

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

On Writ of Certiorari to Greenwood County
Brian M. Gibbons, Post-Conviction Relief Judge
Donald B. Hocker, Trial Court Judge

Appellate Case No. 2019-001220

ORIGINAL

ROBERT A. WRIGHT,

Respondent,

v.

THE STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX VOLUME I OF II

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1 State of South Carolina

Court of General Sessions

2 County of Newberry

5 State of South Carolina)

Transcript of Record

6 vs.)

2014-GS-36-0528

7 Robert Antwon Wright,)

2014-GS-36-0530

8 Defendant.)

11 January 4 - 7, 2016

Newberry, South Carolina

13 B E F O R E:

14 The Honorable Donald B. Hocker, Judge; and a jury

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

18 Christopher Dale Scott, Deputy Solicitor

Taylor Daniel, Assistant Solicitor

19 Attorneys for the State

20 Mindy W. Zimmerman, Esquire

21 Attorney for the Defendant

24 Stacy S. Johnson, RPR

Circuit Court Reporter

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1 (Whereupon, the following proceedings were held on
2 January 4, 2016, beginning at 3:07 PM.)

3 **THE COURT:** All right. Ladies and gentlemen of the
4 jury panel, we will be starting the trial of the first
5 case, and I think they indicated it probably will not
6 officially start until in the morning, but it is the case
7 of the State of South Carolina versus Robert Antwon Wright.

8 Mr. Wright, would you just stand and just face the
9 jury panel for a second, please, so they can see. Thank
10 you very much. You can have a seat.

11 Now, ladies and gentlemen of the jury panel,
12 Mr. Wright has been indicted for two offenses, and let me
13 explain to you before I publish the indictments that the
14 indictments contain allegations, they're not proof, and
15 allegations are not proof of any guilt on Mr. Wright's
16 part. There has to be a mechanism to get the case to
17 the point where we're at, that being the trial of the
18 case, but the allegations contained in each of the two
19 indictments are merely allegations and nothing more. And,
20 again, you're not to take these allegations as any proof
21 whatsoever concerning the guilt of Mr. Wright on these
22 charges.

23 The first charge is accessory before the fact to a
24 felony, and I'll publish this to you, the allegations being
25 as follows: That Robert Antwon Wright did on or about

1 April 30, 2014, in Newberry County, feloniously, willfully
2 and unlawfully aid, abet or assist a person or persons in
3 the commission of a felony by counseling, hiring or
4 otherwise procuring the felony to be committed; to wit,
5 the said Defendant did counsel, hire or otherwise procure
6 a person or persons to commit a felony or felonies, and
7 the said Defendant assisted in the commission of a felony
8 or felonies with knowledge that the said person or persons
9 who was assisted was going to commit the act of armed
10 robbery, burglary and/or any lesser offenses, in violation
11 of Section 16-140 Code of Laws for South Carolina.

12 The other indictment is for conspiracy, and it reads
13 as follows: That Robert Antwon Wright did on or about
14 April 30, 2014, in Newberry County, along with another
15 person or persons, willfully and unlawfully unite, combine,
16 conspire, confederate, agree between and among themselves,
17 and have passive understanding that each other or with
18 other persons who names are unknown to the grand jurors
19 for the person -- for the purpose of committing the act
20 of armed robbery, robbery and/or any other lesser offenses
21 in violation of Section 16-17-410 Code of Laws for South
22 Carolina.

23 Now I know that's a lot said that may be very hard to
24 understand and I'll tell you that -- that at the outset
25 the lawyers will give explanation as to these two charges.

1 Certainly when I instruct you on the law at the end of the
2 case, you'll be certainly instructed and it will be clear
3 to you as far as these two offenses and the elements
4 contained in those offenses.

5 I need to ask you some questions related specifically
6 to this case and -- can I see the lawyers for just a
7 second?

8 (Proceedings held at the bench; not reported.)

9 **THE COURT:** Any member of the jury panel related by
10 blood or marriage, either now or formerly, to either the
11 Defendant, Robert Antwon Wright, or the following two
12 individuals, Cedric Mayers and/or Precious Mayers? That's
13 M-A-Y-E-R-S. If so, please stand.

14 (Juror stands.)

15 **THE COURT:** Yes, ma'am.

16 **JUROR:** I'm a cousin.

17 **THE COURT:** Give me your -- give me your name.

18 **JUROR:** Brianna Bowers.

19 **THE COURT:** Bowers?

20 **JUROR:** Uh-huh.

21 **THE COURT:** Okay. And are you related to one of those
22 individuals?

23 **JUROR:** Uh-huh, Precious Mayers.

24 **THE COURT:** Precious Mayers is -- you're related how?

25 **JUROR:** My cousin.

1 **THE COURT:** What, first cousin?

2 **JUROR:** Maybe second or third.

3 **THE COURT:** Second or third?

4 **JUROR:** My granddad and her grandmother are brothers
5 and sisters.

6 **THE COURT:** Okay. You stay with us for right now,
7 okay?

8 Yes, ma'am.

9 **JUROR:** Sonovia Lindler. My half-sister, I believe,
10 is married to Mr. Wright.

11 **THE COURT:** Okay. Your -- your half-sister is -- and
12 you are Ms. Lindler?

13 **JUROR:** Lindler, uh-huh. Correct.

14 **THE COURT:** Okay. Your half-sister is married to
15 Mr. Wright?

16 **JUROR:** Mr. Wright.

17 **THE COURT:** Okay. You remain with us, Ms. Lindler,
18 for just a little bit, okay, please?

19 Anybody else?

20 Yeah, Ms. Lindler, if you'd come back up and sit on
21 that row where you were at earlier? How did you get way
22 back there, Ms. Lindler?

23 **JUROR:** It's cold up here, Judge. I'm like three
24 days getting over the flu and strep, so it's really cold.

25 **THE COURT:** All right. Well, if it's causing you

1 problems, I'll let you sit in the back if that's better
2 for you.

3 **JUROR:** It's better for me, sir.

4 **THE COURT:** Okay. That will be fine.

5 **JUROR:** Thank you.

6 **THE COURT:** Any member of the jury panel have or had
7 in the past a close personal or social relationship with
8 either Robert Antwon Wright or Cedric Mayers and/or
9 Precious Mayers? If so, please stand.

10 I'm going to publish a list of potential or possible
11 witnesses in this case. Shawn Carnes, Newberry County
12 Sheriff's Office; Garrett Lominack, Newberry County
13 Sheriff's Office; Brad Epps, Newberry County Sheriff's
14 Office; Ryan Dickert, Newberry County Sheriff's Office;
15 Matthew Womack, Newberry County Sheriff's Office; Walter
16 Bentley; Precious Bates; Precious Mayers, Cedric Mayers;
17 Lorenzo Jones; Tarakus Coleman; Sharon Clanahan.

18 Anyone on the jury panel related by blood or marriage,
19 either now or formerly, to any of those people I've just
20 listed or anyone on the jury panel have or had in the past
21 a close personal or social relationship with any of those
22 individuals? If so, please stand.

23 Okay. Now at this time I'm going to give the
24 attorneys the opportunity to introduce themselves. And I
25 can tell you -- and I know these three lawyers extremely

1 well and I can tell you that they are all three very
2 excellent attorneys, and I'll turn it over to the
3 solicitors first.

4 **MR. SCOTT:** Thank you, Your Honor. I'm Dale Scott.
5 I'm the Deputy Solicitor of the Eighth Circuit. The
6 Eighth Circuit is gonna be Abbeville, Greenwood, Newberry
7 and Newberry. I primarily work in Newberry and Newberry
8 counties. Assisting me I'm sure in this trial is gonna
9 be Assistant Solicitor Taylor Daniel. We've got our
10 investigator with the Eighth Circuit Solicitor's Office,
11 Walter Bentley, and representing the sheriff's department
12 is Garrett Lominack. They were introduced from the witness
13 list, but these are my victims over here, Cedric and
14 Precious Mayers.

15 **THE COURT:** Thank you, Solicitor. Ms. Zimmerman?

16 **MS. ZIMMERMAN:** My name is Mandy Zimmerman. I have a
17 law firm here in Newberry on Friend Street, Zimmerman and
18 Shealy. I practice there with my law partner, Ben Shealy,
19 and an associate, Cole Lawrimore.

20 **THE COURT:** All right. Thank you very much.

21 Any member of the jury panel ever been represented by
22 any of the attorneys involved in this case or by anyone
23 in their respective law firms or offices? If so, please
24 stand.

25 (Juror stands.)

1 **THE COURT:** Yes, sir. Your name and number.

2 **JUROR:** Gregory L. Smith, Juror 128. The solicitor.

3 **THE COURT:** Okay. All right. You were represented
4 by one of the solicitors?

5 **JUROR:** Yes.

6 **THE COURT:** Okay. All right. I'm gonna give -- and
7 I meant to tell you this before I started this set of
8 questions. I'm gonna give you an opportunity to speak with
9 me privately like I did previously. You get in that line
10 and we'll speak more about that, okay? Thank you.

11 Anybody else?

12 Anyone on the jury panel related by blood or marriage
13 or -- either now or formerly, or had or currently have a
14 close personal or social relationship with any of the
15 attorneys involved in this case or anyone in their
16 respective law firms or offices? If so, please stand.

17 I understand that you know very little about this
18 case, but I have to ask you anyway. Has any member of the
19 jury panel formed or expressed any opinion whatsoever about
20 any issue or matter involved in this case? If so, please
21 stand.

22 Any member of the jury panel aware of any bias or
23 prejudice towards either the State or the Defendant in
24 this case?

25 Now this next question I know what the answer is, but

1 I'm gonna ask it anyway. Is there any member of the jury
2 panel that was a member of the grand jury which issued the
3 indictment -- the two indictments in this case?

4 Is there any member of the jury panel who is a
5 member of or a contributor to any group which has as its
6 primary concern the promotion of law enforcement or
7 victims rights? These groups will include, but certainly
8 not limited to, and I'll give you the acronym for these
9 groups, MADD, SADD or CAVE, or any organizations of like
10 kind. If that applies to you, please stand.

11 Now does any member of the jury panel know of any
12 reason whatsoever why he or she should not serve as a
13 juror in this case with particular emphasis being placed
14 on your ability to be fair and to be impartial to both the
15 State and the Defendant in this case?

16 All right. Does the State have any objections to the
17 Court's voir dire or any additional voir dire questions?

18 **MR. SCOTT:** None from the State, Your Honor.

19 **THE COURT:** Okay. A like question to the defense?

20 **MS. ZIMMERMAN:** None from the defense.

21 **THE COURT:** Thank you very much.

22 All right. Ladies and gentlemen of the jury panel,
23 we now will pick the trial jury. What will -- what will
24 happen is this. If your name is called, if you will come
25 down and -- Jackie, do they usually come around this way?

1 **THE CLERK:** Yes, sir. They usually just stop here.

2 **THE COURT:** Stand by there. Okay. If your name is
3 called, you'll come around and just kind of stand right
4 at the corner of the jury box and face both the State's
5 counsel table and the defense counsel table and then they
6 will make some indication whether or not to accept this
7 juror, swear this juror or excuse this juror. And as I
8 tell jury panels, if you are not selected, don't take
9 personal offense to that, don't take it personally. These
10 lawyers have certain reasons for having certain people to
11 be jurors in cases that they're involved in. So don't --
12 you can be sad that you were not picked or disappointed
13 that you were not picked, but just don't take it -- don't
14 take it personally. This is not intended for that, okay?

15 **THE CLERK:** How about the other one that you wanted
16 to talk to?

17 **THE COURT:** Excuse me?

18 (Discussion between the Court and the Clerk of Court.)

19 **THE COURT:** Let me see the lawyers for just a moment.

20 (Proceedings held at the bench; not reported.)

21 **THE COURT:** All right. Anybody that -- the gentleman
22 on the front row, you need to come down. Anybody else
23 want to speak to me privately, along with the lady who
24 indicated she was a third cousin of somebody, and,
25 Ms. Lindler, in the back, if you'll come down in line,

1 too. If anybody else wants to talk with me about any
2 concerns or issues, just get in the line, please.

3 (Proceedings held at the bench out of the hearing of
4 the jury panel.)

5 **THE COURT:** Okay. Your name again, sir?

6 **JUROR:** Gregory L. Smith.

7 **THE COURT:** Okay. Mr. Smith, were you a victim of
8 something? You said you were represented --

9 **JUROR:** Yeah, when Timothy, Joseph Metz and all them
10 that shot at my house a few years ago.

11 **THE COURT:** Okay. All right.

12 **MS. ZIMMERMAN:** Judge, I also represented one of those
13 defendants.

14 **THE COURT:** Okay. All right. I'm going to excuse
15 you for cause, but if you'll just have a seat back where
16 you were because I'll have some explanation for the rest
17 of the panel, but I'm gonna excuse you from the trial of
18 this case, okay?

19 **JUROR:** Okay.

20 (Juror returns to his seat.)

21 **THE COURT:** Yes, sir. Your name?

22 **JUROR:** Will Cook. I'm not sure of my juror number.

23 **THE COURT:** That's all right. What do you need to
24 tell me, Mr. Cook?

25 **JUROR:** My brother has been in law enforcement for

1 two years and he works in Newberry County.

2 **THE COURT:** Okay. Does he work at the sheriff's
3 department?

4 **JUROR:** He works with the sheriff's office.

5 **THE COURT:** All right. Now he's not one of the
6 potential witnesses in this case?

7 **JUROR:** No, but he works with the sheriff's office
8 and he's been there for about two or three years.

9 **THE COURT:** Okay. Even though your brother is with
10 the sheriff's office, do you believe you could be fair
11 and impartial to both the State and the Defendant in this
12 case?

13 **JUROR:** I mean, I could, but with my brother on
14 patrol, I'd want to back him up.

15 **THE COURT:** Okay. Even though he's not a witness in
16 this case?

17 **JUROR:** Even though he's not a witness.

18 **THE COURT:** Okay. All right. I'm gonna excuse you
19 from the trial of this case, but stay with us though, okay?

20 **JUROR:** Okay.

21 (Juror return to his seat.)

22 **THE COURT:** Yes, ma'am. You're Ms. Bowers?

23 **JUROR:** Uh-huh.

24 **THE COURT:** You're gonna stay with us. You're fine,
25 but I appreciate you telling us that, okay?

1 **JUROR:** Okay.

2 (Juror returns to her seat.)

3 **THE COURT:** Ms. Lindler, I'm gonna excuse you, okay?
4 But you remain with us though because I've got some further
5 instructions for the panel, okay?

6 **JUROR:** Okay.

7 **THE COURT:** Thank you, ma'am.

8 (Juror returns to her seat.)

9 **THE COURT:** And what's your name?

10 **JUROR:** Miles Wilson.

11 **THE COURT:** All right. Yes, sir.

12 **JUROR:** Lorenzo Jones. I'm associated with Lorenzo
13 Jones.

14 **THE COURT:** Is that a witness?

15 **MR. SCOTT:** Yes, sir.

16 **THE COURT:** Okay. You're associated with the witness
17 in what fashion?

18 **JUROR:** Like I know of him.

19 **THE COURT:** You know him?

20 **JUROR:** Yeah.

21 **THE COURT:** You're good friends with him?

22 **JUROR:** We're all right. I mean, if that's the
23 person --

24 **MR. SCOTT:** Hootie?

25 **JUROR:** Yeah.

1 **THE COURT:** All right. The fact that a potential
2 witness you're friends with, would that prevent you from
3 being fair and impartial to both the State and the defense?
4 Can you be fair and impartial to both sides?

5 **JUROR:** Yes.

6 **THE COURT:** You can? Even though a potential witness
7 is a friend of yours?

8 **JUROR:** (Nods head.)

9 **THE COURT:** Okay. Stay with us, sir. Thank you.

10 **MS. ZIMMERMAN:** I'm sorry, I didn't catch what his
11 name was.

12 **THE COURT:** Miles, come back. Your last name was
13 what?

14 **JUROR:** Wilson.

15 **MS. ZIMMERMAN:** Thank you.

16 **THE COURT:** Okay.. Thank you. Stay with us.

17 (Juror returns to his seat.)

18 **THE COURT:** Okay. And your name?

19 **JUROR:** Bradley Gallman.

20 **THE COURT:** All right, Mr. Gallman. Are you any kin
21 to Wayne Gallman, the running back for Clemson?

22 **JUROR:** No.

23 **THE COURT:** I just wanted to check.

24 **JUROR:** I know the -- Lorenzo Jones.

25 **THE COURT:** You know Lorenzo Jones?

1 **JUROR:** Uh-huh.

2 **THE COURT:** His nickname, Solicitor, is?

3 **MR. SCOTT:** Hootie.

4 **JUROR:** Yeah.

5 **THE COURT:** All right. The fact that you know one
6 of the potential witnesses, can you still be fair and be
7 impartial to both sides in this case?

8 **JUROR:** I don't want no part in that. I'm like real
9 close to him.

10 **THE COURT:** All right. I'm gonna excuse you from the
11 trial of the case, but you stay with us though, okay?
12 Thank you, sir.

13 **JUROR:** Thank you.

14 (Juror returns to his seat.)

15 **MR. SCOTT:** Judge, there was one -- it occurred to me
16 that we may have represented this Javonte Gallman. Javonte
17 Gallman, we may have kicked it down to family court.

18 **THE COURT:** Javonte Gallman?

19 **MS. ZIMMERMAN:** And also Ty Ransdell. He's the
20 director at Springfield and my mother-in-law is out there
21 and I've dealt with him with regards to her.

22 **THE COURT:** Give me one name at a time. The first one
23 is?

24 **MR. SCOTT:** Javonte Gallman.

25 **THE COURT:** Okay.

1 (Bench conference concluded.)

2 **THE COURT:** Could I see Javonte Gallman up here?
3 You're not in trouble. You're not in trouble. Don't
4 worry.

5 (Proceedings held at the bench, out of the hearing of
6 the jury panel.)

7 **THE COURT:** All right. Did you have some charges up
8 here maybe dealing with Solicitor Scott?

9 **JUROR:** Yes, sir.

10 **THE COURT:** All right. And what happened to those
11 charges?

12 **JUROR:** It was juvenile.

13 **THE COURT:** You need to speak up just a little bit.

14 **JUROR:** Juvenile.

15 **THE COURT:** Oh, it was juvenile?

16 **JUROR:** Yes, sir. I was sixteen.

17 **THE COURT:** Was that down in family court?

18 **JUROR:** Yes, sir.

19 **THE COURT:** Okay.

20 **MR. SCOTT:** We had extensive communications with him
21 and, I believe, your aunt?

22 **JUROR:** (Nods head.)

23 **THE COURT:** Can you still be fair and impartial to
24 both sides of this case if you're picked on the jury?

25 **JUROR:** Yes, sir.

1 **THE COURT:** Okay. Thank you, sir. Stay with us.

2 (Juror returns to his seat.)

3 **THE COURT:** All right.

