12 no harm no foul, but worst case scenario.

13 MR. MALLOY: Understood.

14 (Off-the-record conference.)

15 THE COURT: What do you want to do at
16 this point?

17 MR. MALLOY: He wants a trial, Your
18 Honor.

19 THE COURT: Sir, have your lawyers
20 fully explained to you the scope of the offer?

21 THE DEFENDANT: Yes.

22 THE COURT: And do you understand the
23 nature of the offer?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you wish to accept or

1 reject the offer?

2 THE DEFENDANT: Reject.

3 THE COURT: Okay. You are doing that
4 freely and voluntarily?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anyone forced you to do
7 it?

8 THE DEFENDANT: No.

9 THE COURT: Are you suffering from any
10 mental disability or under the influence of any
11 drugs or alcohol?

12 THE DEFENDANT: No.

13 THE COURT: Okay. Anything further for
14 the record regarding his rejection, Mr. Malloy?

15 MR. MALLOY: Nothing further.

16 THE COURT: Is he doing that with or
17 against your advice?

18 MR. MALLOY: Your Honor, I'll answer
19 that question with I have advised him fully of the
20 penalty ranges.

21 THE COURT: I mean there's three
22 options. He is doing it with your advice or
23 against your advice or you left it up to him.

24 MR. MALLOY: I left it up to him.

25 THE COURT: It doesn't matter to me

1 what the options are. I just like a
2 contemporaneous record because hindsight is always
3 20/20. I don't want you coming back three years
4 from now saying I don't remember what I told him.
5 I need a record right now.

6 MR. MALLOY: I left it up to him, Your
7 Honor. I have advised about the trial is likely to
8 go and penalty ranges.

9 THE COURT: Okay. And you left it up
10 to him as to what decision he made, correct?

11 MR. MALLOY: Yes, Your Honor.

12 THE COURT: Y'all can take your seats.
13 The motion for severance is at the sound discretion
14 of the Court and based on the factors that have
15 been enumerated regarding the severance which we
16 have already covered in argument, since we have a
17 jury waiting I'm not going to belabor that point.
18 Clearly these offenses are of the same general
19 nature. They involve transactions that were
20 closely connected in time, place and character and
21 Simmons is almost exactly on point factually. It
22 really almost could be just the same situation,
23 just different streets and different cities.

24 It clearly arose out of a single change
25 of circumstances and they are provable by the same

1 elements. In other words, as articulated in
2 Simmons it is proper to try offenses in one trial
3 where one, they are of the same general nature or
4 character and spring from the same series or
5 transactions, are committed by the same offender
6 and require the same or similar proof. Citing
7 State v. Carter, City of Greenville v. Chapman and
8 State v. Harris.

9 The break-in at each of these houses
10 was very close in time and proximity and meet the
11 other elements articulated in Simmons. Therefore,
12 the motion to sever is denied. That is based on
13 State v. Simmons and its progeny of 352 S.C. 342
14 573.

15 Bear with me just one second. I need
16 to double check something right quick. If you all
17 want your motions as well as your responses filed
18 you need to make sure you do that. Because when I
19 print them off the computer it's unsigned and I do
20 not put them in the file unless I have advised you
21 that I have done that.

22 MR. MALLOY: Ours was filed this
23 morning.

24 MR. CONDON: Your Honor, can I mark it
25 as an exhibit?

1 THE COURT: Well, you need to just put
2 it in the jacket of the file. It will get filed.
3 Making it an exhibit just means the court reporter
4 has got to keep it and it goes in the evidence room
5 versus it becoming a part of the record so to
6 speak. So if you have a signed copy you want to
7 put in the file I can do that.

8 MR. CONDON: May I approach?

9 THE COURT: Yes. We will deal with the
10 Biggers outside of the jury as well as the motion
11 to exclude any prior bad acts. The motion to
12 bifurcate trial I have already ruled on. The
13 precedent or the theory that has been articulated
14 by the defense is only appropriate when there has
15 not been a statute or any case law giving direction
16 regarding the issue. There's more than abundant
17 precedent and authority regarding the State
18 producing evidence of burglaries as an element of
19 the offense as well as the introduction of -- by
20 statute and by case law. There's no basis for a
21 motion for bifurcation based on that principle,
22 therefore, that motion, although I have already
23 ruled on it is denied as well. Is the State ready
24 to proceed?

25 MR. CONDON: Yes, Your Honor.

1 THE COURT: Defense ready to proceed?

2 MR. MALLOY: Yes, Your Honor.

3 THE COURT: Please bring in the jury.

4 Are there any Jackson v. Denno? You have no

5 statements, correct?

6 MR. CONDON: Your Honor, there's a

7 recording.

8 THE COURT: I am talking about subject

9 to Miranda, I am not talking about any jail

10 recordings.

11 MR. MALLOY: No, Your Honor.

12 THE COURT: Is there any Miranda-type

13 issues when he was arrested?

14 MR. MALLOY: No, Your Honor.

15 THE COURT: Okay. I assume you all can

16 agree to sequester?

17 MR. MALLOY: Yes.

18 MR. CONDON: Yes, Your Honor.

19 (Thereupon, the prospective jurors were

20 brought to the courtroom at 12:21 p.m.)

21 THE COURT: We got everybody? Is No.

22 138, Mr. Griffin, present? Okay. We need some

23 extra chairs. They are getting them for you right

24 now.

25 Bailiff and deputies, do we have

1 everybody? Ladies and gentlemen, we appreciate
2 your patience. We had some matters of law that we
3 needed to dispose of before we proceeded with jury
4 selection so again please know that we do not take
5 your time for granted and I greatly appreciate your
6 patience as we took care of those matters.

7 We do things out of your presence lots
8 of times because as the finders of the facts in a
9 case we need to insure your impartiality. We
10 cannot run the risk that you might be prejudiced by
11 something that the Court may say or do in
12 connection with the facts of the case. So again we
13 appreciate your patience as we took care of those
14 matters.

15 We are going to select a jury for the
16 cases of the State of South Carolina versus Joe
17 Louis Baily. Indictments 2015-GS-10-5566 and
18 2016-GS-10-3772, both indictments for burglary in
19 the first degree, those indictments allege as
20 follows: That in Charleston County, South Carolina
21 on or about April 19th of 2015 the Defendant, Joe
22 Louis Bailey, did enter the dwelling of Sandra
23 Schaffer without consent and with the intent to
24 comit a crime therein alleging a violation of code
25 Section 16-11-311 of the code of laws as amended

1 and alleging those actions to be against the peace
2 and dignity of the State of South Carolina. And
3 that in Charleston County, South Carolina on or
4 about April 19th, 2015, the Defendant, Joe Louis
5 Bailey, did enter the dwelling of Marvin Harrison
6 without consent and with the intent to comit a
7 crime therein alleging a violation of code
8 Section 16-11-311 of the code of laws as amended
9 and again alleging those actions to be against the
10 peace and dignity of the State of South Carolina.

11 We are going to go through a process
12 that is called voir dire which is simply a legal
13 term meaning that I am going to ask you some
14 questions so that the attorneys can more
15 effectively exercise their peremptory challenges in
16 jury selection. If a question applies to you,
17 please stand and in a loud and clear voice give me
18 your name, your juror number, an answer to the
19 question if applicable and remain standing until I
20 have completed questioning you.

21 Take a moment, please, and familiarize
22 yourself with your juror number again in the event
23 that a question applies to you. Before we begin
24 that process I'm going to ask counsel for the State
25 to stand and introduce himself, anyone who will be

1 assisting him in the trial of the case and tell us
2 the names of the attorneys in his office.

3 I'm going to have counsel for the
4 defense provide us with that same information as
5 well as his client stand and face the panel. You
6 may proceed, Mr. Condon.

7 MR. CONDON: Good afternoon. Ladies
8 and gentlemen, my name is Charles Condon. I'm an
9 assistant solicitor here in the Ninth Circuit in
10 Charleston County. Assisting me will be assistant
11 solicitor Chris Lietzow and I have investigator
12 Josh Chaney who is not in the courtroom right now,
13 but he will be helping as well. In terms of
14 everyone in our office, we have got a pretty big
15 office. It's going to take a minute here.

16 The solicitor is Scarlett Wilson. The
17 chief deputy solicitor is Bruce Du Rant. The
18 following are assistant solicitors; Marion Askins,
19 Mark Burdon, Daniel Cooper, Ted Corvey, Shannon
20 Elliot, Drew Evans, Lauren Frierson, Alex
21 Gintzburg, Amy Harrold, Debbie Herring-Lash, Culver
22 Kidd, Nick Lewis, Stephanie Linder, Kelly Laplant,
23 Scott Banner, Jenna Newman, David Osborne, Charlie
24 Patrick, Anna Richter, Nina Savas, Jennifer Shealy,
25 Chad Simpson, Richard Waring, Burns Wetworth, Todd

1 Whittaker and Todd Williams.

2 THE COURT: Thank you, sir. Mr.

3 Malloy, you may proceed.

4 MR. MALLOY: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MR. MALLOY: Good afternoon. My name
7 is Luke Malloy. I'm an attorney with the
8 Charleston County Public Defender's Office. To my
9 right is John Kozelski who is also an attorney with
10 the Charleston County Public Defender's Office. To
11 the right of Mr. Kozelski is my client, Joe Louis
12 Baily. We also have a pretty big office. These
13 are the other attorneys who work in the Charleston
14 County Public Defender's office.

15 Amy Andrews, Karen Barker, Charles
16 Cochran, Tammy Coppinger, Rhett Dunaway, Megan
17 Ehrlich, Mary Ford, Jessica Birt, Peter Shahid,
18 Patricia Kennedy, Jason King, Ben Louis, Michael
19 Loignon, Benjamin Mack, Ashley Pennington, Lori
20 Proctor, Mary Ellen Rankin, Martha Runey, Ted
21 Smith, Kelly Solar, Tim Taylor, Tamara Van Pala,
22 Cassandra Woosley, Nicholas Smith, Susanna Knox,
23 Morgan Cleary.

24 THE COURT: Thank you, sir. You may
25 take your seat. Again, ladies and gentlemen, if

1 the question applies to you, please stand and in a
2 loud and clear voice give me your name, your juror
3 number and answer to the questions if applicable
4 and remain standing until I have completed
5 questioning you.

6 Is there any member of the panel
7 related by blood or marriage to Joe Louis Bailly,
8 Marvin Harrison or Sandra Schaffer? If so, please
9 stand at this time.

10 (No response from panel.)

11 Does any member of the panel have a
12 close personal or social relationship with Joe
13 Louis Bailly, Sandra Schaffer or Marvin Harrison?
14 If so, please stand at this time. Yes, sir, tell
15 me your name and number.

16 PROSPECTIVE JUROR: David Ishmael,
17 Juror 166. Is this same Marvin Harrison that was
18 in Charleston City Fire Department, lives in
19 Ravenel?

20 MR. CONDON: That's correct.

21 THE COURT: Yes, sir, it is.

22 PROSPECTIVE JUROR: I worked with him
23 many, many years.

24 THE COURT: I am sorry? Could you
25 repeat that? You worked with him many, many years

1 ago?

2 PROSPECTIVE JUROR: In the fire
3 department we worked together a long time.

4 THE COURT: About how many years would
5 you say?

6 PROSPECTIVE JUROR: Probably going on
7 25 years.

8 THE COURT: Do you see him in any way
9 socially?

10 PROSPECTIVE JUROR: I haven't seen him
11 since he retired. I just wanted you to know.

12 THE COURT: Absolutely. Sir, as a
13 result of this experience do you feel that you can
14 be fair and impartial and render a fair and
15 impartial decision in this case based solely on the
16 evidence as it will be presented and all the law
17 that the Court will instruct?

18 PROSPECTIVE JUROR: I hope so.

19 THE COURT: Well, there's no right or
20 wrong answer but it has to be a yes or no answer so
21 I need you to search yourself and answer.

22 PROSPECTIVE JUROR: I believe I can.

23 THE COURT: I can't have any qualifier.
24 It has to be yes or no.

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Thank you, sir. You may
2 take your seat.

3 Please listen carefully. The following
4 is a list of potential witnesses in this case:

5 Sandra Schaffer, Marvin Harrison, Tammy Harrison,
6 Deputy Keith Tyner, Deputy Richard Powell, Deputy
7 William Shepherd, Deputy Patrick Ward, Deputy Angel
8 Torres, Detective Andrew Miller, Detective Michael
9 Sharpe, all of the Charleston County Sheriff's
10 Office, Sarah Clyde of the Charleston County Clerk
11 of Courts, Sharon Stokes, Charleston County
12 Magistrate's Office. Professor Lori Wallendael,
13 W-A-L-L-E-N-D-A-E-L, and Investigator Harry Long.

14 MR. MALLOY: Wallendael.

15 THE COURT: Is there any member of the
16 panel related by blood or marriage to any of the
17 people that I have just listed or does anyone have
18 a close personal or social relationship with any of
19 these individuals? If so, please stand at this
20 time. Yes, sir.

21 PROSPECTIVE JUROR: Robert Follin,
22 Juror 114. Just from the aspect of Charleston
23 County Deputies, my brother's ex-wife's brother is
24 a sheriff's deputy.

25 THE COURT: Sir, as a result of this

1 experience do you feel that you can remain fair and
2 impartial and render a fair and impartial decision
3 in this case based solely on the evidence as it
4 will be presented and on the law as the Court will
5 instruct?

6 PROSPECTIVE JUROR: Yes, Your Honor.

7 THE COURT: Thank you, sir. You may
8 take your seat. Has any member of the panel ever
9 been represented by any of the attorneys involved
10 in this case or any of the lawyers in their
11 offices? If so, please stand at this time.

12 (No response from panel.)

13 Is there any member related by blood or
14 marriage to or have a close personal or social
15 relationship with any of the attorneys in this
16 case, any of the attorneys in their offices or any
17 person employed in any capacity in their offices?
18 If so, please stand at this time.

19 PROSPECTIVE JUROR: Ethan Boyd, Juror
20 No. 30. I know Luke Malloy from college.

21 THE COURT: Do you all see each other
22 socially?

23 PROSPECTIVE JUROR: Not very often. On
24 occasion.

25 THE COURT: As a result of this

1 experience do you feel that you can remain fair and
2 impartial and render a fair and impartial decision
3 in this case based solely on the evidence as it
4 will be presented and on the law as the Court will
5 instruct?

6 PROSPECTIVE JUROR: Yes, Your Honor.

7 THE COURT: Thank you, sir. You may
8 take your seat. I think I have already asked this
9 question, but I need to ask it again to make sure
10 that I included everyone, but I will do that
11 momentarily. Tell me your name and juror number,
12 sir.

13 PROSPECTIVE JUROR: Robert Follin,
14 No. 114. Mr. Du Rant's wife is my most senior
15 supervisor at Charleston County.

16 THE COURT: If you would remain
17 standing, and behind you, yes, sir.

18 PROSPECTIVE JUROR: Lee Hershey, 156.
19 I went to school with Mr. Condon.

20 THE COURT: How long ago was that?

21 PROSPECTIVE JUROR: Probably ten years,
22 maybe longer.

23 THE COURT: Was it college or high
24 school?

25 PROSPECTIVE JUROR: High school.

1 THE COURT: As a result of these
2 experiences do you both feel that you can remain
3 fair and impartial and render a fair and impartial
4 decision in this case based solely on the evidence
5 as it will be presented and on the law as the Court
6 will instruct? If your answer is yes please take
7 your seat. Let the record reflect that both
8 answered yes.

9 Has any member of the panel ever been
10 represented by any of the attorneys involved in
11 this case? If so, please stand at this time.

12 (No response from panel.)

13 Has any member of the panel formed or
14 expressed an opinion about any issue or matter
15 involved in this case? If so, please stand at this
16 time.

17 (No response from.)

18 Has any member of the panel read,
19 watched or listened to any media accounts about the
20 case? That includes anything that could have been
21 in the newspaper, radio, television or internet.
22 If so, please stand at this time.

23 (No response from panel.)

24 Is there any member of the panel who is
25 aware of any bias or prejudice toward either the

1 State or the defense in this case? If so, please
2 stand at this time.

3 (No response from panel.)

4 Is there any member of the panel who
5 was a member of the grand jury which issued the
6 indictments in this case? If so, please stand at
7 this time.

8 (No response from panel.)

9 Is there any member of the panel who is
10 a member of or contributor to any group which has
11 as its primary concern the promotion of law
12 enforcement or victims right? These groups would
13 include but are not limited to Mothers Against
14 Drunk Driving, Students Against Drunk Driving,
15 Citizens Against Violent Crime, People Against
16 Rape, Citizens Advocating a Return to Decency and
17 Ethics, and Parents Empowered to Save Teens or any
18 other type community watch group? If so, please
19 stand at this time.

20 (No response from panel.)

21 Is there any member of the jury who has
22 a moral, religious or philosophical opposition to
23 sitting in judgment of a fellow human being? If
24 so, please stand at this time.

25 (No response from panel.)

1 Is there any member of the panel who
2 has a moral, philosophical or religious opposition
3 to the crime of burglary? If so, please stand at
4 this time.

5 (No response from panel.)

6 Is there any member of the panel who
7 was the victim of a violent crime? If so, please
8 stand at this time.

9 You don't have to tell me what the
10 crime was. I just need your name and your juror
11 number.

12 PROSPECTIVE JUROR: No. 312, Eileen
13 Sandlin.

14 THE COURT: And yes, ma'am?

15 PROSPECTIVE JUROR: 344, Ashley Stello.

16 THE COURT: As a result of these
17 experiences do you both feel that you can remain
18 fair and impartial and render a fair and impartial
19 decision in this case based solely on the evidence
20 as it will be presented and on the law as the Court
21 will instruct? No. 312?

22 PROSPECTIVE JUROR: Yes, ma'am.

23 THE COURT: No. 344?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: You can both take your

1 seats. I need you to listen to this question
2 carefully because it deals with former employment,
3 not current employment. Is there any member of the
4 panel who was formerly employed with law
5 enforcement? If so, please stand at this time.

6 (No response from panel.)

7 Is there any member of the panel who
8 has a family member whose employed in law
9 enforcement in any capacity? If, so please stand
10 at this time.

11 I need your name, your juror number,
12 which family member it is and what agency.

13 PROSPECTIVE JUROR: Jason Holland, 157.
14 My stepson is an assistant district attorney in
15 North Carolina, Mecklenburg County.

16 THE COURT: Remain standing for me.
17 Yes, sir.

18 PROSPECTIVE JUROR: Juror Chris
19 Washington, 374. I have a brother whose a chief.

20 THE COURT: Which agency? Charleston
21 County?

22 PROSPECTIVE JUROR: Yes, Charleston
23 County.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: 354. I have got a

1 lot of people in law enforcement. None of them are
2 in this area.

3 THE COURT: You can tell me.

4 PROSPECTIVE JUROR: Two in West
5 Virginia.

6 THE COURT: How are they related to
7 you?

8 PROSPECTIVE JUROR: They are my cousins
9 that I grew up with and then one in Ohio and he's
10 my cousin also.

11 THE COURT: Remain standing. Yes, sir.

12 PROSPECTIVE JUROR: Robert Follin, 114.
13 My brother's ex-wife's brother.

14 THE COURT: I have already questioned
15 you, sir. You don't have to respond again. You
16 can take your seat. As a result of these
17 experiences do you all feel that you can remain
18 fair and impartial and render a fair and impartial
19 decision in this case based solely on the evidence
20 as it will be presented and on the law as the Court
21 will instruct? If your answer is yes please take
22 your seat. Let the record reflect that all
23 answered yes.

24 Is there any member of the panel who is
25 a member of the Fully Informed Juror Society? If

1 so, please stand at this time.

2 (No response from panel.)

3 Does any member of the panel know of
4 any reason whatsoever why he or she should not
5 serve as a juror in this case with particular
6 emphasis being placed on your ability to be fair
7 and impartial to both the State and the Defendant?
8 If so, please stand at this time.

9 (No response from panel.)

10 Any additional questions from the
11 State?

12 MR. CONDON: Your Honor, just questions
13 about home ownership.

14 THE COURT: I think that relates to the
15 facts of the case.

16 MR. MALLOY: Not from the defense.

17 THE COURT: I think you can pretty much
18 assume that's 95 percent of the panel.

19 All right. Ladies and gentlemen, if
20 your name is called give us a moment. We need to
21 prepare what are called strike sheets so that we
22 can randomly select you for the purpose of jury
23 selection. I need somebody to demonstrate for me
24 where the juror needs to stand.

25 Ladies and gentlemen, if your name is

1 called, I need you to bring all of your belongings
2 and come forward and stand directly in front of
3 that podium like the bailiff is doing facing back
4 out towards the panel until we either seat or
5 excuse you as a juror. We appreciate your
6 patience.

7 Ladies and gentlemen, please give the
8 clerk your undivided attention. Again, if she
9 calls your name please come forward and face the
10 panel until we either seat or excuse you as a
11 juror. You may proceed.

12 THE CLERK: Juror No. 46, Scott Butler.

13 THE COURT: Strikes are five and ten.

14 THE CLERK: What says the State?

15 MR. CONDON: Please seat this juror.

16 THE CLERK: What says the Defendant?

17 MR. MALLOY: Please seat the juror.

18 THE CLERK: Sir, if you would walk up
19 that ramp there and have a seat in the jury box.
20 You have been selected as a juror in the trial of
21 this case.

22 Juror No. 225, Maggie Mattox. What say
23 you for the State?

24 MR. CONDON: Please seat the juror.

25 THE CLERK: What say you for the

1 Defendant?

2 MR. MALLOY: Please seat the juror.

3 THE CLERK: Ma'am, if you'd head up
4 that ramp, have a seat in the jury box. You have
5 been selected as a juror in the trial of this case.

6 Juror No. 210, John Livingston. What
7 say you for the State?

8 MR. CONDON: Please seat the juror.

9 THE CLERK: What say you for the
10 Defendant?

11 MR. MALLOY: Please seat the juror.

12 THE CLERK: Sir, walk up that ramp,
13 have a seat in the jury box. You have been
14 selected as a juror for the trial of this case.
15 Juror No. 22, Patricia Bender. What say you for
16 the State?

17 MR. CONDON: Please seat the juror.

18 THE CLERK: What say you for the
19 Defendant?

20 MR. MALLOY: Please excuse the juror.

21 THE CLERK: Ma'am, have a seat back in
22 the audience. You have been excused for the trial
23 of this case. Juror No. 362, Elizabeth Trahan.
24 What say you for the State?

25 MR. CONDON: Please seat the juror.

1 THE CLERK: What say you for the
2 Defendant?

3 MR. MALLOY: Please seat the juror.

4 THE CLERK: Ma'am, have a seat in the
5 jury box. You have been selected as a juror for
6 the trial of this case.

7 Juror No. 150, Pamela Harris. What say
8 you for the State?

9 MR. CONDON: Please seat the juror.

10 THE CLERK: What say you for the
11 Defendant?

12 MR. MALLOY: Please seat the juror.

13 THE CLERK: If you will walk up the
14 ramp and have a seat in the jury box. You have
15 been selected as a juror in the trial of this case.

16 Juror No. 228, Bryan McGuinness. What
17 say you for the State?

18 MR. CONDON: Please seat the juror.

19 THE CLERK: What say you for the
20 Defendant?

21 MR. MALLOY: Please seat the juror.

22 THE CLERK: Sir, if you will walk up
23 the ramp and have a seat in the jury box. You have
24 been selected as a juror in the trial of this case.

25 Juror No. 387, Wendy Williams. What

1 say you for the State?

2 MR. CONDON: Please seat the juror.

3 THE CLERK: What say you for the
4 Defendant?

5 MR. MALLOY: Please excuse the juror.

6 THE CLERK: Ma'am, have a seat back in
7 the audience. You have been excused from the trial
8 of this case.

9 Juror 128, Alex Gleim. What say you
10 for the State?

11 MR. CONDON: Please seat the juror.

12 THE CLERK: What say you for the
13 Defendant?

14 MR. MALLOY: Please seat the juror.

15 THE CLERK: Sir, if you want to walk up
16 the ramp and have a seat in the jury box. You have
17 been selected as a juror in the trial of this case.

18 Juror No. 60, John Chilton. What say
19 you for the State?

20 MR. CONDON: Please seat the juror.

21 THE CLERK: What say you for the
22 Defendant?

23 MR. MALLOY: Please seat the juror.

24 THE CLERK: Sir, have a seat in the
25 jury box. You have been selected as a juror in the

1 trial of this case.

2 Juror No. 111, Kathleen Flinton. What
3 say you for the State?

4 MR. CONDON: Please seat the juror.

5 THE CLERK: What say you for the
6 Defendant?

7 MR. MALLOY: Please seat the juror.

8 THE CLERK: Ma'am, if you want to have
9 a seat in the jury box. You have been selected as
10 a juror in the trial of this case.

11 Juror No. 138, John Griffen. What say
12 you for the State?

13 MR. CONDON: Please excuse the juror.

14 THE CLERK: Sir, have a seat back in
15 the audience. You have been excused from the trial
16 of this case.

17 Juror No. 20, Mark Bastian. What say
18 you for the State?

19 MR. CONDON: Please seat the juror.

20 THE CLERK: What say you for the
21 Defendant?

22 MR. MALLOY: Please seat the juror.

23 THE CLERK: Sir, please have a seat in
24 the jury box. You have been selected as a juror in
25 the trial of this case.

1 Juror No. 156, Lee Hershey. What say
2 you for the State?

3 MR. CONDON: Please excuse the juror.

4 THE CLERK: Please have a seat back in
5 the audience. You have been excused from the trial
6 of this case.

7 Juror No. 305, Thomas Rountree. What
8 say you for the State?

9 MR. CONDON: Please seat the juror.

10 THE CLERK: What say you for the
11 Defendant?

12 MR. MALLOY: Please excuse the juror.

13 THE CLERK: Sir, please have a seat
14 back in the audience. You have been excused from
15 the trial of this case.

16 Juror No. 6, Kathryn Angle. What say
17 you for the State?

18 MR. CONDON: Please seat the juror.

19 THE CLERK: What say you for the
20 Defendant?

21 MR. MALLOY: Please seat the juror.

22 THE CLERK: Ma'am, if you want to have
23 a seat in the jury box. You have been selected as
24 a juror for the trial of this case.

25 Juror No. 157, Jason Holland. What say

1 you for the State?

2 MR. CONDON: Please seat the juror.

3 THE CLERK: What say you for the
4 Defendant?

5 MR. MALLOY: Please excuse the juror.

6 THE CLERK: Sir, if you want to have a
7 seat back in the audience. You have been excused
8 from the trial of this case.

9 Juror No. 187, Adam King. What say you
10 for the State?

11 MR. CONDON: Please seat the juror.

12 THE CLERK: What say you for the
13 Defendant?

14 MR. MALLOY: Please seat the juror.

15 THE CLERK: Sir, have a seat in the
16 jury box. You have been selected as a juror.

17 THE COURT: One alternate. Strikes are
18 one and two.

19 THE CLERK: Juror No. 312, Eileen
20 Sandlin. What say you for the State?

21 MR. CONDON: Please seat the juror.

22 THE CLERK: What say you for the
23 Defendant?

24 MR. MALLOY: Please excuse the juror.

25 THE CLERK: Ma'am, have a seat back in

1 the audience. You have been excused from the trial
2 of this case.

3 Juror No. 232, Rose Medlock. What say
4 you for the State?

5 MR. CONDON: Please seat the juror.

6 THE CLERK: What say you for the
7 Defendant?

8 MR. MALLOY: Please seat the juror.

9 THE CLERK: Ma'am, have a seat in the
10 jury box. You have been selected as an alternate
11 in the trial of this case.

12 THE COURT: Are there any motions
13 regarding the selection of the jury from the State?

14 MR. CONDON: Nothing from the State,
15 Your Honor.

16 THE COURT: From the defense?

17 MR. MALLOY: No, Your Honor.

18 THE COURT: All right. Ladies and
19 gentlemen, bear with us just one moment. I need to
20 see what we need to do if we have need of your
21 services.

22 (Brief pause.)

23 THE COURT: Ladies and gentlemen, I
24 wish I could excuse you for the remainder of the
25 day, but as I explained during jury qualification

1 we try to get as much done today as possible. With
2 four judges logistically when we select a jury we
3 need a magic number to do that. So like for
4 example, in a criminal case you need somewhere
5 between 42 and 45 people which sort of -- with a
6 civil jury you only need about 35.

7 So just to give you some idea when we
8 are trying to juggle the numbers it's not random.
9 So the criminal trials tend to monopolize our
10 numbers and we try to get the civil cases selected.
11 So I suspect we have probably one criminal case
12 that needs to be selected after lunch. So we are
13 going to send you to lunch until 2:00. Please
14 return to the jury room at that time. I believe
15 Judge Harrington will be seating a jury. Then
16 after that you will be free for the remainder of
17 the afternoon.

18 So, again, please return to the
19 assembly room at two. Have a great lunch. It
20 should be a pretty day.

21 (Thereupon, the remaining prospective
22 jurors were excused.)

23 Ladies and gentlemen, please stand and
24 raise your right hand so that the clerk can
25 administer the oath to you.

1 (Thereupon, the jury was sworn by the
2 clerk.)

3 THE CLERK: If you have accepted the
4 oath please have a seat.

5 THE COURT: Ladies and gentlemen, we
6 have lost our morning. It is now lunchtime and I'm
7 a little hungry so I know you all must be a little
8 hungry. We are going to adjourn for lunch and
9 return at 2:15. That gives you about an hour and
10 15 minutes. I know that seems like a long time but
11 it is really not. Charleston has wonderful
12 weather, it is always tourist season. So you need
13 to give yourselves the time to accommodate coming
14 back through the security downstairs as well as
15 just getting through the building which is huge. I
16 believe it is 185,000 square feet. So you can
17 imagine it is a tremendously large building.

18 When you return after lunch you will
19 return directly to your jury room. The bailiff
20 will show you how to do that. You will come
21 through security, then you will come up to the
22 third floor. There will be a bailiff that will be
23 waiting for you at the private entrance. Then they
24 will bring you back down to your jury room.

25 During the break please do not discuss

1 this case among yourselves or with anyone else.
2 Please don't speculate about what you think it may
3 or could be about. Please do not watch any media
4 accounts about the case. You are strictly
5 instructed not to do any independent research of
6 any kind on the internet. As the finders of the
7 facts of this case you are bound to decide the case
8 according to your oath based on the facts presented
9 or evidence that will be presented during the trial
10 as well as the law that the Court will instruct
11 regarding this case.

12 Also, I know this may seem like a
13 strange request, but I would ask that you strictly
14 abide by it as well. Please do not make any
15 comments regarding your status on any social
16 networking sites. That would include -- there are
17 so many I have lost track. I am just
18 technologically challenged. So Facebook, Twitter,
19 Instagram, Snapchat, there is some I'm sure I am
20 missing. What is amazing to me I guess because I
21 am so preoccupied with work when I am at work,
22 there are people however who are not on jury
23 service who troll the sites and they are very happy
24 to call us and let us know that you have made a
25 comment that could be very easily misinterpreted.

1 So I would ask you that you refrain from making any
2 comments during your jury service because I know
3 sometimes people make comments that they interpret
4 one way, but somebody else might interpret another
5 way. So if you would accommodate me in that regard
6 I would be very appreciative.