4 **MS. ZIMMERMAN:** Ty Ransdell.

5 **THE COURT:** Ty what?

6 **MS. ZIMMERMAN:** Ransdell.

7 (Bench conference concluded.)

8 **THE COURT:** Ty Ransdell? Could I see Ty Ransdell,
9 please?

10 (Proceedings held at the bench out of the hearing of
11 the jury panel.)

12 **THE COURT:** And Springfield, is that a nursing home?

13 **MS. ZIMMERMAN:** It is. He's the director over it, so
14 I've talked to him just about her.

15 **THE COURT:** Okay.

16 **MS. ZIMMERMAN:** Obviously nothing about this.

17 **THE COURT:** Sure. I understand. Mr. Ransdell, I
18 understand you're the director at Springfield?

19 **JUROR:** Yes, sir.

20 **THE COURT:** And Ms. Zimmerman's just informed
21 me that the mom's there so, therefore, you have to
22 communicate. The fact that you have that relationship
23 with Ms. Zimmerman, can you be fair to both the State and
24 the defense in this case?

25 **JUROR:** I don't know. That's a good question. I

1 think so. Yeah, I can.

2 **THE COURT:** Well, you can be?

3 **JUROR:** Yeah, sure I can.

4 **THE COURT:** Okay. Stay with us. Thank you, sir.

5 (Juror returns to his seat.)

6 (Bench conference concluded.)

7 **THE COURT:** All right. Anybody else on the jury panel
8 need to speak with me about any question that I asked or
9 anything related to this case before we pick the trial
10 jury?

11 **THE COURT:** Okay. Let's go -- let's go two alternates
12 just to be on the safe side. Everybody be at ease for just
13 a few -- few minutes.

14 (Pause in the proceedings.)

15 **THE COURT:** I'm ready, if you're ready.

16 **THE CLERK:** Yes, sir.

17 Members of the jury, as I call your name, please come
18 forward and stop at the end of the jury box and turn and
19 face both of the attorneys. 108 Louise Rex.

20 (Whereupon, Louise Rex, a white female, was called
21 forward.)

22 **THE CLERK:** Come on around, please, ma'am. Right
23 there's fine.

24 **THE COURT:** That's good. Thank you.

25 **THE CLERK:** What says the State?

1 **MR. SCOTT:** Please present the juror.

2 **THE CLERK:** The defense?

3 **MS. ZIMMERMAN:** Please seat Ms. Rex.

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

5 **THE COURT:** Ladies and gentlemen of the jury panel, if
6 your name is called, make sure you have all your things so
7 if you are selected you'll have them with you when you're
8 seated in the jury box, okay?

9 **THE CLERK:** 76, Lisa Kinard.

10 (Whereupon, Lisa Kinard, a white female, was called
11 forward.)

12 **THE CLERK:** What says the State?

13 **MR. SCOTT:** Please present the juror.

14 **THE CLERK:** The defense?

15 **MS. ZIMMERMAN:** Please seat Ms. Kinard.

16 **THE CLERK:** Have a seat in the box, please.

17 157, Amber Worthy.

18 (Whereupon, Amber Worthy, a white female, was called
19 forward.)

20 **THE CLERK:** What says the State?

21 **MR. SCOTT:** Please seat the juror.

22 **THE CLERK:** The defense?

23 **MS. ZIMMERMAN:** Please seat Ms. Worthy.

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

25 62, Britton Havird.

1 (Whereupon, Britton Havird, a white male, was called
2 forward.)

3 **THE CLERK:** What says the State?

4 **MR. SCOTT:** Present the juror.

5 **THE CLERK:** Defense?

6 **MS. ZIMMERMAN:** Please excuse the juror.

7 **THE CLERK:** You may have a seat.

8 89, Susan Martin.

9 (Whereupon, Susan Martin, a white female, was called
10 forward.)

11 **THE CLERK:** What says the State?

12 **MR. SCOTT:** Please present the juror.

13 **THE CLERK:** The defense?

14 **MS. ZIMMERMAN:** Please seat Ms. Martin.

15 **THE CLERK:** Have a seat, please.

16 138, Hilton Tribble.

17 (Whereupon, Hilton Tribble, a black male, was called
18 forward.)

19 **THE CLERK:** What says the State?

20 **MR. SCOTT:** Please present the juror.

21 **THE CLERK:** Defense?

22 **MS. ZIMMERMAN:** Please seat Mr. Tribble.

23 **THE CLERK:** Have a seat, please.

24 4, Lonnie Azecusky.

25 (Whereupon, Lonnie Azecusky, a white male, was called

1 forward.)

2 **THE CLERK:** What says the State?

3 **MR. SCOTT:** Please excuse the juror from this trial.

4 **THE CLERK:** You can have a seat.

5 82, Debra Lipscomb.

6 (Whereupon, Debra Lipscomb, a white female, was called
7 forward.)

8 **THE CLERK:** What says the State?

9 **MR. SCOTT:** Please present the juror.

10 **THE CLERK:** Defense?

11 **MS. ZIMMERMAN:** Please seat Ms. Lipscomb.

12 **THE CLERK:** Have a seat, please, ma'am.

13 52, Javonte Gallman.

14 (Whereupon, Javonte Gallman, a black male, was called
15 forward.)

16 **THE CLERK:** What says the State?

17 **MR. SCOTT:** Please excuse the juror.

18 **THE CLERK:** You're excused, Mr. Gallman.

19 56, Sharon Good.

20 (Whereupon, Sharon Good, a black female, was called
21 forward.)

22 **THE CLERK:** What says the State?

23 **MR. SCOTT:** Please excuse the juror from this trial.

24 **THE CLERK:** You're excused.

25 132, Tammy Suber.

1 (Whereupon, Tammy Suber, a white female, was called
2 forward.)

3 **THE CLERK:** What says the State?

4 **MR. SCOTT:** Please present the juror.

5 **THE CLERK:** The defense?

6 **MS. ZIMMERMAN:** Please excuse Ms. Suber.

7 **THE CLERK:** You're excused.

8 125, Robert Shealy.

9 (Whereupon, Robert Shealy, a white male, was called
10 forward.)

11 **THE CLERK:** What says the State?

12 **MR. SCOTT:** Please present the juror.

13 **THE CLERK:** Defense?

14 **MS. ZIMMERMAN:** Please excuse Mr. Shealy.

15 **THE CLERK:** You're excused.

16 57, Carolyn Grant.

17 (Whereupon, Carolyn Grant, a black female, was called
18 forward.)

19 **THE CLERK:** What says the State?

20 **MR. SCOTT:** Please excuse the juror from this trial.

21 **THE CLERK:** You're excused, Ms. Grant. You may have
22 a seat.

23 152, Miles Wilson.

24 (Whereupon, Miles Wilson, a black male, was called
25 forward.)

1 **THE CLERK:** What says the State?

2 **MR. SCOTT:** Please excuse the juror from this trial.

3 **THE CLERK:** You're excused, Mr. Wilson.

4 153, Kameka Wilson-Griffin.

5 (Whereupon, Kameka Wilson-Griffin, a black female, was
6 called forward.)

7 **THE CLERK:** Any challenge for cause by the State?

8 **MR. SCOTT:** Please present the juror.

9 **THE CLERK:** Defense?

10 **MS. ZIMMERMAN:** I apologize, Madam Clerk. Can you
11 give me that number again?

12 **THE CLERK:** 153.

13 **MS. ZIMMERMAN:** Please seat Ms. Wilson-Griffin.

14 **THE CLERK:** Have a seat, please.

15 156, Markeith Wise. Come on around, Mr. Wise.

16 (Whereupon, Markeith Wise, a black male, was called
17 forward.)

18 **THE CLERK:** Any challenge for cause by the State?

19 **MR. SCOTT:** Please present the juror.

20 **THE CLERK:** The defense?

21 **MS. ZIMMERMAN:** Please seat Mr. Wise.

22 **THE CLERK:** Have a seat, please.

23 80, Marie Libby.

24 (Whereupon, Marie Libby, a white female, was called
25 forward.)

1 **THE CLERK:** Any challenge for cause by the State?

2 **MR. SCOTT:** Please present the juror.

3 **THE CLERK:** What says the defense?

4 **MS. ZIMMERMAN:** Please seat Ms. Libby.

5 **THE CLERK:** Have a seat, please, ma'am.

6 106, Abel Real.

7 (Whereupon, Abel Real, a Hispanic male, was called
8 forward.)

9 **THE CLERK:** Any challenge for cause by the State?

10 **MR. SCOTT:** Please present the juror.

11 **THE CLERK:** What says the defense?

12 **MS. ZIMMERMAN:** Please seat Mr. Real.

13 **THE CLERK:** Have a seat, please.

14 104, Rebecca Pitts.

15 (Whereupon, Rebecca Pitts, a white female, was called
16 forward.)

17 **THE CLERK:** Any challenge for cause by the State?

18 **MR. SCOTT:** Please present the juror.

19 **THE CLERK:** What says the defense?

20 **MS. ZIMMERMAN:** Please seat Ms. Pitts.

21 **THE CLERK:** Have a seat, please.

22 99, Ramona Moore.

23 (Whereupon, Ramona Moore, a white female, was called
24 forward.)

25 **THE CLERK:** Any challenge for cause by the State?

1 **MR. SCOTT:** Please present the juror.

2 **THE CLERK:** What says the defense?

3 **MS. ZIMMERMAN:** Please seat Ms. Moore.

4 **THE CLERK:** Have a seat, please, ma'am.

5 33, Larry Danielson.

6 (Whereupon, Larry Danielson, a white male, was called
7 forward.)

8 **THE COURT:** Two alternates.

9 **THE CLERK:** What says the State?

10 **MR. SCOTT:** Please present the juror -- the alternate.

11 **THE CLERK:** What says the defense?

12 **MS. ZIMMERMAN:** Please seat Mr. Danielson.

13 **THE CLERK:** Have a seat, please.

14 97, Dale Melvin.

15 (Whereupon, Dale Melvin, a white male, was called
16 forward.)

17 **THE CLERK:** What says the State?

18 **MR. SCOTT:** Please present the alternate.

19 **THE CLERK:** The defense?

20 **MS. ZIMMERMAN:** Please excuse Mr. Melvin.

21 **THE CLERK:** You're excused.

22 37, Richard Dehart.

23 (Whereupon, Richard Dehart, a white male, was called
24 forward.)

25 **THE CLERK:** What says the State?

1 **MR. SCOTT:** Please present the alternate.

2 **THE CLERK:** The defense?

3 **MS. ZIMMERMAN:** Please seat Mr. Dehart.

4 **THE CLERK:** Have a seat, please.

5 **THE COURT:** Thank you, Madam Clerk.

6 Ladies and gentlemen of the trial jury, what I'm
7 gonna ask that you do is go back to your jury room, and
8 Ms. Wardlaw will escort you back there, and just take a
9 few minutes to get to know each other and get accustomed
10 to where you'll be spending a little bit of time this
11 week. One thing I want to tell you now that you will hear
12 me tell you throughout the -- the entire trial is do not
13 begin any discussions about this case. Anything -- you
14 know very little, I understand that, but anything related
15 to this case do not discuss that among yourselves and
16 certainly, when I excuse you for the day, you can't discuss
17 this case with anybody that you come into contact with.
18 Discussion can only take place once I instruct you to
19 begin your deliberations and not any time before then,
20 okay? You shouldn't be back there too long and we'll
21 bring you back out and figure out about the starting time
22 and that sort of thing, okay?

23 All right, Ms. Wardlaw.

24 (Whereupon, the jury retires to the jury room at
25 3:47 PM.)

1 **THE COURT:** Does the State have any objections or
2 exceptions to jury selection?

3 **MR. SCOTT:** No, Your Honor.

4 **THE COURT:** Defense?

5 **MS. ZIMMERMAN:** No, sir.

6 **THE COURT:** Okay. Thank you very much.

7 Ladies and gentlemen of the jury panel, again,
8 probably some of you are glad that you were not selected,
9 others are maybe disappointed. Even though I do not
10 anticipate another trial this week other than this one
11 that we're starting, I can't excuse you for the week yet.
12 What I'll need for you to do is after 6:00 this evening --
13 Jackie, they've already been provided the phone number to
14 call in?

15 **THE CLERK:** Yes, sir. It's on that card.

16 **THE COURT:** Thank you. So on the card that you have,
17 there's a call-in number. You call in after 6:00 this
18 evening and it will instruct you on what to do. Chances
19 are it's gonna tell you to call back after 6:00 tomorrow
20 evening, but I can't tell you that for sure. So you be
21 sure and call that number, don't forget, okay, so you will
22 know exactly what you need to do.

23 With that said, I hope to get to see you again, but
24 if not, the very best of luck to all y'all and hopefully
25 sometime in the future you will be given the opportunity

1 to sit on a trial jury, okay? Have a great afternoon.

2 (Whereupon, the jury panel was excused at 3:48 PM.)

3 (Whereupon, the jury returns to the courtroom at
4 3:51 PM.)

5 **THE COURT:** Okay. Ladies and gentlemen, we've got
6 some pre-trial matters that I need to deal with the
7 lawyers on in this case before we start it, so I'm gonna
8 go ahead and excuse you for this afternoon and you need to
9 be back at 9:30. Allow yourselves enough time to be back.
10 Sometimes we have unexpected things happen to us, so allow
11 yourself enough time to be back here at 9:30 and we'll get
12 started in the case. Again, don't discuss anything about
13 this case with anyone you come into contact with, whether
14 it's family, friends. They may ask you about what kind of
15 case is it and that sort of thing. You just say the judge
16 has told me I can't talk about this case and leave it at
17 that, okay?

18 Another thing, too, and I'll go into this in a little
19 bit more detail, but I want to go ahead and tell you now
20 since you're gonna go ahead and be released for the day.
21 You know, we have a wealth of ready access to information
22 because of the Internet, social media and the like, and
23 don't go online tonight and try to research about accessory
24 before the fact or conspiracy or, you know, certainly
25 don't contact anybody to try to find out something about

1 this case. Your decision when I give you the case to reach
2 a verdict has to be based one hundred percent on what
3 happens in this courtroom and from no other source out
4 there. So even though it may be attempting for you to go
5 online tonight and try to do some research, don't do that,
6 okay?

7 All right. So with that said, have a great afternoon
8 and evening and we'll see you at 9:30 in the morning. Be
9 sure to have your juror button on, okay? You're free to
10 leave.

11 (Whereupon, the jury was excused for the evening at
12 3:53 PM.)

13 **THE COURT:** Okay. We'll take about a ten minute
14 break.

15 (Recess taken.)

16 **THE COURT:** Okay. We're back on the record and it's
17 my understanding that we have some pre-trial matters that
18 we need to take up with. Solicitor, did you have -- do
19 you have any issues or are they all pretty much what the
20 defense is --

21 **MR. SCOTT:** I have no motions in this case, Your
22 Honor. Thank you.

23 **THE COURT:** Okay. Ms. Zimmerman, I'll be glad to
24 hear from you.

25 **MS. ZIMMERMAN:** Your Honor, I did discuss with the

1 solicitor a motion to suppress any evidence about my
2 client's prior bad acts as I believe that would be improper
3 impeachment if offered during their case in chief and I
4 believe they actually agree with me that that would be
5 improper unless my client testifies and then, of course,
6 it would be fair game.

7 **THE COURT:** Right. And it was kind of along the lines
8 of referring to your client using a certain term or phrase
9 that we customarily hear in this --

10 **MS. ZIMMERMAN:** In reference to him as a drug dealer
11 or any selling of drugs, anything like that, yes, sir.

12 **THE COURT:** And that's with consent. That suppression
13 motion is granted with consent with the caveat that if the
14 Defendant elected to testify, then we'd have to revisit
15 that particular issue again.

16 **MS. ZIMMERMAN:** And I also intended to move to
17 suppress any identification of my client by Tarakus
18 Coleman or any mention of anything involving my client
19 being involved in this particular crime based on Tarakus's
20 statement to law enforcement that he had never met my
21 client, didn't know my client, so I don't think that he
22 could identify my client as an individual involved in
23 this.

24 **THE COURT:** And this particular witness, the first
25 name is what?

1 **MS. ZIMMERMAN:** Tarakus.

2 **THE COURT:** Can you spell that for us?

3 **MS. ZIMMERMAN:** T-A-R-A-K-U-S.

4 **THE COURT:** Coleman?

5 **MS. ZIMMERMAN:** Yes, sir.

6 **THE COURT:** Okay. And the State's position?

7 **MR. SCOTT:** I don't -- no, I don't intend to use him
8 as an ID witness, Your Honor.

9 **THE COURT:** All right. So that's -- that's granted
10 with consent. Okay.

11 **MS. ZIMMERMAN:** And I had mentioned earlier that I
12 intended to argue to suppress some phone records, but I've
13 actually reviewed what the State intends to offer and --
14 and based upon the two pages that they have shown me here,
15 I actually do not have objection to that.

16 **THE COURT:** Okay. All right.

17 **MS. ZIMMERMAN:** I think that resolves the issues that
18 I had as far as pre-trial.

19 **THE COURT:** Okay. Thank you very much.

20 **MR. SCOTT:** Judge, I think informally there was a
21 stipulation as to phone -- I guess that's kind of
22 incorporated into those phone records coming in, but the
23 phone number that we've associated with Mr. Wright is, in
24 fact, his phone number, so we don't have to, I guess, prove
25 through any kind of extrinsic evidence that that is his

1 phone number. I think it's stipulated to.

2 **MS. ZIMMERMAN:** That is correct, Your Honor.

3 **THE COURT:** All right. Well, let's -- let's put on
4 the record that the lawyers are stipulating that the
5 Defendant's phone number, at least at the time of the
6 alleged offense, was what? Who wants to read that into
7 the record?

8 **MR. SCOTT:** Your Honor, it's gonna be 803-201-4329.

9 **THE COURT:** Is that correct, Ms. Zimmerman?

10 **MS. ZIMMERMAN:** Yes, sir.

11 **THE COURT:** Okay. And if this -- Solicitor, if you'll
12 just remind me to make -- because I may forget, I'm gonna
13 try to make myself a note, to indicate to the jury at the
14 appropriate time that that has been stipulated to.

15 **MR. SCOTT:** Yes, sir.

16 **THE COURT:** Okay. Anything further before we adjourn
17 for today?

18 **MS. ZIMMERMAN:** I would just ask for an opportunity to
19 -- I want to do some research on the accessory before the
20 fact question that we were looking into.

21 **THE COURT:** Yes.

22 **MS. ZIMMERMAN:** So before we form a charge, I would
23 ask to be heard on that again.

24 **THE COURT:** Sure. Yeah, let's all try to look at that
25 and see the best way to craft that to where we can get the

1 results that we need. Certainly not guilty or innocent,
2 but results that the jury understands and makes a correct
3 decision in any way on that.