7 Hope you all have a great lunch and we
8 will see you at 2:15. I will turn you over to the
9 competent hands of the bailiffs who will also get
10 your cell phone numbers.

11 (Thereupon, the jury exited the
12 courtroom at 12:54 p.m.)

13 THE COURT: Anything before we break
14 for lunch from the State?

15 MR. CONDON: Your Honor, when would you
16 like to take up Biggers?

17 THE COURT: When you present those
18 witnesses. So whenever you are going to get to
19 that point in the trial you need to make me aware
20 that we need to take it up in camera.

21 MR. CONDON: My first witness will be
22 her.

23 THE COURT: Then once you ask as many
24 preliminary questions as you can of her, then let
25 me know you have a matter of law to take up. We

1 will go in camera and deal with her identification
2 testimony.

3 MR. CONDON: Okay.

4 MR. MALLOY: So he isn't going to
5 mention anything about identification.

6 THE COURT: Since the jury has already
7 been sworn I don't see any practical efficiency in
8 doing it before we get started. It's all about the
9 same when it boils down to it. I can't imagine
10 that her ID testimony is going to be that long.
11 Shouldn't be more than five or six questions
12 regarding the ID part of it.

13 MR. CONDON: That's correct. I am just
14 worried she might spurt it out or something.

15 THE COURT: Well, I mean she can only
16 answer the questions you ask her. So I would
17 imagine you would instruct her not to spurt it out.

18 MR. CONDON: I will try, Your Honor.

19 MR. MALLOY: Your Honor, in a similar
20 tone I would like to just make clear regarding the
21 other victim Marvin Harrison who says that Joe
22 burglarized him previously, Judge, I would just
23 like to state for the record now that that --

24 THE COURT: I'm not taking up any --

25 MR. MALLOY: Not to mention that.

1 THE COURT: I am not taking up any
2 peremptory sort of objections. You are going to
3 have to make a contemporaneous objection. I'm
4 going to have to hear it in the context and make a
5 contemporaneous ruling. I have no idea what he is
6 going to elicit from the witness. I have no idea
7 whether it's relevant or probative. I have no idea
8 whether it meets any of the factors that are
9 required. But we are going to take up his ID
10 testimony in camera as well so I would imagine that
11 would address whatever your concerns are.

12 MR. MALLOY: No, Your Honor, I am
13 referring to the previous burglary where he says he
14 burglarized his residence.

15 THE COURT: But that goes into his ID
16 of him because he previously saw him. So I think
17 that is -- and they are going to elicit testimony of
18 the element of the offense anyway.

19 MR. MALLOY: My position is it should
20 be facts that should not come in.

21 THE COURT: I don't know that you have
22 to go into the facts for him to say I knew him
23 before because he burglarized my house and he was
24 convicted of it. That goes directly to the issue
25 of him identifying him because one of the elements

1 is whether they had the ability to have seen the
2 person previously.

3 MR. MALLOY: Your Honor, I would make a
4 motion to exclude that based on --

5 THE COURT: I am not taking up any
6 motions until the testimony is elicited. So they
7 would be advisory in nature. I don't even know if
8 they are going to ask him that question. So until
9 it is asked I am not ruling on anything. All
10 right.

11 Now, if there is anything that you all
12 feel is going to be inflammatory that will run afoul
13 of what I have had already told you in the nature
14 of prerulings, you need to make me aware we have a
15 matter of law so we can take it up in camera. Who
16 is the State's first witness going to be?

17 MR. CONDON: Ms. Schaffer, Your Honor.

18 THE COURT: All right. We are down
19 until 2:15. See you at that time. If you all want
20 to come back a little bit earlier, make the court
21 reporter aware if you want to premark any exhibits
22 that you have agreed upon or that you have not
23 agreed upon that need to be marked for ID, that
24 will make life go a whole lot smoother.

25 (Thereupon, a luncheon recess

transpired from 12:59 p.m. to 2:30 p.m.)

AFTERNOON SESSION

MR. CONDON: Your Honor, he is going to plead to two counts of burglary second degree violent.

THE COURT: Do you have sentencing sheets?

MR. CONDON: Range of 10 to 15. Chris Lietzow is bringing them down immediately.

THE COURT: Is that your understanding of the deal, Mr. Malloy?

MR. MALLOY: It is, Your Honor.

THE COURT: There's nothing different in his record than what I have already been provided, correct?

MR. CONDON: That's correct, Your Honor
(Brief pause.)

THE COURT: Any recommendations or negotiations?

MR. CONDON: Your Honor, this is a negotiated 10 to 15-year range. The State is going to ask for the 15 years.

THE COURT: Mr. Malloy, is that your understanding of the negotiated plea?

MR. MALLOY: It is, Your Honor.

THE COURT: Sir, stand for me. I

1 remind you you are still under oath. Mr. Malloy,
2 have you explained to your client the charges
3 contained in the indictment, the possible
4 punishment and his constitutional rights?

5 MR. MALLOY: I have.

6 THE COURT: Do you believe he
7 understands the charge, the punishment and his
8 rights?

9 MR. MALLOY: I do.

10 THE COURT: Does he wish to plead
11 guilty or not guilty?

12 MR. MALLOY: Guilty.

13 THE COURT: Do you agree with that
14 decision?

15 MR. MALLOY: I do.

16 THE COURT: To your knowledge has he
17 ever had to be evaluated to determine his
18 competency?

19 MR. MALLOY: He has.

20 THE COURT: When was he evaluated?

21 MR. MALLOY: He was evaluated I believe
22 within the last two months. It was recently. He
23 was found competent.

24 THE COURT: Who evaluated him?

25 MR. MALLOY: He was evaluated at MUSC.

1 Give me one second, Your Honor. I got the eval
2 right here.

3 THE COURT: Do you want to make that a
4 part of the record?

5 MR. MALLOY: Christopher Theresa.

6 THE COURT: What was the date of the
7 evaluation?

8 MR. MALLOY: The date of the evaluation
9 was August 26th, 2016.

10 THE COURT: Do you want to make his
11 evaluation a part of the record?

12 MR. MALLOY: Yes, Your Honor.

13 THE COURT: Mr. Malloy, do you have any
14 concerns --

15 (Court's Exhibit 1, evaluation,
16 marked.)

17 THE COURT: Mr. Malloy, do you have any
18 concerns about your client's ability to communicate
19 with you or assist in his representation?

20 MR. MALLOY: I do not.

21 THE COURT: Sir, I will remind you you
22 are still oath. Please state your full name for
23 the record.

24 THE DEFENDANT: Joe Louis Bailey.

25 THE COURT: Do you have a middle name,

1 Mr. Bailey?

2 THE DEFENDANT: Louis.

3 THE COURT: Joe Louis Bailly?

4 THE DEFENDANT: Correct.

5 THE COURT: How old are you?

6 THE DEFENDANT: Fifty-one.

7 THE COURT: How far have you gone in
8 school?

9 THE DEFENDANT: 12th.

10 THE COURT: Did you graduate?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Do you have your GED?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Can you read and write?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you understand the
17 sentencing sheets when you read them and signed
18 them?

19 THE DEFENDANT: Yes.

20 THE COURT: What type of work have you
21 done in the past?

22 THE DEFENDANT: Removed mobile homes.

23 THE COURT: How long were you employed
24 in doing that?

25 THE DEFENDANT: Fourteen years.

1 THE COURT: Fourteen years? Are you
2 married?

3 THE DEFENDANT: Divorced.

4 THE COURT: Do you have any children?

5 THE DEFENDANT: Five.

6 THE COURT: What are their ages?

7 THE DEFENDANT: 27, 30, 31, 33, 36 and
8 37.

9 THE COURT: Are you currently on
10 probation or parole?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Have you ever been treated
13 for the abuse of alcohol, drugs or mental illness?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Have you had any drugs,
16 alcohol or medication in the last 72 hours?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Are you aware of any
19 physical, emotional or nervous problem that would
20 keep you from understanding where you are right now
21 or what you are doing?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Have you been able to
24 understand your lawyer?

25 THE DEFENDANT: Yes.

1 THE COURT: And have you been able to
2 assist him in your representation?

3 THE DEFENDANT: Yes.

4 THE COURT: You understand that you
5 have changed your plea from not guilty to guilty?

6 THE DEFENDANT: Yes.

7 THE COURT: And that is on both
8 indictments, correct?

9 THE DEFENDANT: Yes.

10 THE COURT: And your lawyer and the
11 State have entered into a negotiated plea whereby
12 you will plead to both reduced charges of burglary
13 second violent; is that correct?

14 THE DEFENDANT: Yes.

15 THE COURT: With a range of 10 to
16 15 years; is that also correct?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that when
19 the parties negotiate a plea this Court's only
20 option is to accept or reject the plea?

21 THE DEFENDANT: Yes.

22 THE COURT: And knowing that do you
23 still wish to plead guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: On two counts of burglary

1 second violent how do you plead?

2 THE DEFENDANT: Guilty.

3 THE COURT: Do you understand that each
4 carries a maximum penalty of 15 years?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that each
7 is classified as violent?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that each
10 is classified as serious?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that
13 under South Carolina law if you receive an
14 additional -- two additional serious offenses you
15 can face life without the possibility of parole?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that the
18 violent classification also affects how you will
19 serve your time?

20 THE DEFENDANT: Yes.

21 THE COURT: Sir, you may have discussed
22 parole, parole eligibility with your lawyer or with
23 others, but until you're sentenced no one can tell
24 you when, if ever, you will be eligible for parole
25 or under what conditions. You should assume that

1 you will serve the entire time in jail that you are
2 sentenced to day for day. Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: I want you to listen
5 carefully to the facts. Mr. Condon?

6 MR. CONDON: May it please the Court,
7 Your Honor, this incident occurred on April 19th,
8 2015 around 5:30 in the evening when he first
9 burglarized Ms. Shaffer's residence located at [REDACTED]
10 Octavia Avenue in Ravenel in Charleston County.
11 She was at home making supper in her kitchen when
12 she observed the Defendant walking into her
13 carport. He then entered into her utility room in
14 the residence. She went inside -- she went to her
15 bedroom and armed herself with a pistol. She
16 walked out and ordered him out of her utility room
17 at gunpoint.

18 It took him a few seconds, but he
19 finally complied when he walked out. He then faced
20 her for approximately three to five seconds with
21 her pointing the pistol at home before he fled the
22 residence. He then went up the street about half a
23 block later to the Harrison's residence on Cornelia
24 Drive in Ravenel in Charleston County. He went
25 into the garage and he took a lawnmower, several

1 other tools and other items which he stacked on top
2 that mower. He was pushing them back towards his
3 home on Salter Hills Road when the victim, Mr.
4 Marvin Harrison, returned home from a job. He
5 confronted the Defendant and was able to get his
6 items back. He then observed the Defendant go up
7 Octavia Avenue towards Savannah Highway. The
8 deputies responded and were able to apprehend the
9 Defendant on Savannah Highway.

10 This is a case we are asking for the
11 15 years. There is a number of reasons for that.

12 THE COURT: I'm going to hear about
13 that at the sentencing. I just need to know about
14 the facts. Were the victims notified?

15 MR. CONDON: That's correct, both
16 present. Both would like to speak.

17 THE COURT: And was there any
18 restitution?

19 MR. CONDON: We are not asking for
20 restitution.

21 THE COURT: Sir, do you agree or
22 disagree with the facts?

23 THE DEFENDANT: Agree.

24 THE COURT: Do you feel anything needs
25 to be changed or added to the facts?

1 THE DEFENDANT: No.

2 THE COURT: Are you pleading guilty,
3 sir, because you are guilty?

4 THE DEFENDANT: Yes..

5 THE COURT: I want you to listen
6 carefully. When you plead guilty you give up your
7 Constitutional rights. Those include your right to
8 a jury trial. At a jury trial the State has the
9 burden of proving your guilt beyond a reasonable
10 doubt. You would have the right to confront and
11 cross-examine the State's witnesses, call your own
12 witnesses, present any defenses that you may have,
13 challenge any statements you may have made as well
14 as remain silent and your silence could never be
15 used against you.

16 Do you understand your rights as I have
17 just explained them to you?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that you
20 are giving up each and every one of those rights?

21 THE DEFENDANT: Yes.

22 THE COURT: And you have already gone
23 through the jury selection process, correct, where
24 we have picked a jury for this case?

25 THE DEFENDANT: Yes.

1 THE COURT: And you understand that if
2 you desire a trial the jury is in a room right
3 behind me in the hallway and they are ready to go
4 forward to try this case?

5 THE DEFENDANT: Yes.

6 THE COURT: Knowing all that do you
7 still wish to plead guilty?

8 THE DEFENDANT: Yes.

9 THE COURT: Other than what has been
10 stated for the record have there been any other
11 plea negotiations made on your behalf? Are there
12 deals that you are relying on that your lawyers
13 have not told me about?

14 THE DEFENDANT: No.

15 THE COURT: Have you been satisfied
16 with your lawyers services?

17 THE DEFENDANT: Yes.

18 THE COURT: Have they answered all of
19 your questions?

20 THE DEFENDANT: Yes.

21 THE COURT: Have they done everything
22 you have asked or expected?

23 THE DEFENDANT: Yes.

24 THE COURT: Any complaints about their
25 services?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Have you understood your
3 talks with them?

4 THE DEFENDANT: Yes.

5 THE COURT: Has anyone promised you
6 anything or held out any hope of a reward to cause
7 you to plead guilty?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Has anyone used threats,
10 coercion, force, pressure, intimidation or duress
11 to cause you to plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Are you pleading guilty
14 freely and voluntarily and of your own will?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you understood my
17 questions?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you need to ask me about
20 anything we have been over?

21 THE DEFENDANT: No.

22 THE COURT: Have you been truthful in
23 your answers?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that you

1 have the right to appeal this guilty plea and
2 sentence of the Court, but that you must do in
3 writing within ten days of today?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that if
6 you could not afford an attorney one would be
7 appointed to you?

8 THE DEFENDANT: Yes.

9 THE COURT: I find there is a
10 substantial factual basis for each plea, that the
11 Defendant has entered each plea freely,
12 voluntarily, knowingly and intelligently, that he
13 has had the advice and assistance of counsel with
14 whom he has indicated to the Court he's satisfied.
15 I will accept his plea on each offense. Anything
16 further from the State?

17 MR. CONDON: Yes, Your Honor. May it
18 please the Court, we would like to point out that
19 both these burglaries people were home when this
20 happened. These weren't, you know, cases where it
21 was vacant homes. There were people present and he
22 really terrified the victims, particularly Ms.
23 Schaffer, who is recently widowed. If you could
24 have listened to her 911 call I think you really
25 would have understood her level of fear.

1 This is an individual that has been
2 preying on people in the area for a long time as
3 evidenced by his record. And he has got two prior
4 burglaries on there. And, in fact, he burglarized
5 the same residence twice which to me hits home that
6 he has not learned his lesson. We believe his plea
7 is a big gift to him to reduce it to the second
8 violent with a parole eligibility and the way that
9 the sentence is calculated is at a much reduced
10 rate compared to the first degree.

11 Therefore, we believe that the 15 years
12 is appropriate considering his record, the manner
13 of these burglaries, and just the boldness of his
14 actions.

15 We ask that you also take into
16 consideration the victims and their opinions too
17 when they speak.

18 THE COURT: Certainly be glad to hear
19 from them. They need to state their names for the
20 record.

21 MS. SCHAFFER: I'm Sandra Schaffer and
22 what happened to me is exactly what Charles Condon
23 says. I am scared.

24 THE COURT: Ma'am, can you spell your
25 name for the record.

1 MS. SCHAFFER: S-C-H-A-F-F-E-R.

2 THE COURT: Yes, ma'am.

3 MS. SCHAFFER: And I really wouldn't
4 want to go through that again. So I would just
5 feel safe, more safe and for the safety of everyone
6 else around that the neighborhood or wherever he
7 goes if he could get at least the 15 years.