4 **MR. SCOTT:** I think you've got the list, but I'm
5 gonna send an e-mail out through the prosecution commission
6 to all the different counties to see if they've got any
7 experience with that because that's kind of new to me.

8 **MS. ZIMMERMAN:** I'll do the same thing with SCDTAA.

9 **THE COURT:** All right. And basically what I -- just
10 for the record, what we're discussing is for accessory
11 before the fact it has to be before the fact of some
12 felony, and the potential felony involves an armed robbery,
13 burglary, then any lesser included. So, you know, whether
14 or not we present it to the jury in verdict form for them
15 to select what particular offense took place, if they, you
16 know, do find the Defendant guilty on the accessory, and so
17 we'll all take a look at that and put our heads together
18 and come up with something, okay?

19 Very good. Thank you. I appreciate y'all's hard work
20 and we'll get started back at 9:30 in the morning.

21 **MS. ZIMMERMAN:** Thank you, Judge.

22 **THE COURT:** And also, too, let's -- one other thing.
23 Let's go ahead and arraign Mr. Wright now on the
24 conspiracy. This will be very brief. You can explain to
25 him what we're doing, Ms. Zimmerman.

1 (Discussion between the Defendant and Ms. Zimmerman.)

2 **THE COURT:** If you will swear Mr. Wright in, please.

3 (Whereupon, Robert Antwon Wright was duly sworn by the
4 Clerk of Court.)

5 **THE COURT:** All right. Concerning the conspiracy
6 indictment, Mr. Wright, the indictment charges you with
7 conspiracy in violation of Section 16-17-410. And I've
8 already read the indictment to the jury panel. I'll be
9 glad to read it again if you want me to. And all I need
10 to do is ask you, sir, how do you plead to the conspiracy
11 indictment? Guilty or not guilty?

12 **THE DEFENDANT:** Not guilty, sir.

13 **THE COURT:** Okay. And -- and how will you be tried?

14 **THE DEFENDANT:** By jury.

15 **THE COURT:** Okay. Thank you very much. That's all
16 we needed to do on that.

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

18 **MS. ZIMMERMAN:** Thank you sir.

19 **THE COURT:** All right. We'll see everybody at 9:30
20 in the morning. Let me -- one other thing. Even though
21 jurisdiction has not taken place yet because we haven't
22 sworn in the jury, I don't believe we formally addressed
23 the issue of bond. Of course, I certainly will tomorrow
24 afternoon, but, Mr. Wright, just understand that you need
25 to be back here in the morning as instructed, whatever

1 time as your attorney instructs you to be, okay?

2 **THE DEFENDANT:** Okay.

3 **THE COURT:** All right. Thank you. See y'all in the
4 morning.

5 (Whereupon, the proceedings were concluded for
6 January 4, 2016, at 4:24 PM.)

7 (The following proceedings were held on January 5,
8 2016, beginning at 9:27 AM.)

9 (State's Exhibit Number 1 through 17 were marked for
10 identification.)

11 **BAILIFF:** All rise.

12 **THE COURT:** Thank you. Okay. Are y'all ready?

13 **MS. ZIMMERMAN:** Yes, sir. I think before we bring the
14 jury out, there's a few pieces of evidence we're gonna put
15 on the record that were stipulated to --

16 **THE COURT:** Okay.

17 **MS. ZIMMERMAN:** -- just to save some time.

18 **THE COURT:** Okay.

19 **MS. ZIMMERMAN:** The 9-1-1 call we'll stipulate into
20 evidence. There are some photographs that have been marked
21 from the crime scene we'll stipulate that are in evidence
22 and there's photographs from a different scene where the
23 cell phone was located.

24 **MR. SCOTT:** For the record, State's premarked 14 is
25 the 9-1-1 call. Did you say phone synopsis?

1 **MS. ZIMMERMAN:** Oh, yeah. The phone synopsis we'll
2 stipulate to.

3 **MR. SCOTT:** The phone synopsis is premarked as 16.
4 And then the photos that have been stipulated are 1, 2, 3,
5 4, 5, 6, 7, 8, 9, 10, 11, 12, 13.

6 **MS. ZIMMERMAN:** 17 is fine, too.

7 **MR. SCOTT:** Your Honor, also State's Number 17.

8 **THE COURT:** What is 17?

9 **MR. SCOTT:** It's an aerial photograph, Your Honor.

10 **THE COURT:** Okay.

11 **MR. SCOTT:** And then was the phone dump --

12 **MS. ZIMMERMAN:** Oh, yeah. That's fine, too.

13 **MR. SCOTT:** The phone dump is State's Number 15.

14 **THE COURT:** All right. So what I understand y'all
15 have agreed to that will go into evidence on behalf of the
16 State, 1 through -- did you say 11 were the photos?

17 **MR. SCOTT:** 13, Your Honor.

18 **THE COURT:** 13, okay. 1 through 13, photos of crime
19 scene, as well as another scene where a cell phone was
20 located. 14 is the 9-1-1 tape, 15 is the phone dump CD,
21 16 is a cell phone synopsis, and 17 is the aerial photo;
22 is that correct?

23 **MS. ZIMMERMAN:** Yes, sir.

24 **MR. SCOTT:** Yes, sir.

25 **THE COURT:** All right. Very good.

1 (State's Exhibit Number 1 through 13, photographs,
2 were admitted into evidence.)

3 (State's Exhibit Number 14, 9-1-1 call, was admitted
4 into evidence.)

5 (State's Exhibit Number 15, cell phone record CD, was
6 admitted into evidence.)

7 (State's Exhibit Number 16, cell phone printout, was
8 admitted into evidence.)

9 (State's Exhibit Number 17, an aerial photograph, was
10 admitted into evidence.)

11 **THE COURT:** Anything else before we bring the jury
12 out?

13 **MS. ZIMMERMAN:** Nothing from the defense.

14 **THE COURT:** The State?

15 **MR. SCOTT:** Oh, Your Honor, we did mention yesterday
16 there was a stipulation as to a phone number of Mr. Wright
17 that will be used throughout this trial.

18 **THE COURT:** Right. And that number that you gave me,
19 803-201-4329?

20 **MR. SCOTT:** Yes, sir.

21 **MS. ZIMMERMAN:** Yes, sir.

22 **THE COURT:** All right. And, Solicitor, when you get
23 to the part of whoever is gonna testify as it relates to
24 the cell phone, then I'll -- I'll just instruct the jury
25 at that time that's been stipulated to.

1 **MR. SCOTT:** Yes, sir.

2 **THE COURT:** Maybe you can give me the heads-up.

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

4 **THE COURT:** Okay. All right. Also for the record,
5 Juror Number 108, Louise Rex, called in this morning,
6 indicated she had to go to the hospital last night because
7 of a migraine. She's in the bed this morning unable to
8 come and we're trying to confirm that information, but
9 nevertheless we'll put Alternate Number 1, Larry Danielsen,
10 in her place.

11 Okay. Madam Bailiff, if you will bring the jury out,
12 please.

13 (Whereupon, the jury enters the courtroom at
14 9:49 AM.)

15 **THE COURT:** Okay. Let the record reflect the jury is
16 in.

17 Good morning, ladies and gentlemen. You will notice
18 that you are missing one juror. A Ms. Rex became ill, had
19 to receive some medical treatment, and she's not able to
20 be with us today. Consequently, and this is why we have
21 alternates, Alternate Number 1, is Larry Danielsen.
22 Mr. Danielsen, you are now on the main twelve, okay?
23 Richard Dehart, okay, you will remain the -- the sole
24 alternate now understanding that your role is -- is very
25 important because if we had to excuse another juror, then

1 you'd have to take that juror's place.

2 We've got two housekeeping matters to attend to. One
3 is you will need to be sworn in as the trial jury. So,
4 Madam Clerk, would you handle that for me, please.

5 **THE CLERK:** Yes, sir. Please stand and raise your
6 right hand.

7 (Whereupon, the jury was duly sworn by the Clerk of
8 Court.)

9 **THE COURT:** The second housekeeping matter, I need to
10 appoint a foreperson of the jury. Now if it is a male,
11 it's a foreman; if it's a female, it's a forelady. Now the
12 vote of the foreperson carries no greater weight than the
13 vote of the eleven, but I have to have someone to serve as
14 the spokesperson between the jury and the Court. If there
15 was an issue, a concern, a question, whatever, that needs
16 to be brought to my attention, then I need someone to speak
17 on behalf of the jury.

18 Secondly, I need someone to ensure that all of my
19 instructions are -- are followed by the jury. For example,
20 I've already instructed you about not beginning any
21 discussion among yourselves related to this case. I need
22 to make sure that that instruction and other instructions
23 are followed as well.

24 Thirdly, when I do give you the case to begin your
25 deliberations in order to reach a verdict, I need someone

1 to oversee those deliberations and get the discussion and
2 the deliberations started. I'm confident that all of you
3 would make an excellent foreperson of the jury, but I can
4 only have one, and I have decided on Mr. Tribble. I'm
5 appointing you as the foreman of the -- of the jury.

6 Now when you come out after our first break in the
7 morning, you will take that first seat where that lady is
8 seated right here in the front. You'll always maintain
9 that seat. And Mr. Dehart, you will always maintain the
10 seat that you are in, okay? Everybody else can sit
11 wherever you want to. Now it looks like maybe y'all are
12 already kind of staying in the same seat, and that's fine,
13 it's whatever you want to do, okay?

14 All right. Now I want to give you some preliminary
15 remarks. Give me just a minute to get my computer going.
16 Ladies and gentlemen, before we begin the trial of this
17 case I want to explain certain things to you. First of
18 all, this trial will probably be a lot different than what
19 you might expect. Many people don't have the opportunity
20 to -- to attend actual court sessions as you are doing this
21 morning and you may think from watching television or
22 movies or reading books that trials are always full of high
23 drama, intense action and riveting circumstances. While
24 all of these things may be true at times, this trial is not
25 -- it is not for entertainment. It is a fundamental part

1 of our democracy, a search for the truth in an effort to
2 make sure that justice is done between the parties before
3 the court. Searching for the truth and making sure that
4 justice is done is often slow, deliberate and repetitive,
5 the opposite of what you may have seen on television or in
6 movies or have read in books.

7 This courtroom is a place of honor dedicated to the
8 protection and preservation of citizens rights through
9 what many have called to be the greatest justice system
10 ever created. The attorneys appearing before you are
11 advocates for the parties they represent, but first and
12 foremost, they are officers of the court, sworn to uphold
13 the integrity and fairness of our judicial system, and to
14 help you in the search for the truth. You should expect
15 them to be professional, confident and ethical in the
16 representation of their client's interest and you also are
17 expected to be professional, ethical and reasonable as
18 well.

19 Let me formally and officially thank you for accepting
20 this very important responsibility of jury service and for
21 your contribution today to our justice system. I told you
22 yesterday that many consider serving on the jury to be the
23 second highest civic responsibility that we all have second
24 only to the military. It could be equal to serving in the
25 military.

1 Now what I will now say is intended to serve as just
2 an introduction to the trial of this case. These remarks
3 are not a charge on the law in this case. I will instruct
4 you on the law applicable to this case at the end of the
5 trial before you retire to the jury room to consider your
6 verdict. This is merely explanation of some of the
7 procedures that we will follow in this trial and so you
8 may be -- be in a better position to understand what is
9 going on.

10 First of all, you're not permitted to take any
11 notes during this trial. What that means is that you
12 will have to be very, very attentive throughout this
13 entire proceeding so that you will have a good memory
14 and recollection of what was testified to, the evidence
15 presented and that sort of thing.

16 Now as I told you yesterday, the Defendant is charged
17 with two criminal offenses by two indictments. The
18 elements of those charges will be explained to you at the
19 conclusion of this case. But as I also told you yesterday,
20 the indictments are simply the charges by which this case
21 is brought into court and they're not in any sense evidence
22 of any of the allegations it contains.

23 The Defendant has exercised his constitutional right
24 and has pled not guilty to both of these indictments.
25 Therefore, the State has the burden of proving each and

1 every element of both of the charges contained in the
2 indictments beyond a reasonable doubt. It will be your
3 duty, Mr. Foreman, ladies and gentlemen, to decide whether
4 or not the State has met that burden of proof at the
5 conclusion of the case. Your purpose as jurors is to find
6 and determine the facts. You are the sole judge of the
7 facts. If at any time during the course of this trial I
8 make any comment regarding the facts, you must disregard
9 them. You are to determine the facts from the testimony
10 you hear and the other evidence introduced in court. It
11 is up to you to determine the inferences which you feel
12 may properly be drawn from the evidence presented. It
13 is especially important that you perform your duty of
14 determining the facts diligently and conscientiously
15 because ordinarily there's no way to correct an erroneous
16 determination of the facts by a jury.

17 Now on the other hand, and with equal emphasis, the
18 same law that makes you the sole judge of the facts in this
19 case makes me the sole judge of the law. The law as given
20 by me will be the only law that you can consider. You must
21 accept and follow it even though you may disagree with the
22 law as I instruct you. I can't tell you what the facts are
23 and you cannot disagree with me about what the law is or
24 what the law should be. Your job is to take the law as I
25 give it to you and apply it to the facts as you find them

1 from the testimony of the witnesses and any other evidence
2 that is introduced. After doing that, you will render your
3 verdict, the verdict under the solemn oath that you just
4 took as jurors.

5 And, again, as I've already explained to you, you
6 cannot begin any discussion about this case with anyone,
7 including your fellow jurors, any friends, family members
8 that you come into contact with, until I instruct you
9 to begin your deliberations. And as I also told you
10 yesterday, that you cannot do any independent research
11 on your own on anything related to this case as we all
12 acknowledge that we have ready access to a wealth of
13 information via the Internet, and it will be very
14 attempting maybe, very easy, to go on the Internet to
15 try to do some research into this case, but you cannot do
16 that. If I find out that you have, there could be serious
17 sanctions. Unfortunately, jurors seated just where you are
18 seated have violated my instructions and have gone on the
19 Internet, engaged in social media, to try to find out
20 something about the case that is not brought out in this
21 courtroom. Don't do it. It's not worth it, okay? You
22 must decide this case based solely on the evidence
23 presented here in this courtroom and from no other source.

24 And also -- and I don't know if there will be any
25 media account of this trial, whether on the radio or in the

1 newspaper or the like, but if it is you cannot consider
2 that also. And if you -- any of you become aware of any
3 juror's violation of these instructions, then you must
4 notify the foreman so that the foreman can notify the
5 Court.

6 It is your solemn responsibility, ladies and
7 gentlemen, to determine the guilt or innocence of the
8 Defendant. And, again, your verdict must be based solely,
9 one hundred percent, on the evidence as it is presented to
10 you in this trial in this courtroom and based upon the law
11 as I instruct you at the close of the trial.

12 Now there may be times when one of the lawyers may
13 say judge, I have a matter of law to take up with the Court
14 or judge, I have an objection or something of that nature,
15 and it may require me to send you to your jury room so I
16 can discuss that particular objection or issue with the
17 lawyers and it may require me -- in making a ruling on that
18 particular objection or issue raised, it may require me to
19 discuss the facts with the lawyers and I don't want to do
20 that in your presence because, again, you are the sole
21 judge of the facts. So we will use that as sparingly as we
22 possibly can, but if it becomes necessary, then we will
23 need for you to retire for your jury room. We'll try to
24 take care of those issues to the best that we can by having
25 conferences with the lawyers at the bench.

1 In determining what the true facts are in this case,
2 you must decide whether or not the testimony of the
3 witnesses are believable. It will be my responsibility to
4 rule as a matter of law as to whether certain testimony is
5 admissible at all or not, but once that testimony is
6 admitted, whether or not you believe it is solely for you
7 to determine. In deciding whether to believe a witness,
8 you have the right to consider the interest of any witness,
9 the bias of any witness, the prejudice of any witness, the
10 opportunity for the witness to have seen the matters and
11 things about which the witness may testify and the way the
12 witness acts on the witness stand. You have the right to
13 consider anything that is in the record that will help you
14 evaluate the testimony of the witnesses in this case. And
15 again, this means that it is your duty to pay very close
16 attention, as I've just told you, to these witnesses, to
17 observe the witnesses, to listen to the witnesses, pay
18 close attention to the attorneys and to the Court. Don't
19 let your thoughts wander. Give strict attention to the
20 testimony in this case so at the end of the testimony at
21 the end of the case and after the arguments of the
22 attorneys and the charge on the law by the Court you will
23 then be in a position to determine what the true facts are
24 and to apply the law to those facts and thus render a
25 proper verdict in this case.

1 I'll ask the State at this time does the State have
2 any objection to the Court's preliminary charge?

3 **MR. SCOTT:** None from the State, Your Honor.

4 **THE COURT:** And the defense?

5 **MS. ZIMMERMAN:** None from the defense.

6 **THE COURT:** Okay. Thank you very much.

7 All right. At this time the lawyers will make their
8 opening arguments to you. It's not evidence in this case.
9 It's just what they believe that this case is about, what
10 they believe the evidence will show. The State will go
11 first and then the defense. Solicitor?

12 **MR. DANIEL:** Thank you, Your Honor. May it please the
13 Court?

14 **THE COURT:** Certainly.

15 **MR. DANIEL:** Good morning, ladies and gentlemen.
16 First and foremost, Happy New Year. I know you guys were
17 not expecting to kick off the New Year by serving on a
18 jury, but here we are. Briefly, I'll introduce myself
19 again. I'm Taylor Daniel. I'm the assistant solicitor for
20 Newberry. I'm prosecuting this with Deputy Solicitor Dale
21 Scott. And we're prosecutors. In other states they call
22 them district attorneys, state's attorneys, but our role is
23 to enforce the criminal laws of the State of South Carolina
24 and we operate in this courtroom.

25 So what that means is typically, say, the sheriff's

1 office, Newberry Police Department, a crime's committed,
2 they investigate, make an arrest, do the initial charging
3 and then they send the case up to us and our job is to
4 determine if there's enough evidence to proceed to court so
5 the case can be heard in front of a jury like we're doing
6 today. So that's our job, our role.

7 And the case is the State of South Carolina versus
8 Robert Wright. And the reason it's the State of South
9 Carolina, it's the People versus Robert Wright, because
10 that's what the criminal code is for. It's for the
11 protection of everyone and that's why we have criminal
12 laws and that's why the State is bringing these charges
13 and not the individual victims even though that's why
14 we're here is because of what happened to the two victims
15 in the case. They're seated right here, Cedric and
16 Precious Mayers, a couple from Little Mountain, and I'll
17 go into that in detail with some of the facts.

18 But your role is very important. It's the bedrock
19 of the criminal justice system, a jury trial. Everything
20 we do as prosecutors and defense attorneys, such as
21 Ms. Zimmerman, is all geared around the jury trial. Anyone
22 in South Carolina, in the United States, who's charged with
23 a crime, such as Mr. Wright, can demand to have a trial and
24 be heard in front of a jury of his peers. So that's you
25 guys, the residents of Newberry County. You guys determine

1 who gets the last word on crimes committed in your county.
2 And what I mean by that is your verdict. That's what it
3 means to have the last word, whether it's guilty or not
4 guilty, that's your responsibility as residents of Newberry
5 County. Law enforcement can make arrests, we can do all
6 this stuff, but at the end of the day it comes down to a
7 jury trial and it's on you to determine whether a crime
8 was committed and if the person who is on trial committed
9 that crime.