8 THE COURT: Thank you. Anything
9 further, ma'am, you would like to share with the
10 Court?

11 MS. SCHAFFER: No. It just really got
12 next to me.

13 THE COURT: Anybody else wish to be
14 heard, Mr. Condon?

15 MR. CONDON: Yes, Your Honor.

16 THE COURT: Yes, sir. Tell us your
17 name for the record.

18 MR. HARRISON: My name is Marvin L.
19 Harrison, Jr.

20 THE COURT: Yes, sir.

21 MR. HARRISON: And I would feel
22 comfortable if he had the 15 and it would rest me a
23 lot more if I am not there or my wife and kids,
24 grandkids are there that I could step out of the
25 house and not have to worry too much about them.

1 THE COURT: Anything further, sir, you
2 would like to share with the Court?

3 MR. HARRISON: This was the second
4 incident with him at my residence.

5 THE COURT: Anything further, sir, you
6 would like to share?

7 MR. HARRISON: No, ma'am.

8 THE COURT: Thank you very much.
9 Anything further, Mr. Condon?

10 MR. CONDON: Nothing, Your Honor. We
11 just again reiterate that we are asking for the 15
12 years on this case and we would ask he be sentenced
13 to that.

14 THE COURT: Be glad to hear from you,
15 Mr. Malloy.

16 MR. MALLOY: Thank you, Your Honor.
17 May it please the Court. Joe has been incarcerated
18 since he was arrested on April 19th, 2015. That
19 adds up to 547 days that he has been incarcerated.
20 I would ask you to note that on the sentencing
21 sheets due to the fact that one of these charges
22 did not start off as an arrest warrant when he went
23 into the county detention center. Obviously he was
24 indicted --

25 THE COURT: The Department of

1 Corrections calculates time pursuant to the
2 regulation. That's why they took that little line
3 off our sheet. We don't calculate time because if
4 I give less him than that that's all they are going
5 to give him. He's entitled to more than that. He
6 is entitled to a predetention time from the time he
7 was actually served with the warrant. So I leave
8 calculation of credits up to them. If y'all want
9 to agree to something different than that and
10 provide the Court with a consent order I will be
11 glad to consider it, but I'm not taking any time
12 off.

13 MR. MALLOY: Understood, Your Honor,
14 and if it becomes an issue I will take it up with
15 Mr. Condon.

16 THE COURT: They would send all of his
17 records to the Department of Corrections. They
18 will sit down with him and go through it and tell
19 him what he is entitled to.

20 MR. MALLOY: Understood, Your Honor.
21 Joe is 61 years old. As he told you he was
22 employed moving mobile homes before he was --

23 THE COURT: He said 51. Is he 61?

24 MR. MALLOY: Sixty-one.

25 THE COURT: Okay. Well, I

1 misunderstood what he said. Sir, you are in fact
2 61?

3 THE DEFENDANT: Sixty-one.

4 THE COURT: I am sorry. I thought you
5 said 51.

6 MR. MALLOY: Other than moving mobile
7 homes he was previously employed in the electric
8 field. He also previously worked as a brick mason.
9 He also worked in the logging industry at one time.
10 I am asking you for the minimum ten years, the
11 range that we have negotiated. That would be by
12 far the longest amount of time that he would have
13 ever had to go to the Department of Corrections.

14 Obviously we are dealing with a burg
15 first because of the two prior burglaries. I would
16 like to point out on those he received sentences of
17 on one a 30-month sentence, the other ten years
18 suspended to three years and two years probation.

19 THE COURT: I need you to slow down for
20 me. You said one he received 30 months and one he
21 received what?

22 MR. MALLOY: Ten suspended to three and
23 two years probation. Your Honor, I don't think he
24 had to serve any additional time on that.

25 THE COURT: Who was he living with? I

1 am curious. He said he was going back to his house
2 on Salters Road. Who does he live with?

3 THE DEFENDANT: My aunt.

4 THE COURT: How long have you lived
5 with your aunt?

6 THE DEFENDANT: I lived there all my
7 life except for seven years.

8 THE COURT: You may continue, Mr.
9 Malloy.

10 MR. MALLOY: Your Honor, I would like
11 to point out that obviously Ms. Schaffer and Mr.
12 Harrison were very frightened by this event. This
13 was an invasion of their privacy; however, he is
14 going in people's sheds, garages, taking equipment,
15 things like that. He wasn't armed and it was
16 pretty clear --

17 THE COURT: Are you saying her laundry
18 room was not in her house?

19 MR. MALLOY: I think it would be a
20 dwelling per the burglary statute. But he is going
21 in and he's taking equipment just like he did from
22 Mr. Harrison. And the previous event with Mr.
23 Harrison it was basically that's exactly what it
24 was, very similar to what he did in this case.

25 Your Honor, it's very clear also from

1 the video that he was intoxicated at the time. I
2 think Joe has difficulty remembering exactly what
3 he did, but the numbers he faces here today,
4 15 years to life, obviously I think he has been put
5 on notice that if he ever commits a burglary again,
6 it's 15 years to life. And in addition to the fact
7 that he's now going to have two strikes on his
8 record, he does have a previous strike for burglary
9 second violent.

10 I advised him that even if he -- it's
11 not a burglary, if he gets another serious offense,
12 life without parole. I think that ten years
13 certainly is substantial given the allegations we
14 are here for today and the amount of time he served
15 previously and I am asking you to impose that.
16 Thank you.

17 THE COURT: Did he have any mental
18 health diagnosis?

19 MR. MALLOY: He does not, Your Honor.

20 THE COURT: And you said he was
21 intoxicated. Is that a chronic issue? Are
22 substances involved?

23 MR. MALLOY: Your Honor, judging from
24 his eval at MUSC doesn't appear to be -- I will let
25 Joe answer the question whether he needs the

1 addiction treatment unit or not.

2 THE COURT: Sir, do you have any other
3 problems other than alcohol?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Would you characterize your
6 issues with alcohol as chronic? In order words,
7 you drink every day if you are not in jail?

8 THE DEFENDANT: No. Sometimes on the
9 weekends.

10 THE COURT: Just on the weekends?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you drink to the point
13 where you don't know what's going on?

14 THE DEFENDANT: Sometimes.

15 THE COURT: Were you employed at the
16 time this happened?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Where were you employed?

19 THE DEFENDANT: Moving mobile homes.

20 THE COURT: That's where you were doing
21 the mobile home moving.

22 THE DEFENDANT: Yes.

23 THE COURT: What were you earning when
24 you were working there?

25 THE DEFENDANT: Three-fifty for one

1 week.

2 THE COURT: And I assume you didn't
3 have any expenses living with your aunt?

4 THE DEFENDANT: I pay the bills.

5 THE COURT: How old is your aunt?

6 THE DEFENDANT: She is 82.

7 THE COURT: Does she have any other
8 relatives?

9 THE DEFENDANT: She got a daughter.

10 THE COURT: Is her daughter here in
11 town?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: So I assume her daughter is
14 going to take care of her while you are in jail?

15 THE DEFENDANT: Right.

16 THE COURT: Anything further, Mr.
17 Malloy, as a result of my questions of your client?

18 MR. MALLOY: Nothing from me.

19 THE COURT: Anything from the State?

20 MR. CONDON: Nothing, Your Honor, just
21 ask for 15 years. Thank you.

22 THE COURT: You're welcome, sir. Based
23 on what's been presented to the Court, sir, you are
24 sentenced to the state Department of Corrections
25 for a period of 15 years. You will get credit for

1 any time that you have served to be calculated and
2 applied by the department. These sentences are
3 concurrent with one another. And I am ordering the
4 ATU if it's available to you.

5 MR. CONDON: Thank you, Your Honor.

6 THE COURT: You're welcome. Y'all have
7 a good day.

8 (These proceedings were concluded at
9 3:09 p.m., October 16, 2016, Charleston County,
10 South Carolina.)
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1 CERTIFICATE OF REPORTER

2
3 I, Ruth C. Weese, Registered Diplomate
4 Reporter for the State of South Carolina at Large,
5 do hereby certify that the foregoing transcript is
6 a true, accurate, and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 16th day of May, 2017 at
12 Charleston, Charleston County, South Carolina.

13
14 *Ruth C. Weese*

15
16 _____
17 Ruth C. Weese

18 Registered Diplomate

19 Reporter
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Charleston)Joe L. Bailey)

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

v.)

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)

FILED
2017 APR 17 PM 4:55
JULIE J. ARMSTRONG
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland Correctional Institution
P.O. Box 2039, Ridgeland, SC 29936
2. Name and location of Court which imposed sentence Charleston County,
100 Broad Street, Charleston, SC 29401
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2015-GS-10-05566, Burglary Second Degree

- (b) 2016-65-10-03772, Burglary Second Degree
- (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) October, 17th 2016
- (b) October, 17th 2016
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list: N/A

- (a) the name of each Court to which you appealed: N/A
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Was not informed I could by the attorney.

- (b) was not informed he could by attorney
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) (See attached Pages 1 through 14
- (b) With Exhibits)
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (See attached Pages 1 through 14
- (b) With Exhibits)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A
- (a) the specific nature thereof:
- i. Motion for reconsideration of sentence
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Charleston County General Session
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Nov 3rd 2016

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: NONE

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) plea agreement, PCR is first step, attorney did not advise procedures
 (b) plea agreement, PCR is first step, counsel did not advise procedures
 (c) _____

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

- (a) your arraignment and plea? Luke J. Mallory, esq., P.D. office : Yes
 (b) your trial, if any? Luke J. Mallory, esq., P.D. office : Yes
 (c) your sentencing? Luke J. Mallory, esq., P.D. office : Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? None
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NONE, pro se

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. Luke J. Mallory, esq., Public Defender's office, 101 meeting st.
5th floor, Charleston, SC 29401
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. arraignment
 ii. Beginning stage of trial
 iii. Plea agreement deal and sentence

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

Complete dismissal of case # 2015-GS-10-05566; and case
#2016-GS-10-03772, with a reduced adequate offense and
sentence for case # 2016-GS-10-03772 in accordance to law.

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

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Charleston)

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

X Joe Lewis Bailey

SWORN to and subscribed before me this 7
 day of April, 2017.

Virginia Robinson (L.S.)
 Notary Public

My Commission Expires: May 20, 2021

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

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

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

Joe Lewis Bailey
Applicant

SWORN or affirmed to and subscribed before me this

7 day of April, 2017.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

Ground One: The Courts erred in finding Mr. Bailey guilty of Burglary Second Degree in case # 2016-GS-10-03772, in violation of the Double Jeopardy Clause pursuant to the Fifth Amendment of the U.S. constitution

Facts: On April 19th, 2015, Mr. Bailey was arrested and pre-trial detained for Petit Larceny, (sc code § 16-13-30) in case (OCA# 2015-006100) "See (Exhibit-1), Affidavit," - (Part-A)

On May 12th, 2015 the Charleston County Sheriff's Department, who was pre-trial detaining Mr. Bailey, transported him to the West Ashley Magistrate Court for a subsequent guilty verdict and sentence of (30-days) in the County Detention Center. This was done in front of Honorable Stienberg, (Exhibit-1 Part-B)

After Mr. Bailey served his (30-day) sentence, and about (13)-months later in June of 2016, the State sought an indictment for Burglary First Degree, (S.C. Code § 16-11-311) related to the exact same incident, facts and transaction in the above mentioned Petit larceny case. "See (Exhibit-2, indictment)". Which ultimately resulted in a coerced plea of guilty to the Burglary Second Degree and a (15)-year prison sentence in case number 2016-GS-10-03772. "See (Exhibit-3 sentencing sheet)"

Argument: Clearly Mr. Bailey's rights under the Fifth Amendment of the Constitution were thwarted. The State committed Double Jeopardy by indicting Mr. Bailey and prosecuting him for the second time of the same transaction criminal offense.

Then Committed malfeasance in the manipulation of the judicial system and courts by covering up the petit larceny conviction and Sentence, a vindictive act!

The Double Jeopardy Clause of the Fifth Amendment states that [No] person shall "be subject for the same offense to be twice put in jeopardy of life or limb," this includes imprisonment and monetary penalties. The protection applies to both misdemeanor and felony charges. See parte Lange, 85 U.S., 163, 168-69 (1874). Double jeopardy protection applies to every indictment or information charging a person crime or misdemeanor. The Clause protects against a second prosecution for the same offense after an acquittal or conviction. This even includes multiple punishments for the same offense. See Ohio v. Johnson, 467 U.S. 493, 498 (1984).

Multiple prosecution for a single or related acts under Blockburger v. U.S., 284 U.S. 299, 301 (1932), pertinent to the same transaction and facts, violates two distinct statutory provisions. The test to determine whether there are multiple offenses or the same offense, is whether each provision requires proof of a fact that the other does not. See Williams v. Singletary, 78 F.3d 1510, 1516 (11th Cir. 1996), (stating offense charged same transaction because assault does not require any element of proof not required by burglary with assault.) As a consequence of Blockburger Supra, double jeopardy also bars successive prosecutions for greater and lesser included offenses, See Morris v. Reynolds, 264 F.3d 38, 49-50 (2d Cir. 2001), as Mr Bailey's case, double jeopardy bars

Subsequent prosecution for the greater offense of a felony because of a guilty plea on a lesser offense of the misdemeanor involving same incident, facts, and transaction. Mr. Bailey should of never been indicted in case number 2016-GS-10-03772 and then subsequently found guilty and sentenced to prison by the state and courts.

Ground Two: Mr. Bailey's convictions were obtained by the state/County assistant solicitor and/or solicitors office vindictiveness in the malicious prosecution of case number(s) 2015-GS-10-5566 and 2016-GS-10-03772.

Facts: Mr. Bailey was originally arrested for Petit larceny, OCA# 2015-006100 and Burglary Third Degree, OCA# 2015-006098, based on the purported facts. However, due to Mr. Bailey's past criminal history, ~~state~~ illegally seeked out indictments for 2- counts of Burglary First Degree. First the state went beyond the facts and elements of the actual offense(s) and then aided in making records of Mr. Bailey's conviction and sentence of the Petit larceny case of Mervin Harrison in case OCA# 2015-006100 to conveniently disappear so they may vindictively and illegally seek out greater offense. Then in case OCA# 2015-006098 allowed perjured statements in by police officers to vindictively and illegally seek greater offense.

However, Mr Bailey can prove by evidence, clerk records at Charleston county Judicial Center and transport records at the Charleston Co. Detention center to verify Mr. Bailey went to Court at the West

Ashley Magistrate Court in the Petit larceny case; and perjury by police in the preliminary hearing for the Burglary Third Degree case, shows vindictiveness by the state.

Argument: The Due Process Clause prohibits a prosecutor from using criminal charges in an attempt to penalize a defendant's valid exercise of constitutional and statutory rights. When a defendant, after successfully exercising legal rights, such as pointing out deficient police performance in not do finger prints or pleading guilty to a misdemeanor, then is later reindicted for greater offense(s) to employ a greater sentence, a presumption of vindictiveness is there. Such as in Blackledge v. Perry, 417 U.S. 21, 28-29 (1974), (defendant exercised his right in his conviction for a misdemeanor in a lower state court, than prosecutor obtained a superseding felony indictment covering the same conduct that formed the basis of the earlier misdemeanor. *Id.* at 22 and 23.) The Supreme Court has held that this is a Due Process violation. The presumptions are justified on the grounds that it is often difficult to precisely divine prosecutor's motives and that, in certain circumstances due process can be implicated by the mere appearance of vindictiveness, See U.S. v. Goodwin, 457, U.S. 368 (1982) at 373. Motives and vindictive techniques are complex and difficult to prove. As a result, in certain cases like Mr. Bailey's, in which the solicitors reindictment actions were detrimental to defendant after he already exercised his right to plead guilty of lesser offense and point out police vindictiveness by not doing finger printing to show a actual break in, the courts has found that this is vindictive motives.