10 So what we're here today is to determine Mr. Wright's
11 guilt or innocence. He's charged with two crimes.
12 Accessory before the fact to armed robbery and burglary
13 and conspiracy to commit armed robbery and burglary. Now
14 these crimes are a little bit different because we're not
15 alleging, we're not saying that Mr. Wright is the person
16 who actually committed the armed robbery and the burglary,
17 we're saying he's the person that orchestrated this, set
18 the wheels in motion. He didn't want to get his hands
19 dirty, so get someone else to do it for him, and that's
20 why we're here, and it was all at the expense of our two
21 victims.

22 On the night of April 30, 2014, a little over a
23 year and a half ago now, they were victimized, robbed
24 at gunpoint, had their home invaded, all because of
25 Mr. Wright setting the wheels in motion. And you'll hear

1 the testimony from the officers involved in investigating
2 the case, the victims, to the actual perpetrators, the
3 individuals that committed this crime.

4 Now why is that? A lot of times in these cases
5 we have to put up the co-defendants, the people that
6 participated in the crime, because that's evidence. And
7 like it or not we have to get their testimony because
8 Mr. Wright has entered a plea of not guilty, so this is
9 evidence. We have phone records where Mr. Wright is
10 communicating with Lorenzo Jones. We have testimony,
11 statements. Mr. Jones says Mr. Wright put me up to this,
12 told me these victims had drugs and money at their house,
13 told me the who, what, when, where and why. And so that's
14 why we're here today is because Mr. Wright got Lorenzo
15 Jones and another individual, Tarakus Coleman, to do his
16 dirty work. And, you know, what is even kind of more
17 perverse about the situation is Mr. Wright's from Little
18 Mountain. He's the next door neighbor to Mr. and
19 Ms. Mayers. So he gets an individual to do his dirty work.

20 So you're gonna hear about drugs, money, things of
21 that nature. And, you know, and no disrespect to Mr.
22 and Ms. Mayers, but sometimes we can't choose, you know,
23 a perfect victim, a victim who is completely innocent,
24 victims who have real life issues. There might be drugs
25 there. That's besides the point. No one deserves to have

1 a gun stuck in their face, their door kicked in and their
2 property taken. And more was taken. Cell phones were
3 taken, which eventually leads to the break in the case, the
4 cell phones being taken, so that gives law enforcement an
5 idea of who's involved once they discover the missing cell
6 phones, which were recovered, and you'll hear testimony
7 on that.

8 But that's essentially the case. You're gonna hear
9 about Mr. Wright putting Lorenzo Jones up to it. You'll
10 hear testimony from Tarakus Coleman who will say that he
11 overheard conversations and the understanding was that
12 Mr. Mayers and Ms. Mayers had drugs and money that were
13 for the taking and it was all because of Mr. Wright's
14 information. And that's why we're here today.

15 You know, you can control the world from your cell
16 phone, particularly in this day and age. A buddy of mine
17 in the insurance business got injured in a basketball game.
18 But guess what? He was still able to work all through
19 his cell phone. He was able to e-mail, communicate with
20 customers, et cetera, so, Mr. Wright, you can accomplish
21 a lot with a cell phone. So you'll see the cell phone
22 records and how they're communicating, Mr. Wright and
23 Mr. Jones, around the time of the incident and that will
24 corroborate the testimony. You know, these individuals --
25 the charges are still pending against Lorenzo Jones and

1 Tarakus Coleman, the two men that entered the house that
2 night, but they'll get their day in court. But they're
3 not on trial, Mr. Wright is, so that's what you need to
4 remember. We're not condoning any of their conduct, but
5 it's evidence, so we have a job to do.

6 Like I said, I can't tell you -- we can't bring in
7 witnesses who are saints. We're talking about crime,
8 we're talking about unsavory characters involved, so don't
9 think just because they're State's witnesses that we have
10 condone what they've done, so understand that from the
11 beginning. And just because drugs may have been taken as
12 part of this robbery, don't let that cloud your judgment
13 on the real issue. A gun was stuck in their faces, their
14 home was invaded in the middle of the night around
15 11:00 PM. No one deserves that, even if they had marijuana
16 in the house. Focus on the real issue. Don't miss the
17 forest for the trees. At the end of this case, we're gonna
18 be asking for a verdict of guilty on both charges.

19 Accessory before the fact just means you're
20 encouraging, you're aiding and abetting someone to commit
21 a crime, and telling them the who, who, what, when and
22 where and why. That's pretty much it. Without Mr. Wright
23 this wouldn't have occurred. He encouraged Lorenzo Jones
24 and eventually Tarakus Coleman to commit this horrible act
25 to just terrorize these people. He didn't get his hands

1 dirty, but he's just as guilty as if he had gone in that
2 house with these gentlemen that night. Just as guilty.
3 You can sit back from afar, he's the puppet master, it's
4 still a crime. Keep that in mind.

5 Conspiracy, that just means that he agreed with
6 Lorenzo Jones, they had an agreement, an understanding,
7 that Lorenzo Jones was to commit an armed robbery and
8 burglary that night. That's what we have to prove. This
9 case -- everything you need to know about this case will
10 come from this witness box. Nothing else. I ask you to
11 decide the case solely on the evidence and don't decide
12 what wasn't presented. Decide this case on what was
13 presented. That's all I ask you to do. You know, we can
14 -- we can't play the "what if" game because that's endless,
15 playing the "what if". This is the case before you that's
16 been investigated, that's all we have, and it's up to you
17 to decide whether that's enough to convict Mr. Wright, and
18 I submit to you it is. And these are the type of cases we
19 deal with when we're dealing with unsavory characters such
20 as these two gentlemen that will testify for the State, so
21 that's where we are.

22 Thank you again for being here. All we're asking is
23 for the truth. We want a verdict to speak the truth. The
24 truth in your heart, in your head, in your gut, and that's
25 all we can ask for. We'll be as efficient as we can. Just

1 bear with us. It's important to all parties concerned and
2 at the conclusion of this case we'll ask you to return
3 two verdicts of guilty; accessory before the fact and
4 conspiracy. Thank you.

5 **THE COURT:** Thank you, Solicitor. Ms. Zimmerman, are
6 you ready?

7 **MS. ZIMMERMAN:** If it please the Court?

8 **THE COURT:** Yes, ma'am.

9 **MS. ZIMMERMAN:** Good morning, ladies and gentlemen.
10 I enjoy reading, I do a lot of that, and I enjoy reading
11 fiction, and I'm gonna tell you a good novelist when they
12 write their book of fiction they tie in a lot of facts, a
13 lot of things that really do exist out in the real world
14 with the rest of us because it makes their fiction more
15 believable.

16 For example, I love John Grisham. If you come to my
17 house, you're gonna find out I have every one of this
18 books, and A Time To Kill, one of his -- as a matter of
19 fact, his first book, he talks a lot about an attorney in
20 here named Jake Brigance. Jake is a fictional character,
21 but to make him believable Jake goes to Ole Miss, a very
22 real law school that does exist in Mississippi, a good law
23 school. And there's a whole lot of racial strife in this
24 novel and John Grisham talks a lot about the Ku Klux Klan,
25 a real white supremacist group. He doesn't make up his own

1 group because his book is more believable if it stays in
2 some type of fact even though the story he's telling is
3 fiction.

4 Now I've spent a lot of time in front of this very
5 jury box in front of ladies and gentlemen just like
6 yourselves telling you that this is not fiction, this is a
7 real courtroom, and don't believe what you've seen on TV,
8 this isn't CSI, and the judge told you kind of the same
9 thing, and I'm gonna tell you what we're here to hear today
10 is very serious. It's important to Mr. and Ms. Mayers
11 because the fact is someone really broke in on them and
12 you're gonna hear from individuals who really did it. And
13 it was an absolute tragedy that they had to experience this
14 horrible thing. And my client really does live next door
15 to them. That's really based in fact. They're really
16 gonna show you crime scene photos and they're gonna show
17 you phone records, which are facts. But like John Grisham,
18 like a good fiction teller, they're gonna take all those
19 facts and wrap them up in a nice pretty bow and they're
20 gonna want you to get so wrapped up in the things that are
21 real that you start believing the fiction.

22 Ladies and gentlemen, please listen very closely.
23 Listen to what's real and listen to what's not. My client
24 was not involved in this crime. There were individuals
25 who went and broke in on these two victims, but my client

1 is not guilty of organizing this, putting this together,
2 conspiring, whatever, you know, the State wants to paint.
3 That's all a nice pretty fiction and it's up to you to
4 separate the truth from the story. Thank you.

5 **THE COURT:** Thank you, Ms. Zimmerman.

6 Solicitor, are you ready to call your first witness?

7 **MR. DANIEL:** Yes, sir, Your Honor. The State calls
8 officer Shawn Carnes.

9 SHAWN CARNES,
10 having been duly sworn, testified as follows:

11 **THE COURT:** Have a seat and state your name.

12 **THE WITNESS:** My name is Shawn Carnes.

13 DIRECT EXAMINATION

14 BY MR. DANIEL:

15 Q. You're a deputy with the Newberry County Sheriff's
16 Office?

17 A. Yes, sir, I am.

18 Q. And were you on duty the night of April 30, 2014?

19 A. Yes, sir, I was.

20 Q. On that date, did you receive a call to 2890
21 Holy Trinity Church Road in Little Mountain?

22 A. Yes, sir.

23 Q. You were dispatched out to that location?

24 A. Yes, sir.

25 Q. And what was that call in reference to?

1 A. Initially communications indicated it was in reference
2 to a someone trying to kick in the front door. While
3 en route it was discovered it was actually an armed robbery
4 or home envision.

5 Q. And that information was received from a 9-1-1 call?

6 A. Yes, sir. Well, communicated to us through
7 communications, but, yes, sir.

8 Q. And communications was relaying what the 9-1-1 caller
9 was saying?

10 A. Yes, sir.

11 Q. And since this incident, have you had a chance to
12 listen to this 9-1-1 call?

13 A. Yes, sir, I have.

14 **MR. DANIEL:** Your Honor, at this time I'd play the
15 9-1-1 call. Publish it.

16 **THE COURT:** Okay. That is State's Exhibit 14?

17 **MR. DANIEL:** Yes, sir.

18 **THE COURT:** Any objection?

19 **MS. ZIMMERMAN:** No objection.

20 (Whereupon, State's Exhibit Number 14, the 9-1-1 call,
21 was played for the Court and jury.)

22 BY MR. DANIEL:

23 Q. Deputy Carnes, it's my understanding -- was there
24 another dispatcher relaying this conversation to you?

25 A. Yes, sir.

1 Q. All right. So you're dispatched out to 2890 Holy
2 Trinity Church Road in Little Mountain on April 30th of
3 2014?

4 A. Yes, sir.

5 Q. All right. About what time were you dispatched to
6 this location?

7 A. The incident report reflects it was 2318 or 11:18 PM.

8 Q. Okay. Nighttime. And that is in Newberry County just
9 for jurisdiction purposes?

10 A. Yes, sir. Little Mountain, Newberry County, yes, sir.

11 Q. Okay. And when you first arrive, what do you observe?
12 Who did you meet with?

13 A. I'm encountered by what I've got listed as Victim
14 Number 2, which is Mr. Cedric Mayers, and we briefly go
15 over what's going on, you know, what happened and then go
16 in the house and see that the house has been ransacked and
17 interview him as to what happened, and once we do that we
18 notify investigators to come and respond.

19 Q. So you encountered Cedric Mayers at this -- and he
20 lives at 2890 Holy Trinity Church Road?

21 A. At the time, yes, sir.

22 Q. And where do you encounter him? In the yard? In the
23 house?

24 A. If I remember -- if memory serves me right, it was the
25 yard, but I can't be for certain.

1 Q. Okay. I'm gonna show you a number of photos that have
2 been stipulated that they come into evidence. I'll show
3 you State's Number 1 and do you recognize that?

4 A. Yes, sir. That's the porch doorway leading into the
5 residence at the incident location, 2890 Holy Trinity
6 Church Road.

7 Q. Okay. And when you initially arrived, was there
8 anyone else besides Cedric Mayers there?

9 A. No, sir. The other victim in the case, she was still
10 at the neighbor's house.

11 Q. Okay. And we heard that on the 9-1-1 call?

12 A. Yes, sir.

13 Q. I'm gonna show you State's Number 2 and what is that?

14 A. That's the front door to the location. It opens into
15 the living room.

16 Q. Okay. And were there signs of forced entry?

17 A. There were signs of forced entry. I don't, you know,
18 see it in this particular picture from I'm looking at. I
19 know there -- that picture.

20 Q. State's Number 3?

21 A. You can see in that one, the -- where the wood to the
22 frame of the door was broke, and that's the doorway -- the
23 same doorway.

24 Q. And what was Cedric Mayers' demeanor like at this
25 point?

1 A. He was pretty up -- I mean, he was upset about the
2 whole thing.

3 Q. And what -- what crimes did he report had occurred at
4 his residence?

5 A. That someone had kicked in his front door and forced
6 them on the ground at gunpoint and ransacked the house
7 looking for money and what they referred to as some type of
8 stash.

9 Q. Stash?

10 A. That's what it was referred to me as, stash.

11 Q. I'll show you State's Number 4. What is that?

12 A. That's the bedroom at the location where, you know,
13 you can see where it's been ransacked as far as looking for
14 something.

15 Q. Okay. And then I'll show you State's Number 6.

16 A. That's gonna be the living room area of the location
17 where -- and you can see where it's been ransacked,
18 cushions tossed, like looking for something.

19 **THE COURT:** What number is that, Solicitor?

20 **MR. DANIEL:** State's Number 7, Your Honor. I'm sorry.
21 There's different numbers on the computer. State's Number
22 7 -- or State's Number 6. My apologies.

23 **BY MR. DANIEL:**

24 Q. Okay. And that's the living room area?

25 A. Yes, sir.

1 Q. And is that the front door we can see on the left side
2 of that photo?

3 A. Yes, sir.

4 Q. Okay. All right. And at what point did -- did
5 Precious Mayers arrive on the scene?

6 A. I'd already talked with Mr. Mayers for a good bit and
7 got what he had -- gathered, you know, what had happened
8 from him and it was after that, so it was after a few
9 minutes of being on the scene. It wasn't an extended
10 period of time, but a few minutes.

11 Q. Did additional units arrive on-scene?

12 A. I did notify and had investigators come, so we had
13 investigative units that did respond. I think there were
14 other patrol units that arrived on-scene that's not
15 referenced in the report, I don't recall, but I know that
16 we did have investigators respond. We had Lieutenant
17 Lominack and Sergeant Brad Epps.

18 Q. Okay. Lieutenant Lominack would have taken these
19 photos?

20 A. Yes, sir.

21 Q. And he did the investigation in this case?

22 A. To my knowledge, yes, sir.

23 Q. I'll finish showing you these photos. State's
24 Number 7?

25 A. That's a different angle of in the living room.

1 Q. State's 5?

2 A. And that's gonna be -- it would be from the bedroom.

3 Q. All right. And explain -- was that the extent of your
4 role in this case as the responding officer?

5 A. As responding officer, you know, I did fill out
6 different victims forms and assist with getting statements.

7 Q. All right. And you were dispatched at what time you
8 said approximately?

9 A. The -- getting the time from communications, it
10 reflects it was 2318, which is 11:18 PM.

11 Q. Now that's what time -- is that what time you arrived
12 at the incident location?

13 A. No, my arrival time reflects that it was 2327, which
14 is 11:27, so about -- what are we saying? About nine
15 minutes from dispatch time.

16 Q. Okay. And about how long did you stay there on the
17 scene?

18 A. It's saying that my departure time was 1:16 AM. Until
19 about 1:16 in the morning.

20 Q. And at that time were there any suspects?

21 A. Not to my knowledge. The victims didn't say they knew
22 who it was or have an idea, so we didn't have any suspects
23 at that time.

24 Q. And that's why it was turned over to investigations?

25 A. Yes, sir. I mean, that and the severity of the crime.

1 **MR. DANIEL:** No further questions. Please answer any
2 Ms. Zimmerman has for you.

3 **THE COURT:** Cross-examination?

4 **MS. ZIMMERMAN:** No questions.

5 **THE COURT:** Thank you, sir, for you testimony. You
6 can step down. You're welcome to remain with us or you're
7 free to go.

8 (Witness excused.)

9 **MR. SCOTT:** The State calls Precious Mayers.

10 PRECIOUS MAYERS,

11 having been duly sworn, testified as follows:

12 **THE CLERK:** Have a seat and state your name, please.

13 **THE WITNESS:** My name is Precious Mayers.

14 **THE COURT:** Ma'am, you're gonna need to sit close to
15 the microphone so we can hear you, okay?

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q. Precious, I was just fixing to say that you're real
19 soft spoken, so you've got to --

20 A. My name is Precious Mayers.

21 Q. And that was your voice on that 9-1-1 call we just
22 listened to?

23 A. Yes, that's correct.

24 Q. Do you remember that night?

25 A. (Nods head.)

1 Q. You've got to say yes or --

2 A. Yes. Yes, I do.

3 Q. Is that -- is that gonna be something you think you'll
4 ever forget?

5 A. No.

6 Q. Before then had you ever had somebody break into your
7 house before like that?

8 A. No.

9 Q. Had you ever had a gun pointed at you like that?

10 A. No.

11 Q. What all were y'all up to? This was April 30, 2014.

12 A. Yes. We -- we had been out that night and we had just
13 came home putting up a sound bar sitting in the living
14 room.

15 Q. All right. Where had y'all been?

16 A. To Columbia shopping.

17 Q. Down at Harbison?

18 A. Yes, that's correct.

19 Q. And y'all went to, what, H.H. Gregg to get a sound
20 system?

21 A. Yes, that's correct.

22 Q. All right. So you come back to your home and what was
23 the address again?

24 A. 2890 Holy Trinity Church Road.

25 Q. All right. That's in Newberry County?

1 A. Yes, that's correct.

2 Q. Y'all came back and do you remember about what time
3 you got home?

4 A. I want to say it was around ten-ish. Around 10:00.

5 Q. P.M.?

6 A. Yeah.

7 Q. Kind of a dumb question, but dark outside?

8 A. Yes, it was dark.

9 Q. It was nighttime?

10 A. Yes.

11 Q. Did you have the front door locked, do you remember?

12 A. Yes, it was locked.

13 Q. Okay. So who all was there in the -- in the house
14 with you?

15 A. Just me and Cedric.

16 Q. Cedric Mayers sitting right here?

17 A. Yes.

18 Q. Okay. And you said y'all had just bought the sound
19 bar or the sound system and y'all were setting it up?

20 A. Yes, that's correct.

21 Q. Let me get this out of the way. Now y'all had gone
22 down to Columbia to get a sound system, but you'd also
23 gotten a little bit of weed, too, right?

24 A. Yeah, earlier that day.

25 Q. Okay. Y'all picked up some marijuana --

1 A. Yes.

2 Q. -- and brought it back to the house? Who else was at
3 home, just you and Cedric?

4 A. (Nods head.) Yes.

5 Q. Okay. Y'all have got grand -- I was over at y'all's
6 house the other day, wasn't I --

7 A. Yes.

8 Q. -- talking with you two?

9 A. Yes, that's correct.

10 Q. Y'all had a bunch of grand babies in the house?

11 A. Yes, that's correct.

12 Q. All right. Do they go over there regularly?

13 A. Yeah. Not -- not regularly, but sometimes, yeah.

14 Q. Okay. They weren't there that night though?

15 A. No, they wasn't.

16 Q. All right. So just -- I guess go ahead and tell the
17 jury what happened. Y'all were setting the sound system up
18 and it was just the two of y'all?

19 A. Yeah, and I heard a noise at the door, but I thought
20 it was like a tree branch or something because it was kind
21 of stormy, it was coming up a storm that night, so I didn't
22 think nothing else of it until the door flung open and I
23 seen two guys in the door holding us at gunpoint asking us
24 where the stuff was, where the -- they said, "Where the
25 shit at?". I ain't -- we didn't have nothing, couldn't

1 give them nothing, so we told them we didn't have nothing.
2 They started getting frustrated running through the house
3 trying to find stuff and then they took Cedric's pants, his
4 phone, and they took my purse and left -- and made us get
5 on the floor before they left.

6 Q. Okay. Describe these two. On the 9-1-1 call you said
7 -- were they male or female?

8 A. Both of them were males. One was kind of heavysset
9 build, one was a little smaller guy. They were both
10 wearing dark clothes with masks over their face.

11 Q. Okay.

12 A. Like -- like you could see their eyes and mouth area.

13 Q. Okay. Could you tell they were white or black?

14 A. They looked black to me.

15 Q. And did you say one was taller than the other or one
16 was just bigger in general than the other?

17 A. Yeah, he was a little taller and bigger.

18 Q. Which one had the gun?

19 A. The bigger guy.

20 Q. Okay. And the first thing he does when he kicks in
21 the door, what does he do? Lay you on the ground?

22 A. No, he doesn't. He just holds the gun at us and asked
23 us where it's at while the other guy runs through the house
24 with a purse putting stuff in it.

25 Q. He took your purse and he was collecting stuff in your

1 purse?

2 A. He took my purse, but he had a different purse that he
3 was putting stuff in.

4 Q. Okay. Do you know about how long they were there?

5 A. I really can't tell you. It seemed like forever.
6 They was holding us at gunpoint.

7 Q. You said they took your purse and they took Cedric's
8 phone. What else did they take?

9 A. The little bit of marijuana we had and his pants.

10 Q. Any money go missing?

11 A. Yeah, I had a couple of dollars in my purse that was
12 inside my purse that they took.

13 Q. Okay. Any large amounts of money that you remember?

14 A. No, probably like sixty or seventy dollars.

15 Q. All right. If I was to go to Little Mountain and then
16 veer off to the left on Holy Trinity Church Road, is your
17 house on the right or the left?

18 A. Right.

19 Q. Okay. And if I travelled -- what is the next house
20 beside you if I keep going in that direction on the right?

21 A. Rob's.

22 Q. Who?

23 A. Rob and Tressa's house.

24 Q. Who's Rob?

25 A. That guy over there.

1 Q. Who's Tressa?

2 A. The lady sitting behind him.

3 Q. Okay.

4 **THE COURT:** All right. Let the record reflect that
5 she pointed at the Defendant and presumably pointed at the
6 lady behind the Defendant and not Ms. Zimmerman.

7 BY MR. SCOTT:

8 Q. Okay. What was Tressa -- the one with the scarf is
9 who you're talking about, the black lady?

10 A. The lady with the dreads in her hair.

11 Q. Okay. And do you know Rob by anything else?

12 A. Black Rob.

13 Q. Black Rob?

14 A. (Nods head.)

15 Q. Precious, is that what you said?

16 A. Yes, that's correct.

17 Q. Is that something he goes by? Do a lot of people know
18 him by that?

19 A. Yeah.

20 Q. All right. What's his last name, do you know it?

21 A. Wright.

22 Q. Are you somehow related to him?

23 A. Yeah.

24 Q. All right. Have you known him a long time?

25 A. Long -- long enough.

1 Q. Okay. What's y'all's relationship like?

2 A. None.

3 Q. Okay. But y'all lived next door --

4 A. Neighbors.

5 Q. Neighbors is about it? I mean, I was at y'all's house
6 the other day. How far is your front door from his front
7 door?

8 A. I wouldn't even say it's fifty feet. Not far.

9 Q. Let me show you State's Number 17. Do you recognize
10 that, Precious?

11 A. Yes.

12 Q. And what is that?

13 A. It looks like my house and my driveway, Rob's house,
14 their driveway, the dump down the street, and the house
15 that's vacant down the street.

16 Q. Okay. All right. So this gravel lot, that's the dump
17 right there?

18 A. Yeah, the gravel. Yeah. Yeah, it is.

19 Q. All right. And then there's a house right next to it.
20 Is that an occupied house?

21 A. No, that house -- house is not occupied.

22 Q. All right. And then the next trailer beside that,
23 whose is that?

24 A. That's Rob and Tressa's trailer.

25 Q. Rob and Tressa's trailer. And the next one beside

1 that is whose?

2 A. My trailer and Cedric's trailer.

3 Q. All right. And you say about fifty feet between the
4 two?

5 A. Yes.

6 Q. Okay. All right. Tell me what did the guys say to
7 you while they were holding the gun on you besides where's
8 the stuff at.

9 A. Not too much really. We was trying to talk them out
10 of not shooting us, so they really weren't saying anything
11 until they told us to shut up.

12 Q. I mean, was that something you were in fear of, being
13 shot to death?

14 A. Yes.

15 Q. You said it seemed like they were there forever?

16 A. Yes.

17 Q. Did they have any final instructions before they left?

18 A. They just told us to get on the floor and they told us
19 that if they heard their name they were coming back.

20 Q. Okay. Do you know about how long you stayed on the
21 ground before -- after they left?

22 A. Maybe a few minutes. Not too long.

23 Q. Okay. And what did you do after -- after that?

24 A. We had to go next door to call someone because they
25 took our cell phones and we couldn't call anybody, so we

1 had to go next door to get a phone.

2 Q. All right. In the -- in the 9-1-1 you said you went
3 two doors down?

4 A. Yeah.

5 Q. Why didn't you go to Robert Wright's house?

6 A. We just didn't.

7 Q. Was that -- did that ever cross your mind to go to his
8 house?

9 A. No.

10 Q. So even though he's a relative?

11 A. No.

12 Q. All right. But what you did is you went two -- two
13 houses over to use the phone?

14 A. That's correct.

15 Q. Do you see that trailer in the photograph on 17?

16 A. No, it's not in this photograph.

17 Q. Okay. Well, if you could you step down, Ms. Mayers,
18 with the judge's permission.

19 **THE COURT:** Sure. Yes.

20 (Whereupon, the witness steps down from the witness
21 stand.)

22 BY MR. SCOTT:

23 Q. In the aerial here, do you see the home you went to
24 to use the telephone?

25 A. (Indicating.)

1 Q. Okay. And was that somebody you knew?

2 A. Yes.

3 Q. Was that somewhere you felt was safe to use the phone?

4 A. Yes.

5 (Whereupon, the witness returns to the witness stand.)

6 Q. All right. So were you able to kind of regain your
7 composure to some degree once you got there?

8 A. Not really. I was scared.

9 Q. Was that you crying on the 9-1-1 call we listened to?

10 A. Yes.

11 Q. I'm sorry. I know I asked you a question, but I can't
12 remember what the answer was. Did they take one of your
13 phones, too?

14 A. Yes, they took both of our phones.

15 Q. Okay. All right. Then when you got your phone back,
16 how many days later was it?

17 A. I'm not sure the exact number of days it was, but it
18 wasn't -- I think it was more than two days, maybe three
19 days.

20 Q. Who gave the phone back to you?

21 A. Detective Lominack brought my phone back to my house.

22 Q. So law enforcement retrieved the phone from somebody
23 we'll hear about later?

24 A. Yes.

25 Q. And did it have any -- was there anything different

1 about it?

2 A. It was all sticky and stuff, it had debris on it, it
3 had to be cleaned, and it was like almost dead when it
4 was taken, so I don't think they could have used it much
5 though. It was just dead and sticky on it.

6 Q. So it had some -- something sticky on it?

7 A. (Nods head.)

8 **MR. SCOTT:** All right. I think that's all. Answer
9 any questions Ms. Zimmerman has for you, okay?

10 **THE COURT:** Cross-examination?

11 **MS. ZIMMERMAN:** Just briefly.

12 **THE COURT:** Sure.

13 CROSS-EXAMINATION

14 BY MS. ZIMMERMAN:

15 Q. Ms. Mayers, I know this was probably a tragic
16 situation, so I just want to make sure that I understand
17 exactly what happened. You said two men came in, right?

18 A. Yes, ma'am.

19 Q. Any doubt as to whether there was more than two men?

20 A. Not more than two men came in my house, no.

21 Q. Just two. And they went through the house looking; is
22 that correct?

23 A. Yes, ma'am.

24 Q. And then when they went to leave they told you guys to
25 lay down on the floor; is that right?

1 A. Yes, ma'am.

2 Q. Okay. And then you laid there for a few minutes; is
3 that right?

4 A. Yes, ma'am.

5 Q. Okay. No idea exactly how long, right? Probably just
6 scared, kind of going crazy, right?

7 A. Yes, ma'am.

8 Q. When you came out of the house to go to the neighbor's
9 house, did you see anybody outside?

10 A. No, ma'am. I wasn't looking. I was trying to get
11 away as fast as I could before bullets started flying.

12 Q. And you didn't talk to anybody on the way or see
13 anybody on the way, you just went straight to the house,
14 right?

15 A. Yes, ma'am.

16 Q. When you came out of the house, did you have in your
17 mind where you were going?

18 A. Yes, I knew exactly where I was going when I walked
19 out the door.

20 Q. And you probably ran; is that right?

21 A. Yes.

22 Q. Scared, trying to get there as quick as you could?

23 A. Yes.

24 Q. I'm sure everything seems kind of like a blur now
25 looking back, right?

1 A. A little, but not really. I remember.

2 Q. Okay. Has Mr. Wright ever been inside your house?

3 A. Not -- not as long as I've been living there he
4 hasn't.

5 Q. Y'all live next door, but kind of go about your own
6 separate lives; is that right?

7 A. That's correct.

8 Q. You've never been over to his house either?

9 A. Well, I -- I have been over there just to give the
10 water bill because we have to pay the water bill every
11 month. So if I go over there, it's to hand Tressa some
12 water bill money or either I put it in the mailbox. Other
13 than that, we don't have no words with each other.

14 Q. Y'all just go about your own separate lives. Has
15 Tressa ever been over to your house?

16 A. No, not as long as I've been living there.

17 **MS. ZIMMERMAN:** No further questions.

18 **THE COURT:** Any redirect?

19 **MR. SCOTT:** No, sir.

20 **THE COURT:** Okay. Thank you, ma'am, for your
21 testimony. You can step down.

22 (Witness excused.)

23 **THE COURT:** Let's take a ten minutes recess.

24 Ladies and gentlemen, we're gonna take a morning
25 break for about ten minutes. Again, I'll remind you no

1 discussion among yourselves about this case and we'll get
2 you back out shortly and continue with the proceedings.
3 And I remind you, Mr. Foreman, when you come back out
4 you'll take that first seat there, okay?

5 (Whereupon, the jury retires to the jury room at
6 10:51 AM.)

7 **THE COURT:** Okay. We'll be in recess about ten
8 minutes.

9 (Recess taken.)

10 **BAILIFF:** All rise.

11 **THE COURT:** Thank you. Have a seat.

12 Okay. Are we ready to bring the jury back out?

13 **MR. SCOTT:** Yes, sir.

14 **THE COURT:** Okay, Madam Bailiff.

15 (Whereupon, the jury returns to the courtroom at
16 11:11 AM.)

17 **THE COURT:** Okay. Let the record reflect the jury
18 is back in. Solicitor, are you ready to call your next
19 witness?

20 **MR. SCOTT:** I am, Your Honor. The State calls Cedric
21 Mayers.

22 **THE COURT:** Come around, please, sir.

23 CEDRIC MAYERS,

24 having been duly sworn, testified as follows:

25 **THE CLERK:** Have a seat and, please, state your

1 name.

2 **THE WITNESS:** Cedric Mayers.

3 **THE COURT:** Mr. Mayers, be sure to sit close to the
4 microphone, okay?

5 DIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q. All right. Cedric, where do you live?

8 A. 2890 Holy Trinity Church Road.

9 Q. Holy Trinity?

10 A. Church Road.

11 Q. All right. Little Mountain?

12 A. Little Mountain, South Carolina.

13 Q. And that's Newberry County?

14 A. Yes, sir.

15 Q. How long have you lived there?

16 A. About three years now, I think, maybe two and a half,
17 something like that. Three, two and a half. I'm not quite
18 sure.

19 Q. Can everybody hear him? You've got to speak up.

20 A. I'm not quite sure. Maybe two years, something like
21 that. Two and a half, something like that.

22 Q. About two and a half years?

23 A. (Nods head.)

24 Q. Who are your neighbors?

25 A. I have two neighbors. My aunt Tricia lives on one

1 side, on my left-hand side, and Robert and Tressa live on
2 my right-hand side.

3 Q. Okay. Are you related to Robert Wright in any way?

4 A. Yes, sir. That's my second cousin.

5 Q. Okay. Do y'all have -- what is your relationship with
6 him?

7 A. We don't really have a relationship. We don't, you
8 know, really get along. We don't have any type of -- we
9 just live next to each other. That's it.

10 Q. Okay. April 30, 2014, what do you remember doing that
11 night?

12 A. We came in from Columbia. I remember unpacking,
13 sitting down, and then as soon as I sat down the door came
14 off the hinges, two guys came through the door, one had a
15 gun. He asked where the stuff was at, where the money was
16 at. We did a little talking. He told us to shut up. I
17 asked him not to hurt Precious because she was pregnant.
18 They ran through the house and took -- before they left
19 they took her pocketbook, our cell phones, car keys, and
20 took my pants.

21 Q. And took your pants off?

22 A. Yes, sir.

23 Q. What kind of phone did you have?

24 A. An iPhone.

25 Q. Okay. Describe the two guys. What did the guy with

1 the gun look like?

2 A. I couldn't tell you what he looked out. I can tell
3 you his build.

4 Q. That's right. That's what I meant. Tell me his
5 build.

6 A. About six feet, 220.

7 Q. Okay.

8 A. The skin I could see looked dark in color, but --

9 Q. But he was a bigger guy though?

10 A. Yeah, he was a big guy.

11 Q. Appeared to be a black guy?

12 A. Sir?

13 Q. Appeared to be a black guy?

14 A. Yes, sir.

15 Q. Tell me about the other one.

16 A. Just a little smaller guy.

17 Q. Did he have a gun?

18 A. No, not that I saw.

19 Q. Okay. So the big one with the gun, he held it on
20 y'all, and then what -- what was the shorter one doing?

21 A. Just ransacked the house.

22 Q. Okay. And did you have any money for them?

23 A. I had maybe \$40 in my pants.

24 Q. Okay. And they said they were looking for -- what
25 were they saying? Where's the what at?

1 A. Where's the shit, where's the money, where's the dope
2 at.

3 Q. Okay. And did you tell them about the marijuana you
4 had? Did you point that out to them?

5 A. Yes.

6 Q. Okay. You freely gave that up?

7 A. Yeah.

8 Q. Were they continuing to look even after you gave them
9 that stuff?

10 A. Actually that was -- that came closer towards the end
11 when he took the pants and the car and keys all that stuff.

12 Q. About how long do you think they were in there?

13 A. Probably about three minutes.

14 Q. Okay. Did they tear the inside of the house up pretty
15 good?

16 A. Yeah, as far as just misplacing things, going through
17 some stuff, yeah.

18 Q. Okay. I think we have a picture of it. I'll show
19 you State's Number 6. Is that kind of -- is that what the
20 inside of your living room looked like after they were
21 done?

22 A. Yes, sir.

23 Q. They had taken the couch cushions off and everything
24 like that?

25 A. Yes, sir.

1 Q. And it looks like they flipped some other cushions up?

2 A. Uh-huh, took the couch cushions off, went through the
3 little blue tub that was in the living room.

4 Q. The what? The little what?

5 A. The blue tub.

6 Q. That tub? Okay. So they were going through all of
7 this stuff looking for something?

8 A. Yes, sir.

9 Q. Okay. Do you remember -- did you notice them finding
10 anything under those cushions or in that Tupperware?

11 A. No, sir.

12 Q. What did they tell you before they left?

13 A. They -- the bigger guy looked at our ID's -- well, he
14 looked at my ID. I'm not sure if they looked at Precious'
15 because she had a -- a pocketbook and he said he knew who
16 we were and where we lived at and if we hear our name,
17 we'll be back.

18 Q. So he took your ID and said I know where you live and
19 I know your name, so if I hear my name I'll be back?

20 A. Yes, sir.

21 Q. Okay. And then they left?

22 A. Yes, sir.

23 Q. Dark outside? Was it dark outside?

24 A. Yes, sir.

25 Q. What time did you say this was? About what time?

1 A. Between ten and eleven.

2 Q. Okay.

3 A. I'm not sure about the exact time, but around ten or
4 eleven.

5 Q. All right. And I saw this picture, State's Number 3.
6 Was that what it looked like after they kicked the door in?

7 A. Yes, sir. That's the moulding from around the door.

8 Q. And you certainly didn't invite these people in your
9 house that night?

10 A. No, sir.

11 Q. Okay. How long did you stay on the floor after they
12 left?

13 A. I stayed on the floor maybe about -- actually about
14 ten seconds. I had to get some pants on, Precious had to
15 get some shoes on, so after -- we were outside in about a
16 minute.

17 Q. Okay. So you stayed on the floor a little while after
18 they left and then you had to get dressed and then you went
19 where?