Evidence is clear that the prosecution was vindictive in indicting Mr. Bailey (13)-months after he plead guilty in the same case

and incident of the petit larceny case. That their subsequent manipulation of the judicial system clearly shows prosecutorial misconduct and vindictiveness.

Ground Three: That the indictments of burglary first degree in case number(s) 2015-GS-10-05566 and 2016-GS-10-03772 were obtained due to police misconduct and perjured statements in affidavits to support the warrant(s) and with the testimony in the preliminary hearing.

Facts: In the case of burglary third degree of agency number OCA-2015-006098, officer K.M. Tyner reported that the alleged victim, Ms Sandra Schaffer stated basically that the perpetrator walked onto her car-port and opened the utility building door then fled after she pulled a pistol on him. Basically stating that the perpetrator never went inside the build. Deputy D. Zork also attempted to state the same thing in the affidavit to support the warrant presented to the magistrate judge. Yet, further on down this same affidavit, he states that MR. Bailey went inside the building. (See Exhibit-4). The victim, Ms Schaffer clearly stated that the perpetrator only opened the door. He never went in. Ultimately the police were trying to contort the facts to suit the warrant. Then the State, knowing the true facts, or should of known, followed through using this same perjured / contorted information to obtain a burglary first degree indictment. In Mr Bailey's preliminary hearing for the

original arresting offense of burglary third degree, the Charleston County Sheriff's Office deputies involved in this case committed perjury on the witness stand. Mr. Bailey's defense attorney asked the question why didn't any one do finger-print impression to positively identify the offender? Since the purported victim alleged that the said offender opened the garage door with no gloves. Nevertheless, the deputy stated on the witness stand that it was raining that day is the reason why finger-printing was not done. However, it was not raining at all that day of the alleged offense. In fact, the video of the scene offered by the Sheriff's office clearly shows it was bright and sunny.

Mr. Bailey asserts that there were many more inconsistent and contorted statements made by the deputies and investigators involved in this case. In fact, these contorted and perjured statements and assumed circumstance evidence was done vindictively because of Mr. Bailey's history with the law and this/ his neighborhood. And accumulatively, these assumed circumstance evidence was used to obtain an indictment for Burglary First Degree.

Argument: A conviction obtained, even an indictment, by knowingly using perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony "could" have affected the jury's judgment. See Simpson v Moore, 367 S.C. 587, (2006). It violates one's Due Process rights pursuant to the Constitution.

The Supreme Court has long said that the State may not use false evidence, including false testimony, to obtain a tainted conviction or indictment, regardless of whether the state solicited testimony it knew or should have known to be false or simply allowed such testimony to pass uncorrected. False testimony or perjured evidence of a law enforcement officer is imputable to the prosecution. Head notes in Longworth v. Ozmint, 377 F.3d 437, (4th Cir. 2004). Also see, U.S. v. Bartho, 728 F.3d 327, (4th Cir. 2013).

Clearly the state knew or should of known the inconsistency and lack of evidence to support the statements made in these cases. The police knew that a witness statement alone, specially a witness who knew of the alleged offenders character, would not stand alone as evidence that Mr Bailey opened a door. Finger-printing is a must to alleviate any doubt.

Ground Four: Mr Bailey's conviction and sentence was obtained due to ineffective assistance of defense counsel pursuant to U.S.C.A. Const. Amend. 6.

Defense counsels ineffective performance on several levels and issues affected the out come of Mr. Bailey's Case's.

Fact and Argument: Mr. Bailey was originally arrested on April 19th, 2015 for petit larcany, OCA#2015-006100, Exhibit-1; and Burglary Third Degree, OCA#2015-006098, Exhibit-4.

However, later on the state seeked indictments for Burglary First Degree, two accounts. Case number 2015-GS-10-05566, indicted on October 19th 2015, see Exhibit-5. and indictment number 2016-GS-10-03772 done on June 2016. In as much, Mr. Bailey's defense Attorney Mr. Luke J. Malloy with the Charleston County Public Defenders office was ineffective for not challenging the Facts and validation, not to mention the Collateral estoppel doctrine of double jeopardy. Clearly under the collateral estoppel doctrine, when an issue of ultimate fact has been determined by a valid judgment, that issue can not be again litigated between the same parties in future litigations. As stated in Ground One herein, this happened to Mr. Bailey and Mr. Malloy failed to litigate a defense against it. It was a clear miscarriage of justice by the State, and even when Mr. Bailey pointed this out to Mr. Malloy, Mr. Malloy stated he didn't have time to debate these issues.

Which brings us to the next issue of ineffective assistance of counsel. Counsel, failed to do any pre-trial investigation or challenges to the states case. Even after counsel knew of the police perjured statements, lack of tangible evidence, no finger prints, invalid identification, (No six man lineup), nothing broke into, absolutely no entry into any sort of building, no stolen items were found on Mr Bailey, Inconsistence in victim statements against the police statements and most of all,

Mr Bailey's alibi. The defense counsel failed to even interview or do depositions on any of the parties involved in these case(s). The trial counsel should of at the very least challenged unnecessarily suggestive procedures such as the identification and fingerprinting. In Stovall v. Denno, the Supreme Court recognized a defendant's due process right to exclude identification testimony resulting from unnecessarily suggestive procedures that might lead to an irreparably mistaken identification.

Not only was defense counsel's performance so deficient in absolutely [no] pre-trial investigation or challenges to the states purported alleged evidence, Counsel made a point with his actions and non-actions to coerce Mr. Bailey in excepting some sort of plea of guilty verdict. In every single jail visit and conversation counsel had with Mr. Bailey, not onetime did defense counsel discuss any defense or defense strategy or any conclusive discussions about the alleged evidence. Mr. Bailey tried! But counsel was aversion about the case. In fact, Mr. Malloy sent Mr. Bailey 4-letters scheduling guilty pleas. See Exhibit - 6-9. Mr Bailey Knew he was not guilty of burglarizing any sort of building and was very adamant about going to trial. Finally, Mr. Bailey decided he no longer trusted his attorney and wrote the head of the Charleston County Public defender's Office, Mr. D. Ashley Pennington, requesting a new attorney. His response to Mr. Bailey's letter was basically, we can't due to extreme case load.

See Exhibit-10, letter. The courts have long discussed defense counsel's obligation to do some sort of an investigation and to lodge some sort of a defense to the state case. Like in Bagwell v. State, 410 S.C. 259, (2015) Trial counsel's decision not to seek DNA testing of blood found on glass from victims door was ineffective assistance of counsel. In Mr. Bailey's case, not seeking finger prints or challenging the breaking in of the said garage door for lack of finger prints of Mr. Bailey's shows counsel's lack of concern in the case to the point that it actually prejudice Mr Bailey. A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigating evidence and all reasonably available evidence tending to rebut any evidence introduced by the state, Bagwell supra. Mr Malloy's lack of investigation was an intentional set up to coerce Mr. Bailey into a plea of guilty. As Mr Pennington said, "the public defender's have a large case load." Trial's just slows down the judicial process within the Charleston County Public Defender's Office. They don't have time to conduct an adequate investigation, let alone trial.

Not only was Mr. Bailey's case prejudiced by defense counsel lack of investigation to coerce Mr. Bailey into a guilty plea, But Mr. Bailey was coerced into a guilty plea with the promise of a 10-year sentence by Mr. Malloy.

The day of trial, Mr Malloy promised Mr. Bailey that if he plead guilty today, that the offenses would be lowered to Burglary Second Degree and he would receive a

10-year prison sentence. Mr. Malloy informed Mr. Bailey that he is not ready for trial and that this plea was the best he was going to get, because his past criminal record would convict him. Of course Mr. Malloy failed to inform Mr. Bailey that if he didn't take the witness stand, his past criminal record could not come out. But Mr. Bailey knew his hand was tied and forced to accept this plea due to defense counsel's deficient performance and coerced words this day. So Mr. Bailey pled guilty subsequent to Mr. Malloy's promiss. However, Mr. Bailey ended up with two 15-year prison sentence to run concurrent. (See Exhibit-3). Mr. Bailey was never informed by his counsel that the judge/courts are not bound to this 10-year plea agreement. Nevertheless, Mr. Bailey immediately informed his defense counsel that he no longer wanted to plea guilty... As the bailiff escorted Mr. Bailey out of the Court-Room,

Mr. Malloy never informed Mr. Bailey that he could withdraw his guilty plea. Nor did Mr. Malloy actually comply to Mr. Bailey's statement, "I no long want to plea guilty." Instead, Mr. Malloy, maybe out of guilt, made a feeble attempt to fix his misrepresentation with a motion to reconsider sentence. Which was ultimately denied.

Now granted, to withdrawal of a guilty plea is generally within the sound discretion of the trial judge. *151, State v. Neal, 267 S.C. 53, 226 S.E.2d, 236 (1975). However, as Justice's Nless and Horwell has clearly stated, if defendant's plea was

not entered knowingly because he misunderstood the scope of the agreement on sentence, State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) - (plea not knowingly made because he misunderstood the scope of the statutory sentence), see also State v. Peder, S.C. 283 S.E.2d 826 (1981), or the defendant was not confident in his attorney; when the judge discovers the misunderstanding, he must allow the withdraw of plea of guilty. His failure to do so is an abuse of discretion, Hazel supra and State v. Smith, S.C., 280 S.E.2d 200 (1981). Mr Bailey asserts that at the very least, his defense attorney should of at least filed a timely motion to withdraw the guilty Plea pursuant to S.C.R. Crim.P. Rule 29 due to Mr Bailey's request and Mr. Melloy's promiss of a 10-year prison sentence Mr. Bailey did not get. And in criminal law, the test for determining validity of a guilty plea is whether plea represents voluntary and intelligent choice among alternative courses of action open to defendant, with sufficient awareness of relevant circumstances and likely consequences, see Gibson v. State, 514 S.E.2d 320, 324 S.C. (1999).

* Memorandum of Law *

The Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecution. To obtain reversal of a conviction, the defendant must prove that (1) counsel's performance "fell below an objective standard of reasonableness"; and (2) counsel's deficient performance "prejudiced" the

defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding. This two part test pursuant to Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984) also applies to guilty pleas based on ineffective assistance of Counsel. In the context of guilty pleas, the first half of the Strickland test is nothing more than a restatement of the standard of Attorney competence already set forth in Tollett v. Henderson, [411 U.S. 258, 93 S.Ct. 1602, 36 L.Ed. 2d 235 (1973)] and McMann v. Richardson, [397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed. 2d 763 (1970)]. also see South Carolina Rule 407-Professional Conduct, Rule 1.1. competence; 1.2 - scope of Representation and Allocation of Authority Between Client and Lawyer; Rule 1.3. Diligence, and ; Rule 1.4. Communications. The second, or "prejudice" requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the Plea process. In other words, in order to satisfy the "prejudice" requirement, Mr. Bailey must show that there is a reasonable probability that, but for counsel's errors or lack of performance, he would not have pleaded guilty to an offense he knew he was innocent of, he, as he tried to do, would of insisted on going to trial.

In deciding whether counsel's performance was ineffective a Court must consider the totality of the circumstances. See Dugas v. Coplan, 428 F.3d 317, 332, (1st Cir 2005) states, counsel's failure to investigate possible defense was ineffective assistance.

Under the performance prong, there is a presumption that

Counsel's strategy and tactics fall "within the wide range of reasonable professional assistance. See Owens v. U.S., 483 F.3d 48, 59 (1st Cir 2007), stating counsel's failure to inform defendant about his right to testify or not testify was unreasonable strategy because these rights are fundamental and can only be waived by knowing defendant. And a blanket statement by counsel stating that he employed "strategy" does not automatically insulate the lawyer from being ineffective. Gilchrist v State, 350 S.C. 221 (2002)

Nevertheless, Mr Bailey asserts that this court has jurisdictional authority to Rule on this Post-conviction Relief. An application for (PCR) may attack the voluntary, knowing and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness.

Smith v. State, 369 S.C. 135, 138, 631 S.E. 2d 260, 261 (2006)

Counsel informing Mr. Bailey that his past criminal record will convict him in trial alone shows deficient performance, let alone all the other issues Mr. Bailey has cited herein.

To not allow Mr Bailey's guilty verdict/plea to be withdrawn or to not over turn this case for a trial would be a great miscarriage of Justice.

Respectfully Submitted: Joe L. Bailey

Joe L. Bailey, pro se

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

OCA # 2015-006100

AFFIDAVIT

Personally appeared before me, a magistrate of this County, one Detective A. Miller, who, first being duly sworn, deposes and says that

Lewis Joe Bailey

did within this County and State during the months of 19 of April 2015, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
PETIT LARCENY
16-13-30

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On April 19, 2015, while at [REDACTED] Cornelia Dr., Ravenel, in the County and State aforesaid, the above named defendant, **Lewis Joe Bailey**, did commit the offense of violation section 16-13-30 of the South Carolina State Code of Laws, 1976 as amended, **Petit Larceny**, in that he did willfully and unlawfully take, steal, and carry away one green and yellow Briggs & Stratton push lawn mower, A battery charger, socket set, orange color auto polisher, and a orange computer tester for an automobile with the intent to deprive the victim the use thereof and convert said property for his own use.

That on April 19, 2015, the victim, Marvin Harrison reported to members of the Charleston County Sheriff's Office that the above defendant, Lewis Bailey was caught walking away from his residence by him, with all of the listed items. Mr. Harrison took his items away from the defendant and placed them into his pickup. Mr. Harrison went down the street and located a Deputy Sheriff sitting on the side of the road and advised him about Mr. Bailey's location and what he had just done. The Deputies responded to the scene and spoke with Mr. Bailey just minutes after the victims encounter, Mr. Bailey was arrested on separate charges. Mr. Harrison gave me a written detailed statement on the incident and picked the defendant out of a photo lineup. Mr. Harrison also stated that he wants to pursue charges against Mr. Bailey for petit larceny.

The above information was revealed through the investigation of Detective A. Miller, and the observations of the victim Marvin Harrison who is witness to prove the same in such case made and provided against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me

this 4th day of May, 2015.

Allen S. Stenberg
Signature of Judge

[Signature]
Detective A. Miller
Charleston County Sheriff's Office
3691 Leeds Ave.
N. Charleston, SC 29405
Phone No. (843) 529-5327

(Exhibit - 1) - (Part - A)



Charleston County
Summary (Magistrate)
Court Case Details
Public Index

Switch View

The State of South Carolina VS Lewis Joe Bailey

Case Number:	2015A1010900327	Court Agency:	West Ashley Magistrate	Filed Date:	05/12/2015
Case Type:	Criminal	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Steinberg, Ellen Soffar	Disposition Judge:	Steinberg, Ellen Soffar
Disposition:	Guilty Bench Trial				
Disposition Date:	05/18/2015	Date Received:		Arrest Date:	05/12/2015
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
Or	Fine or Jail Time	30	Days	05/18/2015	06/17/2015		
	Fine		Amount				

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(Exhibit-1)-(Part-B)-(Pg. 1 of 2)



Charleston County
Summary (Magistrate)
Court Case Details
Public Index

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Switch View

The State of South Carolina VS Lewis Joe Bailey

Case Number:	2015A1010900327	Court Agency:	West Ashley Magistrate	Filed Date:	05/12/2015
Case Type:	Criminal	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Steinberg, Ellen Soffar	Disposition Judge:	Steinberg, Ellen Soffar
Disposition:	Guilty Bench Trial				
Disposition Date:	05/18/2015	Date Received:		Arrest Date:	05/12/2015
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Bailey, Lewis Joe	3419-Larceny / Petit or Simple Larceny - \$2,000 or less	3419-Larceny / Petit or Simple Larceny - \$2,000 or less	05/18/2015

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(Exhibit-1)-(Part-B)-(pg 2 of 2)

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHARLESTON

At a Court of General Sessions, convened June 2016, the Grand Jurors of Charleston County present upon their oath:

BURGLARY FIRST DEGREE

That in Charleston County, South Carolina on or about April 19, 2015, the Defendant Joe Lewis Bailey, did enter the dwelling of Marvin Harrison without consent and with the intent to commit a crime therein. That, in addition, the defendant has a prior record with two or more convictions for burglary, housebreaking or a combination of both; 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.

Charles Molony Condon Jr.

CHARLES M. CONDON, JR.
ASSISTANT SOLICITOR

(Exhibit -2)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.

JOE LOUIS BAILEY

AKA: Joe Lewis Bailey, Lewis Joe Bailey

Race: Black/African American

Sex: M

DOB: [REDACTED] SS#: 2 [REDACTED]

Address: [REDACTED]

City, State, Zip: Ravenel, SC 29407

DL# [REDACTED] SID# SC00012694

*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: Burglary Second Degree (Violent)

In violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ 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, _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, Ad-15 ☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr. 100579
 Charles M. Condon, Jr., Assistant Solicitor SC Bar #

Joe Louis Bailey
 Defendant

Luke Malloy 100169
 Attorney for Defendant SC Bar #

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-10-55266☒ 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 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____ days/hours Public Service Employment

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 61.6 (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(3) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-10-03772

A/W: 2016-GS-10-03772

Date of Offense: 04/19/2015

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

Check Jail
18 months for
10 months for
10 months for

 Presiding Judge: Adl Judge
 Judge Code: 2128
 Sentence Date: 10/17/16

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

OCA # 2015-006098
AFFIDAVIT

Personally appeared before me, a magistrate of this County, one D. York, who, first being duly sworn, deposes and says that

JOE LEWIS BAILEY

did within this County and State on April 19, 2015, violate the criminal laws of the State of South Carolina in the following particulars:

BURGLARY THIRD DEGREE
16-11-313

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on April 19, 2015 while at [REDACTED] Octavia Ave. Hollywood, in the County and State aforesaid, the above named defendant, Joe Lewis Bailey, did commit the offense of violation section 16-11-313 of the South Carolina State Code of Laws, 1976 as amended, **BURGLARY THIRD DEGREE**, in that he did willfully, unlawfully and feloniously, enter a utility room connected to the aforementioned residence, during daylight hours, with the intent to commit a crime therein, to wit: LARCENY

On April 19, 2015, Deputies K. Tyner and R. Powell responded to a Burglary in progress [REDACTED] Octavia Ave. The victim, Sandra Schaffer wrote a sworn statement that she observed a black man enter her carport and open the door to the utility room. She yelled at the defendant to get out, showed him her pistol and he fled towards Savannah Hwy. The Victim called 911 and provided a description of a black male, green shirt and dark pants. Deputies K. Tyner and R. Powell located the defendant at Savannah Hwy. @ Glayton Dr. less than 1/2 mile from the victim's residence.

On this same date Deputy R. Powell escorted the victim to the corner of Cornelia Dr. and Savannah Hwy. to identify the defendant. The victim looked at the defendant and stated to Deputy R. Powell "I am positive this was the man in the yard and in the room."

The above information was obtained through the statement of the victim Sandra Schaffer and the investigation of Deputies K. Tyner and R. Powell and they are witnesses to prove the same against the form of the statute in such case made and provide against the peace and dignity of the state.

Sworn to and Subscribed before me

this 19th day of April 2015.

[Signature]

Signature of Judge

Deputy D. York
Charleston County Sheriff's Office
3691 Leeds Ave.
North Charleston, SC 29405
Phone (843) 202-1700

(Exhibit-4)

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHARLESTON

At a Court of General Sessions, convened on October ^{14 MS} 8, 2015, the Grand Jurors of Charleston County present upon their oath:

BURGLARY FIRST DEGREE

That in Charleston County, South Carolina on or about April 19, 2015, the Defendant Joe Louis Bailey, did enter the dwelling of Sandra Schaffer without consent and with the intent to commit a crime therein. That, in addition, the defendant has a prior record with two or more convictions for burglary, housebreaking or a combination of both; 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.

Charles M. Condon Jr.
CHARLES M. CONDON, JR.
ASSISTANT SOLICITOR

(Exhibit 5)

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY

O.T. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET, 5th FLOOR
CHARLESTON, SC 29401-2214
(843) 958-1850
(843) 958-1860 (fax)
publicdefender@charlestoncounty.org

October 07, 2015

VIA HAND DELIVERY

Joe Louis Bailey
Inmate # 64
Sheriff Al Cannon Detention Center

Re: Your Court Date

Date: October 13, 2015 Time: 1:30 PM

Dear Mr. Bailey:

You have been scheduled for a guilty plea on October 13, 2015 at 1:30 PM. If you do not wish to plead guilty, we can discuss it at that time, or you can send me a letter regarding your wishes.

Please contact any family members, employers, friends, or clergy that you would like to attend in order to speak on your behalf. Have them contact me in advance so that I can be better prepared for your case.

I will do everything I can to bring about the best possible resolution to your case. I look forward to seeing you.

Sincerely,

Luke J. Malloy

Luke J. Malloy
Assistant Public Defender

(Exhibit-6)

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY

O.T. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET, 5th FLOOR
CHARLESTON, SC 29401-2214

(843) 958-1850

(843) 958-1860 (fax)

publicdefender@charlestoncounty.org

October 09, 2015

VIA HAND DELIVERY

Joe Louis Bailey

Inmate # 64

Sheriff Al Cannon Detention Center

Re: Your Court Date

Date: October 13, 2015 Time: 1:30 PM

Dear Mr. Bailey:

You have been scheduled for a guilty plea on October 13, 2015 at 1:30 PM. If you do not wish to plead guilty, we can discuss it at that time, or you can send me a letter regarding your wishes.

Please contact any family members, employers, friends, or clergy that you would like to attend in order to speak on your behalf. Have them contact me in advance so that I can be better prepared for your case.

I will do everything I can to bring about the best possible resolution to your case. I look forward to seeing you.

Sincerely,

Luke J. Malloy

Luke J. Malloy

Assistant Public Defender

(Exhibit-7)

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY

O.T. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET, 5th FLOOR
CHARLESTON, SC 29401-2214

(843) 958-1850

(843) 958-1860 (fax)

publicdefender@charlestoncounty.org

December 03, 2015

VIA HAND DELIVERY

Joe Louis Bailey

Inmate # 64

Sheriff Al Cannon Detention Center

Re: Your Court Date

Date: December 08, 2015 Time: 9:00 AM

Dear Mr. Bailey:

You have been scheduled for a guilty plea on December 08, 2015 at 9:00 AM. If you do not wish to plead guilty, we can discuss it at that time, or you can send me a letter regarding your wishes.

Please contact any family members, employers, friends, or clergy that you would like to attend in order to speak on your behalf. Have them contact me in advance so that I can be better prepared for your case.

I will do everything I can to bring about the best possible resolution to your case.. I look forward to seeing you.

Sincerely,

Luke J. Malloy

Luke J. Malloy

Assistant Public Defender

Mr. Ashley

MR. ASHLEY PENNINGTON
I AM JOE BAILEY. Need
To see you if I can.

(Exhibit-8)

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY

O.T. WALLACE COUNTY OFFICE BUILDING

101 MEETING STREET, 5th FLOOR

CHARLESTON, SC 29401-2214

(843) 958-1850

(843) 958-1860 (fax)

publicdefender@charlestoncounty.org

March 30, 2016

VIA HAND DELIVERY

Joe Louis Bailey

Inmate # 64

Sheriff Al Cannon Detention Center

Re: Your Court Date

Date: April 06, 2016 Time: 9:00 AM

Dear Mr. Bailey:

You have been scheduled for a guilty plea on April 06, 2016 at 9:00 AM. If you do not wish to plead guilty, we can discuss it at that time, or you can send me a letter regarding your wishes.

Please contact any family members, employers, friends, or clergy that you would like to attend in order to speak on your behalf. Have them contact me in advance so that I can be better prepared for your case.

I will do everything I can to bring about the best possible resolution to your case. I look forward to seeing you.

Sincerely,

Luke J. Malloy

Luke J. Malloy

Assistant Public Defender

(Exhibit-9)

Berkeley County
 219 N. Hwy. 52, Suite E
 P.O. Box 1687
 Moncks Corner, SC 29461
 (843) 899-2777
 (843) 899-2701 Fax
 David P. Schwacke
 Berkeley County Public Defender

Ninth Circuit Public Defender
Berkeley & Charleston Counties

D. Ashley Pennington, Circuit Defender
 publicdefender@charlestoncounty.org
 (843) 958-1850

Charleston County
 O.T. Wallace Building
 101 Meeting Street, 5th Floor
 Charleston, SC 29401-2214
 (843) 958-1850
 (843) 958-1860 Fax
 Lorelle D. Proctor
 Charleston County Public Defender

BY HAND DELIVERY

March 17, 2016

Mr. Joe Bailey, Inmate # 64
 Sheriff Al Cannon Detention Center

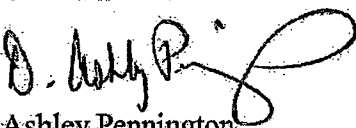
Dear Mr. Bailey,

I am in receipt of your letter dated March 14, 2016 regarding your pending case. I have forwarded your letter to your attorney, Luke Malloy so that he will be aware of your concerns and can address these issues with you.

Due to our extreme caseload demands I cannot appoint another public defender to represent you. I assure you that Mr. Malloy is a very talented & experienced attorney that I am confident is working diligently on your behalf. I have asked that he advise me of any legal issues that may arise during the pendency of your case.

With kind regards, I am

Very truly yours,


 D. Ashley Pennington
 Ninth Circuit Public Defender

DAP/jd

cc: Luke J. Malloy, Assistant Public Defender

(Exhibit -10)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2017-CP-10-1917

JOE L. BAILEY,
Plaintiff,

v.

STATE OF SOUTH CAROLINA,
defendant.

CIA#: _____

MOTION FOR APPOINTMENT

OF COUNSEL FOR (PCR)

HEARING.

FILED
2017 APR 17 PM 4:56
JULIE CLEGG, CLERK
COURT

Comes now plaintiff, Joe L. Bailey, pro se and files this above caption motion seeking an appointment of an attorney to represent him in his Post Conviction Relief hearing. Plaintiff states the following in support thereof:

- 1) Plaintiff with the help of jailhouse lawyers put together this (PCR) application and mailed it to the Clerk of Court on 4/14/17.
- 2) That plaintiff, Mr. Bailey is illiterate and layman to law.
- 3) That Plaintiff is indigent and has no way of paying for an attorney's service.

WHEREFORE, in the interest of justice, Mr. Bailey Prays upon this Honorable Court for the relief sought of appointing him an attorney to represent him in his (PCR) hearing.

Respectfully Submitted: Joe Bailey
Joe Lewis Bailey,

April 14th 2017

4-10-2017

Joe L. Bailey # 273714

Ridgeland C. I. G-13-21

P.O. Box 2039

Ridgeland, SC 29936

Julie J. Armstrong

Clerk of Courts

100 Broad St. Ste 106

Charleston, SC 29401

RE: (PCR) Bailey vs. State

Dear Clerk,

Please except and file my enclosed original P.C.R. application. And except my Forma Pauperis Affidavit to waive filing fees, and my request for appointment of Attorney.

Please send me some sort of verification that my PCR has been filed.

Thank you in advance for your prompt and professional attention in this matter

Sincerely: Joe Bailey, pro se

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

**Joe L. Bailey,
S.C.D.C. No. 273714,**

Applicant,

V.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-1917

RETURN AND PARTIAL MOTION TO DISMISS

In response to the post-conviction relief application filed April 17, 2017, Respondent would show this Court:

I.

Joe L. Bailey ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its October 2015 term, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2015-GS-10-5566). The Charleston County Grand Jury subsequently indicted Applicant for another charge of first-degree burglary (2016-GS-10-3772) during its June 2016 term of court. Assistant Public Defender Luke Malloy, Esquire, represented Applicant on both charges. Assistant Solicitor Charles Condon

On October 17, 2016, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Deadra Jefferson, circuit court judge, and commenced with a jury trial. Following pre-trial motions and the selection of a jury, Applicant elected to forgo his jury trial and entered guilty pleas to two counts of the lesser-included offenses of second-degree burglary (violent). Pursuant to negotiations with the State, Judge Jefferson sentenced Applicant to two concurrent terms of fifteen years' imprisonment. Applicant did not appeal his guilty pleas or sentences.

II.

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

1. "The courts erred in finding Mr. Bailey guilty of burglary second degree in case # 2016-GS-10-03772, in violation of the Double Jeopardy Clause pursuant to the Fifth Amendment of the U.S. Constitution."
2. "Mr. Bailey's convictions were obtained by the state/county assistant solicitor and/or solicitor's office vindictiveness in the malicious prosecution of case number(s) 2015-GS-105566 and 2016-GS-10-3772."
3. "That the indictments of burglary first degree in case numbers 20150GS-10-05566 and 2016-GS-10-03772 were obtained due to police misconduct and perjured statements in affidavits to support the warrants and with the testimony in preliminary hearing."
4. "Mr. Bailey's conviction and sentence was obtained due to ineffective assistance of defense counsel pursuant to U.S.C.A. Const. Amend. 6."

Respondent interprets these allegations to be prosecutorial misconduct and ineffective assistance of counsel.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, the guilty plea transcript, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only

individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. Applicant alleges ineffective of assistance of counsel. 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this

issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Therefore, the State submits this allegation should be summarily dismissed.

V.

The State therefore requests this Court convene an evidentiary hearing on the allegations of ineffective assistance of trial counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT

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

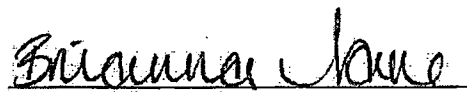
June 20, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2017-CP-10-1917
JOE L. BAILEY,	)	
S.C.D.C. No. 273714,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this 20th day of June, 2017.


Brianna Arnone, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2017-CP-10-1917
4 JOE LOUIS BAILEY,)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: February 1, 2018
9 _____)

10 B E F O R E:

11 THE HONORABLE MAITE MURPHY

13 A P P E A R A N C E:

14 CHRISTOPHER MURPHY
15 Attorney for the Applicant

16 RASHEEDA CLEVELAND
17 Attorney for the Respondent

18
19 Karen V. Andersen, RMR, CRR
20 Circuit Court Reporter
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23
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Re-Cross By Mr. Murphy..... 18

1 MS. CLEVELAND: Our next case is Joe Bailey vs. the
2 State of South Carolina, Docket No. 2017-CP-10-1917.
3 Mr. Bailey is presently confined in the South Carolina
4 Department of Corrections pursuant to orders of commitment
5 of the Charleston County Clerk of Court during its October
6 2015 term. The Charleston County Grand Jury indicted
7 Mr. Bailey for first-degree burglary. He was subsequently
8 indicted again at the June 2016 term of the Charleston
9 County Grand Jury for first-degree burglary as well.

10 Assistant Public Defender Luke Malloy represented
11 Mr. Bailey on those charges and Assistant Solicitor Charles
12 Condon prosecuted the case. On October 17th, 2016,
13 Mr. Bailey appeared in the Charleston County Court of
14 General Sessions before the Honorable Deadra Jefferson and
15 commenced with the jury trial.

16 Following pretrial motions and the selection of the
17 jury, Mr. Bailey elected to forego his jury trial and
18 entered a plea of guilty to two counts of burglary second
19 degree.