20 A. Two houses over to a friend's house to use the phone.

21 Q. Okay. That's where you called 9-1-1?

22 A. Yes, sir.

23 Q. Okay. Did you talk to law enforcement that night?

24 A. Yes, sir.

25 Q. Okay. You told them everything that happened?

1 A. Yes, sir.

2 Q. Did you tell them anything different than what you're
3 telling us right now?

4 A. No, sir, not that I recall.

5 Q. Okay. And you told them that they had taken an iPhone
6 from you?

7 A. Yes, sir.

8 Q. Okay. What is the Find My iPhone App?

9 A. It's a feature that helps me find my lost or stolen
10 phone.

11 Q. How does it work? Like if I lost my iPhone and I have
12 that app, how would I use it?

13 A. I can just log in from any computer and put my
14 information in and it will tell me where my phone's at.

15 Q. Okay. So did you utilize that?

16 A. I couldn't that night because no one around me had
17 the app downloaded, but the next day -- the next morning a
18 friend let me use his phone and I found it and I called
19 Newberry and told them where my phone was, but I had to
20 come to Newberry to enter my information so they could find
21 it.

22 Q. Okay. Let me ask you something. Do you know Lorenzo
23 Jones?

24 A. No.

25 Q. Do you know Tarakus Coleman?

- 1 A. No.
- 2 Q. But you know Robert Wright?
- 3 A. Yes.
- 4 Q. And he's your next door neighbor?
- 5 A. Yes.
- 6 Q. All right. So the next morning after your house gets
- 7 broken into by these two guys and your iPhone gets taken,
- 8 you say you used a friend's Find My iPhone App?
- 9 A. Yes, sir.
- 10 Q. And you put in your information, I guess, and it
- 11 showed a location where your phone was located?
- 12 A. Yes, sir.
- 13 Q. And you told law enforcement about it?
- 14 A. Yes, sir.
- 15 Q. Okay. And at some point after that, did they give you
- 16 back your phone?
- 17 A. A couple of days. A couple of days. They had to get
- 18 some information out of it, I think, but -- I think they
- 19 actually got the phone later that day, but they had to get
- 20 some stuff out of it, but they returned it to our home
- 21 about two days after that.
- 22 Q. Okay. Precious said hers was covered with something
- 23 sticky. What was yours like?
- 24 A. Mine?
- 25 Q. Yes, yours.

1 A. It was a little -- it was a little yanky, it had water
2 damage, I think. I had to get it replaced, but a little
3 damaged, some liquid inside of it.

4 Q. Did you ever get your pants or your ID back?

5 A. No, no.

6 Q. Keys?

7 A. Yes, sir.

8 Q. You did get your keys back?

9 A. Yes, sir.

10 Q. Okay. And money and the marijuana was taken.
11 Anything else they took?

12 A. (Shakes head.) That's it.

13 Q. Tell me about the pistol, what you remember about the
14 pistol they held on you.

15 A. Excuse me?

16 Q. Tell me about the pistol, what you remember about it.

17 A. It was a dark colored pistol.

18 Q. A dark colored what?

19 A. Handgun.

20 Q. Okay. Did you get a good chance to take a look at it?

21 A. Not really. Just a glance -- first glance when they
22 came in.

23 Q. But it was pointed at you?

24 A. Yes, sir.

25 Q. And pointed at Precious?

1 A. Yes, sir.

2 Q. Did you say she was pregnant at the time?

3 A. That's what I told them --

4 Q. That's what you told them?

5 A. -- but she wasn't.

6 Q. Okay. That was just something you said?

7 A. (Nods head.)

8 Q. Okay.

9 **MR. SCOTT:** All right. Thank you. Answer any
10 questions Ms. Zimmerman has for you.

11 **THE COURT:** Cross-examination?

12 CROSS-EXAMINATION

13 BY MS. ZIMMERMAN:

14 Q. Mr. Mayers, you mentioned earlier you know my client,
15 right, Mr. Wright?

16 A. Yes.

17 Q. How long have y'all lived next door to each other?

18 A. About two years, maybe a little longer.

19 Q. And he's never been over to your house, correct?

20 A. I can't say that. Not since I've been there.

21 Q. Okay. Never been over to visit with you or anything
22 like that?

23 A. Not with me, no.

24 Q. Okay. You two have never had a fight, right? A
25 physical fight, any kind of fist fight, anything like that.

- 1 A. We -- we've had some altercations.
- 2 Q. Okay. How about since y'all have been living next to
3 each other?
- 4 A. No.
- 5 Q. Okay. Y'all kind of go about your separate ways?
- 6 A. Yes.
- 7 Q. You mind your business, he minds his, right?
- 8 A. Yes, ma'am.
- 9 Q. Okay. How much marijuana did y'all have that night?
- 10 A. About twenty dollars' worth.
- 11 Q. Can you give me an idea just -- is that in a bag?
- 12 A. Yes, ma'am.
- 13 Q. Okay. About how big of a bag is twenty dollars'
14 worth?
- 15 A. (Indicating.)
- 16 Q. And that's all the drugs that were in the house,
17 right?
- 18 A. Yes, ma'am.
- 19 Q. No other kind of drugs?
- 20 A. No other kind of drugs.
- 21 Q. And how much money did you say you had on you?
- 22 A. I had \$40 in my pocket. I think around forty, sixty,
23 but not much. But I think \$40.
- 24 Q. No large stash of cash anywhere, right?
- 25 A. No.

1 Q. How about Tressa, do you know her?

2 A. I know her as far as seeing her. I don't know her
3 personally.

4 Q. That's my client's wife, right?

5 A. Yes, sir. Yes, ma'am. Sorry.

6 Q. Has she ever been over to the house to visit with
7 you?

8 A. No, ma'am.

9 Q. Kind of the same thing; you go about your business,
10 she goes about hers, right?

11 A. Basically.

12 Q. Have you ever been over there to visit them?

13 A. No, ma'am.

14 **MS. ZIMMERMAN:** No further questions.

15 **THE COURT:** Any redirect?

16 **MR. SCOTT:** No, sir.

17 **THE COURT:** Thank you for your testimony, sir. You
18 can step down.

19 (Witness excused.)

20 **MR. SCOTT:** The State calls Tarakus Coleman.

21 TARAKUS COLEMAN,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** Please state your name.

24 **THE WITNESS:** Tarakus Coleman.

25 **THE COURT:** Sit close to that microphone, Mr. Coleman,

1 so we can hear you, okay?

2 DIRECT EXAMINATION

3 BY MR. SCOTT:

4 Q. All right. Mr. Coleman, how old are you?

5 A. Twenty-three.

6 Q. And where are you from?

7 A. Newberry.

8 Q. Okay. Have you got any ties to Little Mountain,
9 South Carolina?

10 A. No.

11 Q. Did you happen to be there April 30th of 2014?

12 A. Yes.

13 Q. Okay. Who were you there with?

14 A. Lorenzo Jones.

15 Q. Who's Lorenzo Jones?

16 A. Hootie.

17 Q. Hootie?

18 A. Uh-huh.

19 Q. That's his nickname?

20 A. (Nods head.)

21 **THE COURT:** What's the nickname?

22 **MR. SCOTT:** They call him Hootie. Sometimes Hootie
23 Mack.

24 **THE COURT:** Okay.

25 BY MR. SCOTT:

1 Q. But Lorenzo Jones, how do you know him?
2 A. We grewed up together.
3 Q. Y'all grew up where?
4 A. Newberry.
5 Q. He's from Newberry, too?
6 A. Yeah.
7 Q. April 30, 2014, did you meet up with him that day?
8 A. With Lorenzo Jones?
9 Q. Yeah.
10 A. Yeah, earlier that day.
11 Q. Do you remember about what time?
12 A. Probably like twelve. Twelve.
13 Q. All right. At noon?
14 A. Yeah, at noon.
15 Q. Okay. Did he have something that he was wanting you
16 to help him with?
17 A. He said he had a lick for me.
18 Q. What's a lick?
19 A. A robbery.
20 Q. A robbery?
21 A. (Nods head.)
22 Q. And what were you hoping to get out of it?
23 A. \$8,000 and some crack.
24 Q. Okay. That's what -- was that what Lorenzo said was
25 in it --

1 A. Yeah.

2 Q. -- if y'all did the lick?

3 A. Yes, sir.

4 Q. Tell me what else he was saying.

5 A. He said he had a lick for me and he was gonna show me
6 where it was at and they were gonna show me how to get to
7 the spot and what was supposed to have been there and took
8 me to the scene and showed me around and --

9 Q. Where was the scene?

10 A. In Little Mountain.

11 Q. Okay. And what was the -- what was the location? Was
12 it a house, was it a brick house, was it?

13 A. Once we got there, it was a trailer.

14 Q. Uh-huh.

15 A. He showed me two trailers. It was one of them right
16 there and he showed me around.

17 Q. Okay. Did you ask him how he knew there would be
18 \$8,000 and crack in there?

19 A. Yeah, he had told me some -- some guy named Black
20 Rob --

21 **MS. ZIMMERMAN:** Objection, Your Honor. Hearsay.

22 **THE COURT:** Okay.

23 **MR. SCOTT:** This would be a statement in furtherance
24 of a conspiracy, Your Honor, and I think it would fall
25 under the hearsay exception.

1 **THE COURT:** Okay. Repeat your question again and
2 repeat your answer so then -- so that I can deal with this
3 objection.

4 **MR. SCOTT:** All right.

5 BY MR. SCOTT:

6 Q. Now you said that your understanding was there would
7 be \$8,000 and crack in this trailer?

8 A. Yes, sir.

9 Q. All right. And then I asked you how did Lorenzo Jones
10 indicate that he knew that?

11 A. How did he knew it was in there?

12 Q. Yeah.

13 A. He said he had a partner named Black Rob.

14 Q. Black Rob?

15 A. (Nods head.)

16 **THE COURT:** Okay. All right. I'm gonna overrule the
17 objection.

18 BY MR. SCOTT:

19 Q. And did you know who Black Rob was at this point?

20 A. Did I knew who he was?

21 Q. Yeah.

22 A. No.

23 Q. You didn't know Black Rob?

24 A. No, I didn't know him.

25 Q. All right. And was this something that was surprising

1 to Lorenzo?

2 A. What, me not knowing him?

3 Q. Yeah.

4 A. No, he was trying to show me pictures of him to get
5 an understanding to see who he was, but I didn't know him.

6 Q. All right. So he showed you a picture at some point?

7 A. Yes.

8 Q. All right. Where did he show you the picture?

9 A. On his phone.

10 Q. Okay. I mean, was it a Facebook thing or what?

11 A. Yeah, it was on Facebook.

12 Q. Did you recognize the guy?

13 A. No, I ain't recognized him.

14 Q. Okay. Did -- did he indicate where Black Rob lived?

15 A. He said it was beside where we was supposed to have
16 been going and hitting the lick at, the robbery.

17 Q. Okay. Tell me -- after y'all -- he showed you the
18 location, what did y'all do next? You and Lorenzo. I'm
19 sorry. I need to -- you and Lorenzo -- after Lorenzo Jones
20 showed you the location where y'all were supposed to rob
21 and he showed you Black Rob's house, what did y'all do
22 next?

23 A. We started seeing what was going on around the scene.
24 We had sat in the woods.

25 Q. Y'all sat in the woods?

- 1 A. Yeah.
- 2 Q. All right. And then just watched both of the houses?
- 3 A. Uh-huh.
- 4 Q. And what did you see?
- 5 A. We had waited and probably like an hour later we had
- 6 seen where the robbery was supposed to be going on, we find
- 7 out that, we seen a car pull up in the yard.
- 8 Q. All right. So y'all are sitting in the woods and
- 9 y'all are out there about an hour?
- 10 A. Yeah, about an hour.
- 11 Q. And you say you're looking at the scene y'all are
- 12 supposed to rob and a car pulled up?
- 13 A. Yes, sir.
- 14 Q. Was it dark?
- 15 A. Yeah, it was dark outside.
- 16 Q. Do you know about what time it was?
- 17 A. Probably like ten.
- 18 Q. Okay. And were y'all on the other side of the road
- 19 from the incident location, on the other side of Holy
- 20 Trinity, or were y'all on the same of the road? What woods
- 21 were y'all in?
- 22 A. At what -- what time?
- 23 Q. Hold on. This is State's 17. Do you recognize that,
- 24 Tarakus?
- 25 A. Yeah.

1 Q. Okay. Can you see in that picture where the woods are
2 y'all were hiding in or is it not in that particular --

3 A. It's not in this one.

4 Q. Okay. But at any rate, y'all said you were hiding in
5 the woods and y'all were there about an hour because y'all
6 were, what, just, I guess, scoping the place out, see what
7 was going on?

8 A. Yeah.

9 Q. Okay. And you said a car pulls up to the incident
10 location and then what did you and Lorenzo Jones do next?

11 A. We were just sitting in the woods and two people had
12 got out of the car, a female and a male, and they had went
13 in the house and the car stayed the yard and so the female
14 come back out -- the guy came back out to the car and they
15 had made a little transaction somewhere along and after
16 that, the car left.

17 Q. Okay. So a car pulls up. You said a male and a
18 female got out of the car and went inside and you said the
19 male went back out to the car. And so, I guess, there was
20 a third-party in the car and they left at that point?

21 A. Yeah, they left.

22 Q. So the male went back inside?

23 A. Yeah.

24 Q. So as far as you know there was a male and a female
25 inside the trailer at that point?

1 A. Yeah, after the car left.

2 Q. Okay. Now what's Lorenzo Jones doing all this time?
3 Is he -- do you remember him talking on his phone or
4 anything?

5 A. Yeah, he had -- he had called supposedly the guy he
6 said he was getting in touch with, Black Rob.

7 Q. He had called Black Rob?

8 A. Yeah.

9 Q. All right. And this is while y'all are out at the
10 scene?

11 A. Yeah, we was at the scene.

12 Q. In the woods?

13 A. Yeah, in the woods.

14 Q. All right. Is Lorenzo texting?

15 A. Yeah, he had -- he had texted, but then he had called
16 after.

17 Q. Were you and Lorenzo Jones trying to come up with some
18 kind of agreement as to how y'all were gonna hit this lick?

19 A. Not me and him. Him and whoever he was talking to was
20 coming up. I don't know.

21 Q. All right. So you were hearing them talking on the
22 phone about how this was supposed to go down?

23 A. Yeah.

24 Q. All right. At some point did you tell me that Lorenzo
25 put somebody on a speakerphone? /

1 A. Yeah, he had put some -- someone on the speakerphone.
2 Q. When was that?
3 A. He put him on before and after.
4 Q. Okay. Well, tell me about before, who this was, and
5 at what point does he put this person on speakerphone?
6 A. At the beginning at one point he had put the dude he
7 said he was talking to on the phone and he had asked him
8 what was going on, whatever, you know, was going on, who
9 was supposed to be there, and what's going down.
10 Q. This is before y'all went to the scene?
11 A. Yeah, that was before, but after he had called.
12 Q. I should have mentioned that earlier. Well, tell me
13 about that though. This is when Lorenzo's trying to
14 explain to you about this deal he's got going on?
15 A. (Nods head.)
16 Q. And tell me about the speakerphone situation. Explain
17 to the jury what you're talking about.
18 A. He had -- earlier he had called and said I've got to
19 explain to my partner what's going on.
20 Q. Lorenzo tells the person explain to my partner,
21 meaning you?
22 A. Yeah, meaning me.
23 Q. Okay.
24 A. Telling whoever he was talking to on the phone to
25 explain -- to explain and so he was like it's supposed to

1 be there, just go ahead in the house.

2 Q. That's what the guy on the speakerphone said?

3 A. Yeah.

4 Q. And he said what, it's supposed to be there, just go

5 in the house?

6 A. Yeah. Right.

7 Q. And did Lorenzo mention who that person was supposed

8 to be?

9 A. Black Rob.

10 Q. Okay. So Black Rob said it's supposed to be there,

11 just go in the house?

12 A. Yes.

13 Q. And you understand "it's supposed to be there" to mean

14 the crack and the money?

15 A. Yeah.

16 Q. All right. That's a whole lot of money to you, isn't

17 it?

18 A. \$8,000?

19 Q. Yeah.

20 A. (Nods head.)

21 Q. Were you working at the time?

22 A. No.

23 Q. Okay. All right. Let's go -- fast forward again to

24 where we were. Y'all are out there and you and Lorenzo are

25 trying to figure out how you're gonna hit it and he's on

1 the phone when he's texting somebody and he's calling
2 somebody. What did you two eventually decide to do, you
3 and Lorenzo?
4 A. To go in the house.
5 Q. Okay. How did y'all get to the scene? You drove,
6 right?
7 A. Yeah, I drove.
8 Q. All right. And when y'all went in the house, did one
9 of y'all have a gun?
10 A. Lorenzo.
11 Q. Lorenzo?
12 A. Yeah.
13 Q. Who's taller? You or Lorenzo?
14 A. Lorenzo.
15 Q. He's a little bit bigger than you?
16 A. Yeah, taller.
17 Q. Okay. How tall are you?
18 A. Six-two.
19 Q. Okay. You're six-two?
20 A. No. You said me?
21 Q. Yeah.
22 A. No, I'm six.
23 Q. So he's a couple of inches taller than you?
24 A. Yeah.
25 Q. So he has the gun. Do y'all go to the front door or

1 the back door?

2 A. We went through the front.

3 Q. All right. Tell me -- walk the jury through what
4 happens as y'all are approaching this house. Did y'all put
5 masks on?

6 A. Yeah, after -- after he had got off the phone, he had
7 put the mask on, a T-shirt, and went to the front door and
8 listened to see what's going on.

9 Q. Did you hear any voices inside?

10 A. Yeah, we heard voices on the inside.

11 Q. Okay. And -- all right. So what did y'all decide to
12 do?

13 A. He just told me to hold the door, hold the door, so I
14 hold the door and he kicked in the door and went in the
15 house and laid them down, they said everything was in the
16 bedroom and in the bedroom we found some crack, you know,
17 we found some weed, got a couple of dollars off of him,
18 stripped him, and we left.

19 Q. All right. Y'all took his pants off?

20 A. Yeah.

21 Q. Do you see Mr. Mayers here? Do you see this man
22 sitting here?

23 A. Yes.

24 Q. Do you recognize him? Do you remember him? Do you
25 remember what the guy looked like that y'all took his pants

1 off?