20 Pursuant to those negotiations with the State,
21 Judge Jefferson sentenced Mr. Bailey to two concurrent terms
22 of 15 years imprisonment. He did not appeal his guilty plea
23 or sentences.

24 He filed this post-conviction relief action on
25 April 17th, 2017, alleging violation of double jeopardy

1 clause, prosecutorial misconduct, and ineffective assistance
2 of counsel. He is present in the courtroom today and
3 represented by Christopher Murphy.

4 THE COURT: Good morning, Mr. Murphy.

5 MR. MURPHY: Thank you, Your Honor.

6 THE COURT: Mr. Murphy, have you discussed with
7 your client the potential benefits and detriments of going
8 forward with this claim?

9 MR. MURPHY: I have, Your Honor.

10 THE COURT: Does he wish to go forward?

11 MR. MURPHY: He does, Your Honor. I could kind of
12 break this up to the Court to make it easier. There's two
13 components. There's a legal component, which I could lay
14 for the record. It's solely legal. And then there's going
15 to be one issue with regard to a promise he alleges his
16 attorney, Luke Malloy, made to him. The allegations of
17 malicious prosecution and police misconduct that he put,
18 there's no merit to those. So we withdraw those portions of
19 his application.

20 We focus only on the double jeopardy and the
21 alleged promise that his attorney said he would get 10 years
22 if he pled guilty.

23 THE COURT: All right, sir.

24 MR. MURPHY: First, Your Honor, for the double
25 jeopardy, the Court should understand, back on May 19th of

1 2015, he was charged with two separate incidents. One, he
2 walked into a garage and took a lawn mower. The other, he
3 walked into a car port and a witness saw him, and he took
4 off running. He got charged with two separate crimes for
5 those incidents, a burg' third for one and then a petty
6 larceny for the second one.

7 He was convicted of the petty larceny and served 30
8 days in jail. After that happened, he got indicted for
9 burg' first for both of these separate incidents. And then
10 when he was ready to go to trial, both of them were reduced
11 to a burg' second, to which he pled guilty. He had a
12 negotiated sentence of a 10- to 15-year range. The judge
13 ended up giving him 12 years.

14 Mr. Bailey has alleged double jeopardy. He thinks
15 that the conviction of the petty larceny was his jeopardy --
16 placed him in jeopardy and prohibited him from getting
17 convicted of the burg' second.

18 Now, I have explained to him that we are not a
19 fact-base state. We look at the elements of the crime, and
20 that the elements of petty larceny are different than
21 burglary. Therefore, he could be convicted under the law.
22 However, he would like to maintain that issue. We can file
23 an appeal, and if the law changes or something happens, that
24 he's protected on the record.

25 The problem with that is, even if he won, he's

1 still facing the second burglary charge, which he got the
2 12-year sentence run concurrent. So it may be that there's
3 a change if he won within SCDC policy, but as a practicality
4 for time served, it's not going to have any effect on him.
5 So that will be the first issue. And that's strictly a
6 legal issue.

7 The second issue is whether or not he was promised
8 10 years. We call him to the stand to testify about that,
9 Your Honor.

10 THE COURT: All right. Mr. Bailey, before we get
11 started, I just want to ask you a couple of questions. Will
12 you please stand and raise your hand.

13 JOE BAILEY,
14 having been duly sworn, testifies as follows:

15 THE COURT: Mr. Bailey, you heard your attorney's
16 recitation of what your claims are to me. Do you understand
17 that if your application is granted, basically, you would be
18 looking at a burglary first charge, at least one, depending
19 on what the legal conclusion is. But there are different
20 elements to what you are telling me. But if your
21 application for post-conviction relief is granted, the State
22 doesn't have to offer you a burg' second. You would be
23 looking at burglary in the first degree or you would be
24 looking at 15 years to life in prison. Do you understand
25 that?

1 MR. BAILEY: Right, right.

2 THE COURT: And have you had enough time to talk to
3 your attorney about that?

4 MR. BAILEY: Well, we had some time, but we didn't
5 have enough time.

6 THE COURT: Do you need a second to talk to him?

7 MR. BAILEY: Well, I will go with what he said.

8 THE COURT: You understand? You don't need any
9 more to talk to him?

10 MR. BAILEY: No.

11 THE COURT: You feel comfortable going forward
12 today?

13 MR. BAILEY: Yes.

14 THE COURT: And you feel that your are freely and
15 voluntarily going forward, knowing what would happen if I
16 grant your PCR, correct?

17 MR. BAILEY: Yes.

18 THE COURT: You've understood all my questions?

19 MR. BAILEY: Yes.

20 THE COURT: You are not under the influence of drug
21 or alcohol or any kind of mental illness?

22 MR. BAILEY: No.

23 THE COURT: So you fully understand what's going
24 on?

25 MR. BAILEY: Yes.

1 THE COURT: And you wish to go forward here today?

2 MR. BAILEY: Yes.

3 THE COURT: Okay. Come on up to the stand.

4 He's already been sworn. Your witness.

5 MR. MURPHY: Thank you, Your Honor. May it please
6 the Court.

7 DIRECT EXAMINATION

8 BY MR. MURPHY:

9 Q. Do you recall picking a jury and starting to go to
10 trial in this case?

11 A. Yes.

12 Q. Okay. And at that point, had you been -- did you
13 know of any offers to plead guilty by the State?

14 A. No.

15 Q. Okay. Now, did you talk to your attorney about
16 possible sentences you could receive if convicted of these
17 charges?

18 A. Yes.

19 Q. And your attorney, was it Luke Malloy?

20 A. Yes.

21 Q. And how many times did you talk to him prior to
22 going to trial?

23 A. 13 or 14 times.

24 Q. So you've talked to him a good number of times
25 before trial?

1 A. Right.

2 Q. Now, when you got to trial, did you actually pick a
3 jury; do you recall?

4 A. Yes.

5 Q. And did you start to do any motions or anything
6 like that?

7 A. Yeah, we went to pretrial motions.

8 Q. And at what point did you understand that there
9 would be some type of offer from the State to try to plead
10 guilty?

11 A. I mean, like pretrial.

12 Q. Tell the Court how that came about, that you had
13 this offer from the State.

14 A. Well, I had the offer by the State because my
15 public defender and his assistant was telling me that would
16 be my best offer to plead guilty.

17 Q. Okay. And when you heard this, did you know what
18 type of time you would get if you pled guilty?

19 A. No. I pled -- I said, if I plead guilty now, what
20 would I get? And he said 0 to 10.

21 Q. Okay. 0 to 10?

22 A. Right.

23 Q. And when you went before the judge to plead guilty,
24 what was your understanding what your sentence would be?

25 A. 10 years.

1 Q. 10 years?

2 A. Right.

3 Q. Why did you think it would be 10 years?

4 A. Because that's what my public defender tell me.

5 Q. And do you remember exactly what your attorney told
6 you about getting the 10 years?

7 A. Not really, but if I stop the jury now, we don't
8 have to go through the trial and this would be the best for
9 you. Both of them, him and the sidekick was telling me that
10 would be the best for me, which they wasn't going to defend
11 me anyway.

12 Q. You understand with the burg' first, you were
13 facing 15 years to life if convicted?

14 A. What you say, sir?

15 Q. If you were convicted of burglary first, you were
16 facing 15 years to life?

17 A. Yes, sir.

18 Q. Okay. And, obviously, do you recall whether or not
19 your plea was a negotiated plea or not?

20 A. No, I don't.

21 Q. Do you know what a negotiated plea is?

22 A. No.

23 Q. Okay. But as far as you understand, you thought
24 you were getting 10 years?

25 A. Right.

1 Q. And your actual sentence was for how much time?

2 A. My actual sentence?

3 Q. What did you get sentenced to, yes.

4 A. Right now?

5 Q. Yes.

6 A. 15 years.

7 Q. You have a 15-year sentence right now?

8 A. Right now.

9 Q. Did you talk to your attorney about filing an
10 appeal or correcting this wrong that happened?

11 A. Well, I went to reconsideration situation, but they
12 still said the same, 15.

13 MR. MURPHY: All right. Thank you. That's all I
14 have.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MS. CLEVELAND:

18 Q. Mr. Bailey, you stated that you met with Mr. Malloy
19 at least 13, 14 times --

20 A. Right.

21 Q. -- prior to your plea. And did you all discuss any
22 plea negotiations at that time?

23 A. No.

24 Q. Were there any on the table at that time?

25 A. 10 years.

1 Q. Fast-forward to the day of trial. After they
2 picked the jury and you decided you wanted to plead guilty,
3 do you recall hearing the solicitor tell the judge that the
4 recommendation was for 15 years, pre-sentence?

5 A. No.

6 Q. You don't recall that at all?

7 A. No, hm-mm. The whole thing been for the 10 years.

8 Q. Do you understand that it was a recommendation and
9 that the judge didn't have to follow the recommendation of
10 the solicitor in your sentences?

11 A. No. My public defender was telling me that 10
12 years is what I was getting if I take the plea right now.

13 Q. But did you understand that it wasn't up to your
14 public defender, that it was ultimately the judge's
15 decision?

16 A. No, I didn't understand.

17 Q. Mr. Bailey, you told the Court that you wished to
18 plead guilty, correct?

19 A. Did I wish to plead guilty? My lawyer tell me to
20 plead guilty, would be the best.

21 Q. But did you tell the Court that you wished to plead
22 guilty?

23 A. Did I want to plead guilty?

24 Q. Did you tell the Court that?

25 A. Yeah. He tell me to plead guilty.

1 Q. Do you recall telling the judge that you were
2 pleading guilty of your own free will?

3 A. Yes.

4 Q. And no one was making you plead guilty?

5 A. No. I told them I was pleading guilty on my own.

6 Q. Can you repeat that for me?

7 A. I pled guilty on my own.

8 Q. Of your own free will?

9 A. Yes.

10 Q. Do you recall telling the judge that you were
11 testifying truthfully that day?

12 A. Yes.

13 MS. CLEVELAND: Nothing further from this
14 witness.

15 THE COURT: Any redirect?

16 MR. MURPHY: No, Your Honor.

17 THE COURT: You may step down, Mr. Bailey. Thank
18 you.

19 You may call your next witness.

20 MR. MURPHY: We would rest, Your Honor.

21 THE COURT: Anything from the State?

22 MS. CLEVELAND: Yes, Your Honor. The State would
23 call Luke Malloy.

24

25

1 LUKE MALLOY,
2 having been duly sworn, testifies as follows:
3 DIRECT EXAMINATION
4 By MS. CLEVELAND:
5 THE COURT: Your witness.
6 Q. Good morning, Mr. Malloy.
7 A. Good morning.
8 Q. Can you tell us how long you've been practicing
9 law?
10 A. I have been practicing law now over six years.
11 Q. And how much of that have you spent practicing
12 criminal law?
13 A. I spent about five and a half years at the
14 Charleston Public Defender's Office.
15 Q. Do you recall how you came about being involved in
16 this case?
17 A. I was appointed to represent Joe Bailey when I was
18 at the public defender's office.
19 Q. And do you recall how the charges arose in this
20 case?
21 A. I do. He was originally arrested for one count of
22 burglary third degree. He was subsequently indicted for a
23 burglary first degree on that charge due to two prior
24 convictions for burglary.
25 While we were preparing for trial on that

1 indictment, the solicitor directly indicted him for another
2 count of burglary first degree for the incident which was
3 originally a petty larceny, which he pled guilty to in
4 magistrate's court.

5 Q. And did you meet with Mr. Bailey to discuss these
6 charges?

7 A. I did.

8 Q. Did you discuss the elements of the offenses?

9 A. We did.

10 Q. Did you discuss any possible punishment?

11 A. Yes, thoroughly discussed the penalty range from
12 burglary first degree. I thoroughly discussed enhancement,
13 even before the direct indictment came about, when I
14 realized he did have at least two prior burglaries on his
15 record, and discussed the penalty ranges for the lesser
16 offenses of burglary second degree, including the amount of
17 time he would have to serve if convicted of each offense.

18 Q. And did he ever indicate to you that he didn't
19 understand your discussions about the charges and the
20 possible penalties he faced?

21 A. No, he did not.

22 Q. Did you enter into any plea negotiations prior to
23 to trial of Mr. Bailey?

24 A. I did.

25 Q. Were there any offers from the State?

1 A. There were. The State offered him a plea to
2 burglary third degree, second offense, which is a zero to
3 ten-year offense.

4 Q. And did you communicate that offer to Mr. Bailey?

5 A. I did.

6 Q. And what was his ultimate decision?

7 A. He rejected that plea. That was in the -- and the
8 rejection was held on the record.

9 Q. Fast-forwarding to the day of trial. When
10 Mr. Bailey decided to take the plea offer, did you feel that
11 that was in his best interest, and why?

12 A. I did feel that it was in his best interest. We
13 did have pretrial motions earlier in the day which were
14 important for the case. The State was trying the two
15 burglary first counts together. We had two pretrial motions
16 that morning. One was a motion to sever, in other words, to
17 have them tried separately. And there was also a motion to
18 bifurcate that I filed and argued, essentially arguing that
19 his prior -- two prior convictions for burglary should not
20 be admissible during the trial.

21 At that stage, I did feel like -- all those motions
22 were denied -- with the two counts being tried together and
23 his two priors being admitted in, I felt like the case would
24 have been a very difficult one to win.

25 Q. Let's backtrack a little bit. On the day of trial,

1 what was the plea offer from the State on that day?

2 A. The plea offer from the State was a negotiated plea
3 to burglary second degree, violent, with a negotiated range
4 of 10 to 15 years.

5 Q. And when the State gave their recommendation, did
6 you explain to Mr. Bailey that the judge didn't have to
7 follow the recommendation of the State?

8 A. I did explain that to him. The whole discussion of
9 the plea came about after we had picked the jury and argued
10 pretrial motions and broke for lunch. I came back to check
11 on Mr. Bailey. I think his exact words were, how can I stop
12 this? I told him that we had no way of stopping the trial.
13 There are no grounds. I was prepared to try the case. I
14 had no reason for a continuance or no grounds for a
15 mistrial. I said the only way that the case would stop is
16 if he chose to not have a trial and plead guilty, at which
17 point he indicated he would plead to 10 years.

18 At that point, I approached the solicitor,
19 indicated that my client wishes to plead and he would take a
20 negotiated plea for 10 years. The solicitor at that point
21 needed to get approval from someone in his office as to
22 whether or not he could even make a plea offer off the trial
23 docket.

24 He returned. And they had agreed to offer a plea,
25 a negotiated plea with a range of minimum 10 up to 15 years.

1 I conveyed that to Mr. Bailey and made it clear that he
2 could get, with this plea agreement, anywhere between 10 and
3 15 years, indicated I would ask for 10, which was his wish,
4 but the State would be asking for 15, and the judge could
5 sentence anywhere within that range.

6 Q. And he indicated that he understood that?

7 A. He did.

8 Q. One final question. Did this idea of a possible
9 double jeopardy issue ever come to mind for you?

10 A. It did.

11 Q. Can you elaborate?

12 A. I researched it, just to see if I could come up
13 with a motion. And I concluded from my research that there
14 was no argument available in this case.

15 MS. CLEVELAND; Thank you, Mr. Malloy. I have no
16 further questions.

17 THE COURT: Any cross-examination?

18 MR. MURPHY: Yes, very briefly, Your Honor. May it
19 please the Court.

20 RE-CROSS-EXAMINATION

21 BY MR. MURPHY:

22 Q. Did you have Mr. Bailey evaluated for mental
23 competency?

24 A. I did.

25 Q. During the point you were Representing him, did you

1 have any trouble communicating with him or did you ever get
2 the idea that he didn't understand what you were saying?

3 A. We had difficulty communicating, which led me to
4 have him evaluated. He would get angry when I would explain
5 the case or the consequences, especially as the case
6 proceeded with the penalty ranges getting worse, direct
7 indictments. And he wasn't -- I felt like he wasn't
8 listening. And I was worried there could be a mental health
9 issue there that was the reason for that. So I did have him
10 evaluated for competency.

11 Q. What were the results of that evaluation?

12 A. He was found to be competent.

13 Q. After that point, did you have any other difficulty
14 communicating with him that you recall?

15 A. After which point?

16 Q. After you got the results of the evaluation?

17 A. No. I didn't believe -- as we proceeded to trial,
18 I didn't believe there was any difficulty communicating what
19 was happening, you know, what the trial was going to be
20 like, what the penalty ranges were, things like that.

21 Q. At the trial, when you started engaging in plea
22 negotiations again with the solicitor, did you have any
23 problem communicating the 10 to 15-year range that he was
24 going to receive?

25 A. I did not.

1 Q. And did you file a motion to reconsider in this
2 case?

3 A. I did.

4 Q. And what was the result of that?

5 A. The motion was denied.

6 Q. And if I understand you, you did research the
7 double jeopardy issue?

8 A. I did.

9 Q. Was there any other issues that Mr. Bailey raised
10 that he wanted you to research or look into?

11 A. No legal issues. His defense was fairly consistent
12 that he did not go -- he was not the person who went into
13 the house that was the basis for the burglary third degree.
14 And the subsequent case that began as a petty larceny, which
15 he pled to, his version of those facts were that he never
16 went into a dwelling or garage to get the lawn mower; he
17 found that on the road.

18 Q. So the one case was, I didn't do it, was the
19 defense?

20 A. Uh-huh.

21 Q. And the second case was, I was involved, but it's
22 not as alleged; is that correct?

23 A. Correct.

24 Q. And with regard to the first case, did you ask him
25 for any witnesses or alibis or where he was at that time?

1 A. We did discuss that. And we consulted with an ID
2 expert, Professor Van Wallendael, to testify regarding some
3 of the signs behind mistaken IDs to try to support our
4 defense of mistaken identification in that case.

5 And we also made sure to go and look at the scene.
6 My investigator went, attempted to speak to the witnesses.
7 I don't think he had much luck with getting the victims to
8 speak to him. But one issue we had was the location between
9 the two residences, would it be possible for him to get to
10 one place to another within the short amount of time from
11 which police responded. I made sure to map out the
12 direction which he was alleged to have gone compared to his
13 recollection of the events. And that would have been one of
14 the defenses raised at trial, would have been that he could
15 not have been in these two places in a short amount of time
16 that they were alleging.

17 Q. Let me ask you this, Mr. Malloy. When you were
18 denied -- when the Court denied the motion to reconsider the
19 sentence, did you discuss the idea of appeal with him at
20 all?

21 A. I did not.

22 Q. And what would be your reasoning for not doing
23 that?

24 A. I didn't believe there was a basis for
25 appealment.

1 Q. I assume it's because he was sentenced within the
2 range, there would be no basis; is that correct?

3 A. Correct.

4 MR. MURPHY: That's all I have, Your Honor.

5 THE COURT: Anything further?

6 MS. CLEVELAND: Nothing further.

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

8 Any other witnesses?

9 MS. CLEVELAND: Nothing from the State, Your Honor.

10 THE COURT: Are you prepared to give a brief
11 summation?

12 MR. MURPHY: Yes, Your Honor.

13 THE COURT: Mr. Murphy, you may proceed.

14 MR. MURPHY: Thank you, Your Honor. May it please
15 the Court. Very briefly, as I said, we have two issues, the
16 double jeopardy issue, which I've already explained. I
17 don't believe it has merit, but I would like to preserve for
18 appeal for him. And we also have the question as to whether
19 or not he was promised a ten-year sentence, which I do think
20 the record is overwhelming that he was not promised. But,
21 again, Your Honor, I would like to preserve that issue.

22 THE COURT: Anything from the State?

23 MS. CLEVELAND: Your Honor, the standard for
24 ineffective assistance of counsel is first the showing of
25 deficient performance on the part of plea counsel; and

1 second, that there was a reasonable probability that but for
2 counsel's deficient performance, the applicant would not
3 have pled guilty and would have been insisted on going to
4 trial. Here he was available at trial. Trial was ready to
5 go forward. He chose to plead guilty.

6 Your Honor, the State would submit that Mr. Bailey
7 has failed to meet his burden of proof in regards to the
8 ineffective assistance of counsel claim. As counsel
9 testified, that he explained to Mr. Bailey the charges, the
10 possible penalties, and he explained the offers from the
11 State, the sentencing range, and that the sentence was a
12 range between 10 and 15, and he could get anywhere in
13 between that, or he could get the full 15.

14 In regards to the double jeopardy claim, Your
15 Honor, a guilty plea acts as a waiver of all
16 nonjurisdictional defects of defenses. This includes double
17 jeopardy. Your Honor, by him pleading guilty, he waived his
18 double jeopardy claim.

19 And the State would ask that this Court would
20 dismiss Mr. Bailey's post-conviction relief application with
21 prejudice on both grounds.

22 THE COURT: Thank you, counsel. I will notify
23 y'all of an opinion.

24 MR. MURPHY: Thank you, Judge.

25 (Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Joe L. Bailey,
S.C.D.C. No. 273714,
Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-1917

ORDER OF DISMISSAL

FILED
2018 APR 18 AM 9:55
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief filed on April 17, 2017 by Joe L. Bailey ("Applicant"). Respondent submitted its Return on June 20, 2017. An evidentiary hearing was convened on February 1, 2018 at the Charleston County Courthouse. Applicant was present and represented by Christopher L. Murphy, Esquire. Rasheeda Cleveland, Esquire of the South Carolina Attorney General's Office, represented the State.

Before the Court were the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the application.

I. PROCEDURAL HISTORY

Joe L. Bailey ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its October 2015 term, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2015-GS-10-5566). The Charleston County Grand Jury subsequently indicted Applicant for another charge of first-degree burglary (2016-GS-10-3772) during its June 2016 term of court. Assistant Public Defender Luke Malloy, Esquire, represented Applicant on both charges. Assistant Solicitor Charles Condon prosecuted the case.

On October 17, 2016, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Deadra Jefferson, circuit court judge, and commenced with a jury trial. Following pre-trial motions and the selection of a jury, Applicant elected to forgo his jury trial and entered guilty pleas to two counts of the lesser-included offenses of second-degree burglary (violent). Pursuant to negotiations with the State, Judge Jefferson sentenced Applicant to two concurrent terms of fifteen years' imprisonment. Applicant did not appeal his guilty pleas or sentences.

II. ALLEGATIONS

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

1. "The courts erred in finding Applicant guilty of burglary second degree in case # 2016-GS-10-03772, in violation of the Double Jeopardy Clause pursuant to the Fifth Amendment of the U.S. Constitution."
2. "Applicant's convictions were obtained by the state/county assistant solicitor and/or solicitor's office vindictiveness in the malicious prosecution of case number(s) 2015-GS-105566 and 2016-GS-10-3772."
3. "That the indictments of burglary first degree in case numbers 2015GS-10-05566 and 2016-GS-10-03772 were obtained due to police misconduct and perjured statements in affidavits to support the warrants and with the testimony in preliminary hearing."
4. "Applicant's conviction and sentence was obtained due to ineffective assistance of defense counsel pursuant to U.S.C.A. Const. Amend. 6."

III. SUMMARY OF RELEVANT TESTIMONY

During the hearing, Applicant testified that he talked with Plea Counsel a lot before trial, and that Plea Counsel told him that he would get ten years, if he pleaded guilty. He further testified that he did not remember exactly what Plea Counsel said recalls being told it was best for him to plead. Applicant recalled that he did not know

what a negotiated plea was, and thought he would get ten years but instead got a fifteen year sentence.

On cross-examination, Applicant testified that he met with his plea counsel thirteen or fourteen times before trial. He also recalled that there was a ten year offer on the table but did not recall the State saying there was a recommendation of fifteen years. He further recalled that Plea Counsel told him to plead because it would be best for him. Applicant also testified that he told the Court that he was guilty and was pleading on his own free will, and that he was testifying truthfully.

On direct-examination by the State, Plea Counsel testified that he has been practicing law for over six years and was at the Public Defender's Office for over five and half years. He recalled that he was appointed to represent Applicant while employed as a public defender. He further recalled the charges against Applicant, and that the burglary charge was enhanced to a burglary 1st degree based on Applicant's priors. Plea Counsel testified that he thoroughly discussed the enhancement, and the penalty ranges with Applicant.

Plea Counsel testified that he entered into plea negotiations with the State, and was offered burglary 3rd, second offense with a sentence range of zero to ten years. However, Plea Counsel recalled that Applicant rejected this plea offer on the record. Plea Counsel further testified that on the day of trial for the burglary 2nd he again entered into plea negotiations with the State, and negotiated a sentencing range of ten to fifteen years. He also recalled moving to bifurcate the other motions, and explained to Applicant that he would automatically get ten years and could get ten to fifteen.

Plea Counsel recalled Applicant asking him how could he stop this, and he replied there was no way to stop it. Plea Counsel stated that he spoke with the Solicitor and told him that Applicant would take a ten year offer. However, the Solicitor responded that he could offer a ten to fifteen year deal and negotiate the burglary 3rd to a burglary 2nd (violent). Plea Counsel testified that he communicated the offer to Applicant and made it clear that he could receive a ten to fifteen year sentence, and that there was no promise of ten years.

Regarding Applicant's allegations of double jeopardy, Plea Counsel testified that he researched the issue and there was no double jeopardy argument.

On cross-examination by PCR Counsel, Plea Counsel testified that he had Applicant evaluated based on communication difficulties because Applicant would get upset whenever they discussed the case. The result of the evaluation was that Applicant was competent to stand trial. Plea Counsel further testified that he filed a motion to reconsider but it was denied. He recalled that as a part of his investigation he consulted with an identification expert and hired an investigator to speak with witnesses. He also visited the scene and mapped out Applicant's pathed on Applicant's recollection of the events.

Lastly, Plea Counsel testified that he did not discuss a possible appeal with Applicant because he saw no basis for an appeal.

IV. APPLICABLE LAW

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to

observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

Double Jeopardy

Applicant argues that the Plea Court erred in finding him guilty of burglary 2nd degree, and that this was a violation of his the Double Jeopardy Clause. However, this Court finds his claim to be without merit. The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense. State v. Easler, 327 S.C. 121 (1997).

Blockburger v. U.S., 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932), remains the test for determining whether there has been a double jeopardy violation. In Blockburger, the United States Supreme Court held that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test is to determine whether each statute requires proof of a fact the other does not.

Here, Applicant was charged with and pled guilty to Petit Larceny, which requires taking and carrying away the property of another without their consent. 1st degree burglary requires entering a dwelling without consent and with the intent to commit crime in the dwelling. His 3rd degree burglary was enhanced based on two prior convictions. Looking at the elements of both, each requires something that the other does not. Plea Counsel also testified that he researched the double jeopardy issue and was unable to find any defense in this case. PCR Counsel in his closing argument conceded that the issue was without merit but wanted to preserve the issue for appeal. Therefore, there is no double jeopardy violation.

Ineffective Assistance of Counsel

Applicant alleged his plea counsel was ineffective because he "told him he would get ten years' if he pleaded guilty. However, this claim is also without merit. In order to establish a claim of ineffective assistance of plea counsel, Applicant was required to show that there was a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52 (1985). This Court finds Applicant failed to show that plea counsel was deficient in any way or that he would not have otherwise pleaded guilty.

Pre-trial the State offered Applicant a ten year deal, which he declined. Prior to jury selection and on the record, Applicant objected to a plea offer of burglary second (with a negotiated range of 10-15 years). Following jury selection, Applicant decided to plea to two counts of second degree burglary. Judge Jefferson sentenced him to 15 years on each to run concurrently. Applicant argues that he was told by his attorney that he would get 10 years if he pled. However, it is noted on the record that the range was 10-15 years and that the State asked for 15 years. Mr. Malloy testified that he told Applicant that the Judge does not have to accept a recommendation and can sentence anywhere within the range stated in the statute. In closing arguments, PCR Counsel stated that he does not believe the record supports that a ten year offer was ever made. Therefore, after hearing oral argument and reviewing all documentation provided, this Court finds no deficiency on the part of counsel.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

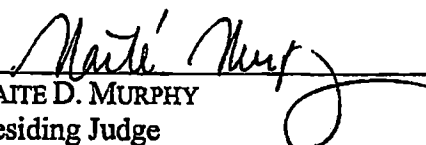
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9 day of April, 2018.


MATTE D. MURPHY
Presiding Judge
Ninth Judicial Circuit

St. George, South Carolina

CMC/0303807
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2015-006098

ARREST WARRANT NUMBER

2015-GS-10-05566

DATE OF ARREST

04/19/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: OCT 19 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-05566

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2015

THE STATE

VS.

JOE LOUIS BAILEY
B/M DOB: [REDACTED]

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311
CDR Code: 0079

FILED

10/21/2015 12:47:35 PM

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened on October ^{14th} 2015, the Grand Jurors of Charleston County present upon their oath:

BURGLARY FIRST DEGREE

That in Charleston County, South Carolina on or about April 19, 2015, the Defendant Joe Louis Bailey, did enter the dwelling of Sandra Schaffer without consent and with the intent to commit a crime therein. That, in addition, the defendant has a prior record with two or more convictions for burglary, housebreaking or a combination of both; 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.

Charles M. Condon Jr.
CHARLES M. CONDON, JR.
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

JOE LOUIS BAILEYAKA: Joe Lewis Bailey, Lewis Joe BaileyRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Ravenel, SC 29407DL# [REDACTED]SID# SC00012694*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Burglary Second Degree (Violent)In violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted,☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence, 10-15☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr. 100579
Charles M. Condon, Jr., Assistant Solicitor SC Bar #Joe Louis Bailey
DefendantMike McIlroy 100169
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2016-GS-10-3772☒ 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 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 (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: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS 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 if available.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 61.6 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforc. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUJ Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ \$ 3.75

TOTAL

\$ 128.75☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christine DavyPresiding Judge: [Signature]Judge Code: 2128Sentence Date: 10/17/16Court Reporter: Ruth Weese

CMC/0303807
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2015-006098

ARREST WARRANT NUMBER

2016-GS-10-03772

DATE OF ARREST

04/19/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 6/30/2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-03772

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

JOE LOUIS BAILEY

B/M DOB: [REDACTED]

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

FILED

6/30/2016 12:12:10 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened June 2016, the Grand Jurors of Charleston County present upon their oath:

BURGLARY FIRST DEGREE

That in Charleston County, South Carolina on or about April 19, 2015, the Defendant Joe Lewis Bailey, did enter the dwelling of Marvin Harrison without consent and with the intent to commit a crime therein. That, in addition, the defendant has a prior record with two or more convictions for burglary, housebreaking or a combination of both; 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.

Charles Molony Condon Jr.
CHARLES M. CONDON, JR.
ASSISTANT SOLICITOR

174

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

JOE LOUIS BAILEYAKA: Joe Lewis Bailey, Lewis Joe BaileyRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Ravenel, SC 29407DL# [REDACTED]SID# SC00012694*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary Second Degree (Violent)In violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☐ As indicted,☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☒ Negotiated Sentence, Ad-15☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr. 100579
Charles M. Condon, Jr., Assistant Solicitor SC Bar #Joe Louis Bailey
DefendantLuke Malloy 100169
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015-GS-10-5506☒ 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 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 (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: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*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 61.6 (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

-\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§50-21-114 (BUJ Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Funds

Other: Att if available☐ Appointed PD or appointed other counsel, _____

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christine DavyCourt Reporter: Ruth WeesePresiding Judge: Adl JudgeJudge Code: 2128Sentence Date: 10/17/16