2 A. I really can't tell.

3 Q. Okay. It happened pretty fast?

4 A. Yeah.

5 Q. Did it go down like you were hoping it would go down?

6 A. No, because we didn't get nothing.

7 Q. You didn't get what?

8 A. We didn't get what we was supposed to have went to go
9 get.

10 Q. Okay. Because y'all were wanting \$8,000 and a big
11 amount of crack; is that right?

12 A. Yeah.

13 Q. And y'all didn't find that?

14 A. No.

15 Q. So what do you mean when you say "hold the door"? Is
16 there like a --

17 A. A screen door.

18 Q. Okay. You held the screen door and then you said
19 Lorenzo kicked it in?

20 A. Yes.

21 Q. You said laid them down. What's that mean? He told
22 them to get on the ground?

23 A. Told them to get on the ground.

24 Q. And he held a pistol on them?

25 A. Yeah.

1 Q. What were you doing?

2 A. I was standing at the door when he said everything was
3 in the room, I just went to the room and got it.

4 Q. Okay. You said you found a little bit of crack and a
5 little bit of marijuana and a couple of dollars?

6 A. A couple of dollars, yeah.

7 Q. About how long were y'all in there?

8 A. Five minutes at the most. Not even that long.
9 Probably two or three minutes.

10 Q. What was Lorenzo saying to the two homeowners?

11 A. Where it's at? Give it up before I shoot you and kill
12 you.

13 Q. Okay. And what else did y'all take? Do you remember
14 him taking anything else?

15 A. Keys, a phone, an iPhone.

16 Q. Okay. What did you tell Lorenzo about taking the
17 iPhone?

18 A. I told him he needs to get rid of it because they're
19 gonna automatically find it.

20 Q. All right. You kind of know how it works? You know
21 about the iPhones and everything?

22 A. Yeah.

23 Q. Did he get rid of it to your knowledge?

24 A. To my knowledge, after the fact, he told me he did,
25 but I ain't watching him to see that he get rid of it at

1 that point.

2 Q. Okay. When did you get -- at some point did law
3 enforcement come talk to you?

4 A. After the fact?

5 Q. Yeah. They -- they served you with an arrest warrant
6 for this?

7 A. Yeah, they served me with a warrant.

8 Q. And then they started talking to you and asking you
9 about some things that happened?

10 A. Yes.

11 Q. Did you write a statement?

12 A. Yeah.

13 Q. Did you kind of tell them what you're telling the jury
14 today?

15 A. Yeah.

16 Q. All right. When you -- do you remember when you were
17 arrested? It was June, wasn't it?

18 A. June.

19 Q. All right. So this happens in April 2014 and then two
20 months later or so you get picked up on this?

21 A. Yes.

22 Q. And where did they take you?

23 A. They took me to Newberry County.

24 Q. Detention center, the jail?

25 A. Yeah, they took me to jail.

1 Q. All right. And while you were there, did you have
2 some kind of encounter with Robert Wright?

3 A. Robert Wright? Yeah.

4 Q. Black Rob, whatever you call him.

5 A. Yeah, I seen who they said he was.

6 Q. Okay. Were you in a -- I guess you were in a max
7 holding cell; is that right?

8 A. Yeah, I was -- I was in a room. I was in lockup.

9 Q. Okay. Describe what the door -- you know, when you're
10 in one of those cells, what's it got, like a heavy glass
11 window or something on it?

12 A. Yeah, little thin glass, little -- it looks probably
13 about this tall and you see out of it.

14 Q. All right. At some point did -- did Mr. Wright
15 communicate with you through your door?

16 A. Well, he had sent the message, asked was anybody
17 locked up for what Lorenzo was being locked up for, and I
18 said me, and he had came and asked me and then once he had
19 asked he backed back from the window and then we didn't
20 talk no more.

21 Q. All right. So did you see him through the window?

22 A. Yeah.

23 Q. And he was asking you about whether you were locked up
24 for the same thing Lorenzo was locked up for?

25 A. Yes.

1 Q. Okay. Did he say anything else?

2 A. No.

3 Q. All right. Do you -- do you see Black Rob in the
4 courtroom that you saw through that window?

5 A. Through -- at that time?

6 Q. Yeah.

7 A. Yeah.

8 Q. That guy right there?

9 A. Yeah.

10 **THE COURT:** Let the record reflect he's identified the
11 Defendant.

12 BY MR. SCOTT:

13 Q. And were you able to compare his voice to the one you
14 heard on the speakerphone?

15 A. At that moment when I seen him that day.

16 Q. Was it -- did they compare? Was it the same person to
17 you?

18 A. Yes.

19 Q. Okay. And you probably never saw him again after that
20 day, did you?

21 A. No, I never seen him.

22 Q. Because he booked out that same day?

23 A. Yeah.

24 Q. What did y'all do with the -- did you get to keep any
25 money or crack or anything?

- 1 A. No, I ain't -- I ain't keep nothing.
- 2 Q. Why not?
- 3 A. It wasn't nothing that really I was concerned with
- 4 getting.
- 5 Q. It wasn't enough? It wasn't worth it to you?
- 6 A. No.
- 7 Q. All right. So, again, this thing really didn't play
- 8 out like you had hoped it had?
- 9 A. No.
- 10 Q. Because you were told \$8,000 and a bunch of crack?
- 11 A. Yeah.
- 12 Q. All right. Mr. Coleman, you -- you were charged in
- 13 this crime, too, right?
- 14 A. Yeah.
- 15 Q. Armed robbery?
- 16 A. (Nods head.)
- 17 Q. Burglary first?
- 18 A. (Nods head.)
- 19 **THE COURT:** You need to answer.
- 20 Q. You've got to say yes or no. Don't nod.
- 21 A. Yes, sir.
- 22 Q. All right. Both of those you're charged with?
- 23 A. Yes, sir.
- 24 Q. And those are still pending against you?
- 25 A. Yes, sir.

1 Q. And you told your story to law enforcement, haven't
2 you?

3 A. Yes, sir.

4 Q. And you've told this story to me, haven't you?

5 A. Yeah.

6 Q. Have there been any offers made to you as far as your
7 charges?

8 A. No.

9 Q. All right. Do you hope to get some kind of favor?

10 A. Yeah.

11 Q. But there have been no offers made to you?

12 A. No.

13 Q. And this is the story -- the same story you've told
14 since you were arrested, isn't it?

15 A. Yes.

16 **MR. SCOTT:** All right. Answer any questions
17 Ms. Zimmerman has for you.

18 **THE COURT:** All right. Cross-examination?

19 CROSS-EXAMINATION

20 BY MS. ZIMMERMAN:

21 Q. The same story you've told every time; is that right?

22 A. Yeah. Yes.

23 Q. Okay. Let's talk about that. Do you remember the
24 first time the investigators came and talked to you about
25 this case?

1 A. Yes.

2 Q. Do you remember telling them that you weren't
3 involved, didn't have anything to do with it?

4 A. Yeah. At first, yes.

5 Q. Okay. So that's one story --

6 A. Yeah.

7 Q. -- that's different than the story you're telling
8 today, correct?

9 A. Yeah.

10 Q. All right. And how about the second time that you
11 talked to them, do you remember telling them a different
12 story? Do you remember telling them that Lorenzo asked you
13 to go do this and you said no?

14 A. Yeah.

15 Q. Do you remember telling them that?

16 A. Yeah.

17 Q. Story Number 2, right?

18 A. (Nods head.)

19 Q. Different than what you're telling today?

20 A. Yeah.

21 Q. Yes? Okay. Do you remember telling them a third
22 story? Do you remember telling them that you were the
23 lookout? Do you remember that?

24 A. No, I don't remember.

25 Q. You don't remember talking to an investigator and

1 telling him that yes, you did go out there, but you were
2 just the lookout, you never went in the house?
3 A. At the moment I had -- when I got locked up at first?
4 Q. No, this was the third time that you talked to them.
5 A. No, I don't remember that one.
6 Q. You don't remember that. Okay. How about do you
7 remember -- you know who Investigator Lominack is --
8 A. Yes.
9 Q. -- with the sheriff's office?
10 A. Yes.
11 Q. A tall guy, short, dark hair?
12 A. Yeah.
13 Q. Do you remember talking to him?
14 A. Yeah.
15 Q. Do you remember him telling you, let's get real,
16 because he didn't believe the story about how you weren't
17 involved, you were, oh, so innocent?
18 A. Yes.
19 Q. Do you remember that?
20 A. Yeah.
21 Q. You remember telling him then well, yeah, maybe I was
22 out there, but I was just the lookout?
23 A. You're saying do I remember telling him that?
24 Q. Uh-huh.
25 A. I don't remember telling him that.

1 Q. Okay. Do you remember finally telling him a fourth
2 story that yes, you went in?

3 A. Yes.

4 Q. All right. And do you remember writing out a
5 statement about that?

6 A. Yes.

7 Q. Okay. You talked to him, you told him that you went
8 in with Lorenzo and that y'all were going to get crack and
9 money?

10 A. Yes.

11 Q. Okay. And that statement doesn't mention anything
12 about anybody else being involved, right?

13 A. Yes.

14 Q. Do you remember then him coming back to you yet again
15 and then you told yet another story about how this all
16 happened? Do you remember that?

17 A. I don't remember another story I told.

18 Q. You don't remember writing a completely separate
19 statement?

20 A. I just -- just one.

21 Q. You only wrote one statement?

22 A. One to compare with the same one. I wrote two, but it
23 was the same thing.

24 Q. They said the same thing?

25 A. Yeah.

1 Q. Okay. Do you remember writing a statement on June 9,
2 2014?

3 A. Oh, yeah.

4 Q. Yeah?

5 A. Yes.

6 Q. That's your handwriting, your statement?

7 A. Yeah, yeah.

8 Q. Okay. Do you remember writing a completely different
9 statement on February 18th of 2015?

10 A. Yes.

11 Q. Okay. That's -- that's also your statement?

12 A. Yes.

13 Q. I want you to just take a moment and look over those.
14 You don't have to read them or anything, but make sure that
15 those are actually your statements.

16 A. Yes.

17 Q. And they tell two different stories, right?

18 A. One's longer than the other one, yeah.

19 **THE COURT:** You need to speak up, sir.

20 **THE WITNESS:** Yes.

21 BY MS. ZIMMERMAN:

22 Q. I think what you said was one was longer than the
23 other one?

24 A. Different.

25 Q. Okay. So the story that is today's story is not the

1 same story that you've told all along, correct?

2 A. Not the same story with what?

3 Q. That you've been telling all along. You've -- you've
4 told that you weren't involved and then you said that they
5 asked you and you said no and then you went and then it was
6 not until February of 2015 that you said that Mr. Wright
7 was involved, correct?

8 A. Oh, yeah.

9 Q. That's correct?

10 A. Yes.

11 Q. Okay. Let me ask you a question. Back in 2014, did
12 Black Rob tell you to commit that burglary?

13 A. No.

14 Q. No?

15 A. No.

16 Q. But you were convicted of a burglary back in '14,
17 right?

18 A. Yes.

19 Q. Okay. Did Lorenzo tell you to commit that burglary?

20 A. No.

21 Q. How about the drugs that you had in your possession in
22 '15? Did -- did Lorenzo put those in your hands?

23 A. No.

24 Q. The fail to stop in '14, did Lorenzo or Rob tell you
25 to do that?

1 A. No.

2 Q. How about the strong arm robbery and the conspiracy
3 that you had in '11? Did Robert Wright tell you to do
4 that?

5 A. No.

6 Q. Okay. So all of those you decided to do all on your
7 own?

8 A. On my own, yes.

9 Q. Let's talk about that incident at the jail. I just
10 want to make sure I'm real clear. You were an inmate at
11 the Newberry County Detention Center; is that correct?

12 A. Yes.

13 Q. And Mr. Wright was an inmate at the detention center;
14 is that correct?

15 A. Yes.

16 Q. At the same time?

17 A. Yes.

18 Q. Okay. And is that just as accurate as the rest of the
19 story that you're telling me? Y'all were there at the same
20 time? That's the truth?

21 A. Like in the jail at the -- together?

22 Q. Uh-huh. In the jail at the same time.

23 A. I had -- I had -- yeah, I had seen him at the same
24 time I was in there.

25 Q. Okay. And he was in the jail, too?

1 A. Yes.

2 Q. Now you have several pending charges, right?

3 A. Yes.

4 Q. And you're here today because you're hoping that the
5 State is gonna show you some favor on those charges?

6 A. Yes, sir.

7 Q. Nine charges sound right?

8 A. Yeah.

9 Q. You're hoping maybe some of those are gonna go away?

10 A. Yes.

11 Q. And is that why you're telling the story that you're
12 telling today about Robert Wright being involved?

13 A. Yes.

14 **MS. ZIMMERMAN:** No further questions.

15 **THE COURT:** Redirect?

16 REDIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q. Now wait a minute. You've got to listen to the
19 questions when they're asked. She just asked you you're
20 -- the reason you're telling this story is because you hope
21 to get a deal. Is that what your answer is? What's your
22 answer to that?

23 A. Oh, no, no. No deal.

24 Q. You've got to listen to the question. She asked you a
25 bunch of questions real fast because she's trying to trip

1 you up. If you don't understand a questions, ask somebody
2 to repeat it.

3 A. Yes, sir.

4 Q. Why are you telling this story?

5 A. For a favor to help everything could work out for me
6 in the long run.

7 Q. Is what you're telling the truth?

8 A. Yeah, what I'm saying is the truth.

9 Q. You've written two statements?

10 A. Yes.

11 Q. Haven't you been telling this same story since you've
12 been arrested?

13 A. Yes.

14 Q. All right. Now she wanted to show you the statements,
15 but not introduce them into evidence. I want the jury to
16 see them --

17 A. Yes.

18 Q. -- because you have been telling the same story,
19 haven't you?

20 A. Yes.

21 (State's Exhibit Number 18 and 19 were marked for
22 identification.)

23 BY MR. SCOTT:

24 Q. Let me show you statement number one. This is
25 State's 18. Do you recognize that, Mr. Coleman?

1 A. Yes.

2 Q. Now lawyers talk fast, so if you don't understand
3 something I ask you, ask me to repeat it. Don't just
4 answer it. What is that?

5 A. A statement.

6 Q. Is that your first written statement?

7 A. My first written statement.

8 Q. What's the date? If you'll look at the bottom, you'll
9 see the date you gave that statement.

10 A. June the 9th, 2014.

11 Q. Okay. Do you remember when you were arrested?

12 A. Like June the 4th.

13 Q. Okay. So you'd been in jail about five days and you
14 wrote that statement to law enforcement?

15 A. Yes, sir.

16 Q. Okay. Read it to the jury so they -- I'm not just
17 gonna show it to you. I'm gonna ask you to read it to the
18 jury so they can hear what you were saying right from the
19 get-go.

20 **THE COURT:** Are you offering that statement into
21 evidence?

22 **MR. SCOTT:** Your Honor, I'm sorry. I've introduced it
23 at this point. It's already been introduced by opposing
24 counsel. This will be State's 18 and I'm offering it for
25 admission.

1 **THE COURT:** What says the defense?

2 **MS. ZIMMERMAN:** I have no objection.

3 **THE COURT:** No objection. Admitted into evidence on
4 behalf of the State.

5 (State's Exhibit Number 18, 6/9/14 statement, was
6 admitted into evidence.)

7 BY MR. SCOTT:

8 Q. Would you read it in a loud voice, Tarakus, so the
9 jury can hear what you were saying from the very beginning.

10 A. On April 30th Lorenzo "Hootie" called me and said he
11 got us a lick and we went and scoped it out and went to it
12 later. He held the gun, kicked in the door and got crack,
13 phone, money and weed. We left about 11:00 and head back
14 to Newberry. This happened at a trailer in Little
15 Mountain.

16 Q. Okay. So from the very beginning you were admitting
17 to a burglary and armed robbery?

18 A. Yes.

19 Q. Okay. You're putting yourself right in the middle of
20 it, aren't you?

21 A. Yes.

22 Q. Let me show you State's Number 19. That was the one
23 that the other lawyer showed you real quickly and I want
24 you to read it to the jury.

25 **THE COURT:** Are you offering this statement into

1 evidence?

2 **MR. SCOTT:** Yes, sir. I'm fixing to.

3 BY MR. SCOTT:

4 Q. Do you recognize that statement?

5 A. Yes, sir.

6 Q. Okay.

7 **MR. SCOTT:** And, Your Honor, that has been ID'd twice
8 now. That's State's Number 19. We're gonna offer that
9 into evidence as well.

10 **THE COURT:** It's in evidence -- without objection
11 it's into evidence as 19 for the State. You may proceed.

12 (State's Exhibit Number 19, 2/18/15 Statement, was
13 admitted into evidence.)

14 BY MR. SCOTT:

15 Q. All right. Tarakus, read that statement to the jury.

16 A. On Wednesday, April the 30th, Lorenzo Jones called me
17 and said he had a lick for us and told me to come with the
18 gun, so I went and meet Lorenzo when he called Black Rob on
19 speakerphone and said let me -- let my people know what up
20 and he said there should be \$8,000 and four ounces of crack
21 in the house. So he told Lorenzo to hit him up when --
22 when he get to the city. So I gave Lorenzo the gun and he
23 directed me to Little Mountain and showed me the house it
24 was at and where Black Rob, who was on the phone lived at.
25 So we went and parked on a side road and walked back to the

1 trailer. He pointed it out and was standing in the woods
2 for two hours. Lorenzo called Black Rob, told him we here
3 and Rob said wait. Lorenzo said too late, we here, what
4 you think I should do, kick in the front or the back door?
5 So Lorenzo told me to follow him, so we went to the front
6 door, stepped and listened to him and the woman in the
7 house and told me to hold the door open and Lorenzo kicked
8 the door open and laid the two people on the ground and
9 told the male he was going to kill him, so where -- where's
10 the stash, so he ran through the house and I went in the
11 room and crack was on the dresser. I got it, Lorenzo
12 stripped the male pants off and told me to come on, so we
13 left and he called Black Rob back and let him know he only
14 got \$26, a little weed and crack.

15 Q. Okay. It's more detailed than the first one, but the
16 same version, isn't it?

17 A. Yeah.

18 Q. Is that what happened that night?

19 A. Yes.

20 Q. Okay. Or is this some story you've been making up for
21 over two years -- for two years now?

22 A. No, this is what happened.

23 Q. That's what happened?

24 A. Yes.

25 Q. And that's your sworn testimony under oath?

1 A. Yes.

2 Q. Under threat of perjury that's your testimony?

3 A. Yes.

4 **MR. SCOTT:** All right. Thank you, Mr. Coleman.

5 **THE COURT:** Recross?

6 **MS. ZIMMERMAN:** No, sir.

7 **THE COURT:** Thank you for your testimony, sir. You
8 can step down.

9 (Witness excused.)

10 **THE COURT:** Let me see y'all.

11 (Proceedings held at the bench; not reported.)

12 **THE COURT:** Okay. Mr. Foreman and ladies and
13 gentlemen, I think we're at a point that would be good
14 for us to stop for lunch and we'll start back at 1:15. I
15 would ask that if during lunch break if you're kind of out
16 in public or going to a restaurant or whatever, wear your
17 juror button. And the sole reason for that is that if
18 any of the lawyers or witnesses or the Defendant and his
19 family, whatever, if they were at the same place they may
20 not recognize your face as being on the jury and there may
21 be some discussion about the case and we don't want you to
22 overhear anything like that. So I know you may not like to
23 have that little sticker on, but it would be best that you
24 do keep it on if you're gonna be out in public. Now if you
25 go home, then you don't have to wear it at your house, but

1 -- and, again, anybody that you come in contact with, no
2 discussion about this case. Have a good lunch and we'll
3 see you back at 1:15.

4 (Whereupon, the jury is excused for lunch at
5 11:59 AM.)

6 **THE COURT:** Okay. We'll be -- all right. We'll be
7 in recess until 1:15.

8 (Whereupon, a luncheon recess taken.)

9 **BAILIFF:** All rise.

10 **THE COURT:** Thank you very much. Have a seat.
11 Okay. Everybody ready?

12 **MR. SCOTT:** Yes, sir.

13 **MS. ZIMMERMAN:** Yes, sir.

14 **THE COURT:** Madam Bailiff, if you'd bring the jury out
15 please.

16 (Whereupon, the jury returns to the courtroom at
17 1:31 PM.)

18 **THE COURT:** All right. Let the record reflect the
19 jury is back in.

20 Solicitor, are you ready to call your next witness?

21 **MR. SCOTT:** Yes, Your Honor. The State calls Lorenzo
22 Jones.

23 LORENZO JONES,

24 having been duly sworn, testified as follows:

25 **THE CLERK:** Please state your name.

1 **THE WITNESS:** Lorenzo Jones.

2 **THE COURT:** Okay. You need to sit close to that
3 microphone, sir.

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q. All right. State your name.

7 A. Lorenzo Jones.

8 Q. All right. Go ahead and just speak into the
9 microphone because it's gonna be hard for everybody to
10 hear.

11 A. Okay.

12 Q. And, Lorenzo, what's your nickname?

13 A. Hootie.

14 Q. Okay. Most people call you Hootie?

15 A. Yes, sir.

16 Q. Okay. And you live in Newberry?

17 A. Yes, sir.

18 Q. All right. Do you remember April 30, 2014?

19 A. Yes, sir.

20 Q. Do you remember going down into Little Mountain?

21 A. Yes, sir.

22 Q. Okay. You got any ties to Little Mountain?

23 A. No, sir.

24 Q. Okay. What was it on that day that -- that made a
25 Newberry guy like yourself go down into Little Mountain?

1 A. I got a call from somebody telling me to come down
2 there.
3 Q. You got a call from who?
4 A. Rob.
5 Q. Rob?
6 A. Yeah.
7 Q. You're talking about Robert Wright?
8 A. Yes, sir.
9 Q. Okay. And what was the reason that he said that you
10 ought to go down to little Mountain?
11 A. He had a lick for me.
12 Q. He had a lick for you?
13 A. Yeah.
14 Q. Tell the jury what a lick is.
15 A. Well, street-wise a lick is somebody put you up to
16 something or take something from somebody.
17 Q. I didn't hear anything you just said.
18 A. You've got somebody call you to take something from
19 somebody.
20 Q. I still didn't hear you.
21 A. To take something from somebody.
22 Q. Take something from somebody? You mean rob from
23 somebody?
24 A. Yeah.
25 Q. Tell me what Rob said about this lick that you could

1 do in Little Mountain.

2 A. Basically he called me and said he got something for
3 me. He needed to get somebody out of the way.

4 Q. He needed to get somebody out of the way?

5 A. Yeah.

6 Q. All right. What did that mean? What did that mean to
7 you? How did you take that?

8 A. Basically it's free money.

9 Q. Free money?

10 A. Yeah.

11 Q. All right. What did that mean, he needed to get
12 somebody out of the way?

13 A. Well, let me see. Say, basically like get them out of
14 the way as competition between them.

15 **MS. ZIMMERMAN:** Objection, Your Honor. May we have a
16 sidebar?

17 **THE COURT:** Okay.

18 (Proceedings held at the bench; not reported.)

19 **THE COURT:** Mr. Foreman and ladies and gentlemen of
20 the jury, there's a matter that I need to take up with
21 the lawyers outside of your presence, so if you would be
22 patient with us and go back to your jury room. And,
23 hopefully, it won't be too long. Again, no discussions
24 about this case and we'll get you back out just as soon as
25 we possibly can.

1 (Whereupon, the jury retires to the jury room at
2 1:36 PM.)

3 **THE COURT:** Okay. The -- a question was asked, I
4 can't remember specifically what was asked of him, what
5 did the Defendant say, and the witness stated that he
6 wanted to get somebody out of the way and then maybe
7 another question was asked and then the witness used the
8 word "competition". At that time, Ms. Zimmerman, you
9 offered your objection. I think that's where we were.
10 We tried to resolve it at sidebar, we couldn't, so renew
11 your objection, please, ma'am.

12 **MS. ZIMMERMAN:** My objection is to a couple of
13 different things actually. First of all, I think it's
14 improper character impeachment. We've stipulated that we
15 would not get into any allegations that my client is a
16 drug dealer. And, secondly, the specific question that was
17 asked, I did not object when he said what did Rob say to
18 get him out of the way.

19 **THE COURT:** Right.

20 **MS. ZIMMERMAN:** The question I'm objecting to is when
21 the solicitor says what does that mean to you --

22 **THE COURT:** Right.

23 **MS. ZIMMERMAN:** -- which is improper opinion and is
24 calling for him to get into my client's character and my
25 client is not on the stand. So I think there's several

1 different reasons why we shouldn't go beyond what did he
2 say into what does it mean to you.

3 **MR. SCOTT:** Judge, if I could -- I'm sorry.

4 **THE COURT:** Wait one second. It really doesn't matter
5 what -- you know, what he thought was meant by whatever the
6 Defendant said. Now if the Defendant had said I've got
7 some competition that I need for you to do something with,
8 then probably that would probably be admissible apart from
9 this whole notion that I thought it was agreed at the
10 outset that we wouldn't get into these people being drug
11 dealers and that sort of thing or alleged drug dealers.
12 But, Solicitor, you go ahead and state your position on the
13 record.

14 **MR. SCOTT:** Yes, sir. To -- to the extent that there
15 was a stipulation, I thought it was his prior record. He's
16 got a drug record and --

17 **THE COURT:** I thought it was any reference to it
18 because back in chambers before we -- we started the
19 trial some reference or discussion was made about the
20 Defendant being a drug dealer and then I think that's
21 what Ms. Zimmerman was -- was concerned about and so my
22 understanding was there was a stipulation that, you know,
23 no reference being made to that apart from a prior record
24 which, of course, wouldn't be relevant unless the Defendant
25 elected to testify and then we'd have to get into it, but

1 with that said, go ahead.

2 **MR. SCOTT:** Well, the argument, Your Honor, is gonna
3 be, you know, a res gestae-type argument because what we've
4 got here is it's accessory and this jury is gonna say well,
5 what does Rob -- what does he get out of all of this?
6 Because the testimony, which you're gonna hear and I don't
7 expect it to be any different, is that Rob didn't get any
8 dope, Rob didn't any money, they kept it. That was the
9 deal. They get to go in there and get the money and dope,
10 he gets to, you know, kind of send a message to the
11 competition, which is next door. And I've a statement
12 right here where he says that "I need this nigger out the
13 way". That's gonna be a statement that's gonna come in
14 through this witness.

15 **THE COURT:** Mr. Scott, I don't think Ms. Zimmerman
16 has an objection to his testifying that the Defendant said
17 I need to get somebody out of the way. I don't think that
18 was a part -- or the part of her objection. What she's
19 objecting to is for him -- well, what did you think that
20 meant? Well, in my mind it meant competition out of the
21 way, but that's not what --

22 **MR. SCOTT:** I'll ask him -- I can ask him further what
23 else was said, but I would almost attribute that -- there's
24 a lot of -- I've talked to Lorenzo extensively. This stuff
25 you mean, hitting a lick, you know, that sixty-year-old

1 white lady on the jury does not know what that means and
2 she does not understand what you mean when you talk about
3 getting rid of the competition. She doesn't live that
4 life. So he is in a certain position where he can explain
5 what that means. I need him to explain to them what Rob's
6 getting out of this. They're gonna ask what is his motive.
7 She certainly can argue that in closing, I expect her to do
8 that, and I'm trying to close those gaps and answer those
9 questions on the front end.

10 **MS. ZIMMERMAN:** Judge, this is still improper
11 impeachment of my client. And on top of that, you know,
12 they're saying that he wanted to get competition out of the
13 way, but the State put the -- the victim up there and he
14 testified he had \$20 worth of marijuana and \$40 cash on
15 him. The State has not even introduced their victim as a
16 drug dealer, but they're wanting to introduce my client as
17 a drug dealer.

18 **THE COURT:** Right. And then we're kind of treading
19 on thin ice a little bit that if you allow this testimony
20 or line of testimony of pointing towards him being a drug
21 dealer, then we get into bad acts, Lyle, and then, you
22 know, you've got to pretty much identify the specifics of
23 the, quote, bad acts to get to determine whether or not the
24 relevance and similarities. I mean, we're really kind of
25 getting far afield. What I'm gonna do is I'm gonna sustain

1 the objection. Again, I think anything that the Defendant
2 allegedly told this witness, the words that the Defendant
3 used, I'm gonna allow that, but asking him -- and I realize
4 he was allowed to define what it meant by a "lick", but I
5 think based upon the objection to using the word
6 "competition", I'm going to sustain that objection. I'm
7 going to -- without placing a lot of emphasis on the use of
8 the word "competition", I'm just going to instruct the jury
9 that his -- the witness's last answer is stricken from the
10 record and not to be considered and I won't even use the
11 word "competition".

12 **MR. SCOTT:** Yes, sir.

13 **MS. ZIMMERMAN:** Thank you, Judge.

14 **THE COURT:** All right. Madam bailiff, if you'll bring
15 the jury back out, please.

16 (Whereupon, the jury returns to the courtroom at
17 1:44 PM.)

18 **THE COURT:** Okay. Let the record reflect the jury is
19 back in.

20 Solicitor, you may -- oh, ladies and gentlemen of
21 the jury, the -- the last testimony prior to the objection
22 from Ms. Zimmerman I have stricken from the record, which
23 means that it is no longer for your consideration, the last
24 testimony that he gave to the last question prior to the
25 objection.

1 You may proceed, Solicitor.

2 **MR. SCOTT:** Thank you, Your Honor.

3 BY MR. SCOTT:

4 Q. All right. So April 30th, what -- the reason you
5 found yourself in Little Mountain was because Robert Wright
6 said there was a robbery you could do down there?

7 A. Yes, sir.

8 Q. And what did he indicate that you would be able to
9 find at this location?

10 A. Crack and money.

11 Q. All right. Had you ever been to Robert Wright's
12 house?

13 A. Once or twice.

14 Q. Once or twice?

15 A. Yeah.

16 Q. And where was this location that he told you about in
17 relation to his house?

18 A. Right next door.

19 Q. Next door to his house?

20 A. Yeah.

21 Q. Did you know the people who lived in the home?

22 A. No, sir.

23 Q. Okay. What did -- what did Mr. Wright tell you about
24 these people?

25 A. That -- basically that he sell drugs.

1 Q. Okay. And did he say any other reason why he wanted
2 you to rob them?

3 A. Supposedly they got the same clientele basically.

4 **MS. ZIMMERMAN:** Objection, Your Honor.

5 **THE COURT:** All right.

6 **MS. ZIMMERMAN:** May we have a sidebar?

7 **THE COURT:** Sure.

8 (Proceedings held at the bench; not reported.)

9 BY MR. SCOTT:

10 Q. All right. Lorenzo, let me ask you -- I want to know
11 what Robert Wright said to you, okay? Not what you, you
12 know, kind of assumed he meant, but what he said to you.
13 What did he tell you about these people?

14 A. That's somebody for you to rob.

15 Q. Say again.

16 A. I've got somebody for you to rob.

17 Q. Okay. And why did he tell you to rob them?

18 A. Because he's getting in his way.

19 Q. He's getting in the way?

20 A. Yeah.

21 Q. All right. Did he say anything else about them
22 getting in the way?

23 A. No.

24 Q. Okay. What else did -- all right. So he told you
25 where they lived?

1 A. Yeah.

2 Q. Okay. And April 30th, before this, before you even
3 went down to Little Mountain, you talked to him on the
4 phone?

5 A. Rob?

6 Q. Yeah.

7 A. Basically every day.

8 Q. Every day?

9 A. Yeah.

10 Q. All right. But the day you robbed these people, was
11 that the first day he told you about them?

12 A. Yes, sir.

13 Q. Okay. So all throughout that day, April 30th, were
14 y'all talking on the phone beforehand?

15 A. Basically on and off. Probably so, on and off.

16 Q. On and off?

17 A. Yeah.

18 Q. Okay. Your phone number at that time was
19 803-940-0271?

20 A. Yes, sir.

21 Q. Okay. And do you remember his phone number being
22 803-201-4329?

23 A. Yeah.

24 Q. So throughout that day y'all were talking on the phone
25 and he's giving you a little bit more information about the

1 house and the lick?

2 A. Not really. He just asked me what time I'm gonna be

3 there.

4 Q. What time you're gonna be down there?

5 A. Yeah.

6 Q. All right. Do you remember -- tell me -- how did

7 Tarakus Coleman get involved?

8 A. I called him.

9 Q. You called him?

10 A. Yeah.

11 Q. What -- just for some help?

12 A. Yes, sir.

13 Q. Okay. And y'all were up here in Newberry?

14 A. Yes, sir.

15 Q. Did he pick you up?

16 A. Yes, sir.

17 Q. Okay. And then y'all went down to Little Mountain

18 together?

19 A. Yes, sir.

20 Q. What happened once y'all got there?

21 A. Well, we got dressed and went to the house.

22 Q. What do you mean you got dressed?

23 A. Dressed in all black.

24 Q. Okay. Did you cover your face?

25 A. Yeah.

1 Q. Were y'all outside -- how long were y'all outside
2 before y'all approached the trailer?

3 A. Like an hour.

4 Q. An hour? Were y'all watching the trailer?

5 A. Yes, sir.

6 Q. Okay. What did you see?

7 A. A little movement in the house. Basically that's
8 about it.

9 Q. All right. What, if anything, did Robert tell you
10 about who would be in the house?

11 A. He said probably him and his girlfriend.

12 Q. Him and his girlfriend?

13 A. Yeah.

14 Q. All right. Did you really have a good idea of how you
15 were gonna go about doing this?

16 A. No, sir.

17 Q. Did you seek advice from Robert Wright on how to do
18 it?

19 A. I called his phone.

20 Q. Okay.

21 A. He said -- I asked him should we kick the door in. He
22 said go ahead.

23 Q. Kick the door in?

24 A. Yeah.

25 Q. Okay. So you put your black clothes on, you put your

1 shirt and, what, a T-shirt over your face?

2 A. A mask.

3 Q. A mask? And then y'all approached the house?

4 A. Yes, sir.

5 Q. All right. Let me -- it's been admitted into
6 evidence. I want to -- State's Number 16. Now on
7 April 30th, I've got you at 11:40 AM making a phone call to
8 Robert Wright that lasts a minute and forty-six seconds;
9 11:58 PM -- so there's one call in the morning and then if
10 you drop down -- what time do you think y'all got out
11 there?

12 A. Probably about 9:00.

13 Q. 9:00. Okay. So if I go down about 9:00, you get a
14 call from Robert Wright, it's fifty-six seconds, and then
15 there's a call to Robert Wright at 9:23 PM, a minute and
16 sixteen seconds. 9:29 there's a call from Robert Wright,
17 two minutes and five seconds. 9:49, a call to Robert
18 Wright, two minutes and thirty-nine seconds. 9:57 it looks
19 like you called Robert and y'all had a three-minute long
20 conversation. If you got there about nine, what time do
21 you think y'all went inside the house?

22 A. I know -- I think we sat outside the house at least an
23 hour and a half. Probably ten something.

24 Q. You mentioned a text you sent Robert Wright and I'm
25 showing your phone records. At 10:45 PM, you text Robert

1 Wright and said "Should I kick the door in?". Was that
2 before you kicked the door in?

3 A. Yes, sir.

4 Q. All right. So if it's 10:45 and you're texting him
5 that, did you immediately kick the door in?

6 A. I probably waited at least five or ten minutes.

7 Q. Five or ten minutes? Okay. Well, two minutes later
8 you made a call to Robert Wright that lasts thirty-four
9 seconds. Do you remember if you talked to him then?

10 A. I don't think he answered the phone.

11 Q. He answered the phone?

12 A. He didn't.

13 Q. He didn't answer the phone, so that was a voicemail?

14 A. Most likely.

15 Q. Well, at 10:52 Robert Wright called you and there was
16 a two-minute and six second conversation. Do you remember
17 what that was?

18 A. Letting me know to go ahead and kick the door in.

19 Q. Okay. So after you text him "Should I kick the door
20 in?", you finally got confirmation at 10:52 to go ahead and
21 kick it in. I see 11:08 PM you call Robert Wright for
22 three minutes and fifty-five seconds. Was that before or
23 after you were inside the house?

24 A. That was after.

25 Q. After you went in the house?

1 A. (Nods head.)
2 Q. So that was as you were leaving?
3 A. Yes, sir.
4 Q. All right. So then we can say the robbery happened
5 between 10:52 PM and 11:08 PM; is that right?
6 A. Yes, sir.
7 Q. Okay. And -- well, when you called him as y'all were
8 leaving the scene, what did y'all talk about? Did you tell
9 him you had -- what you had done?
10 A. Yeah, I then told him everything -- what he said was
11 in there wasn't in there.
12 Q. Okay. Were you kind of upset about that?
13 A. Basically.
14 Q. All right. So you broke into a house thinking you
15 were gonna get a bunch of money and a bunch of crack and
16 you didn't find all that?
17 A. Yes, sir.
18 Q. All right. Did he have explanation?
19 A. We didn't stay on the phone that long, no. Just said
20 I'll call you tomorrow.
21 Q. Okay. All right. What all did y'all get -- did you
22 talk about the -- what did you talk about y'all getting
23 from the house?
24 A. Got about twelve grams of crack, a bag of weed and
25 like a few dollars.

- 1 Q. All right.. A few dollars? How many?
- 2 A. Thirty, forty dollars.
- 3 Q. Thirty or forty dollars, a little bit of weed and a
- 4 little bit of crack?
- 5 A. Yes, sir.
- 6 Q. Not what you were hoping for?
- 7 A. No, sir.
- 8 Q. What about the cell phones?
- 9 A. And two cell phones. Two cell phones.
- 10 Q. All right. You and Tarakus, what did y'all do? Did
- 11 y'all jump in the car and come back to Newberry at that
- 12 point?
- 13 A. Yes, sir.
- 14 Q. Where did he drop you off?
- 15 A. At home.
- 16 Q. Who's Precious Bates?
- 17 A. A girl I used to go with.
- 18 Q. A girl you just used to go with?
- 19 A. Yeah.
- 20 Q. So 11:14 PM you text her "on the way" and at 11:19
- 21 "what are you doing, may I come over?". That's your text
- 22 to her?
- 23 A. Yes.
- 24 Q. Okay. So he dropped you off over at her house?
- 25 A. Yeah.

1 Q. All right. And you had the phones with you?

2 A. Yes, sir.

3 Q. What did you do with the cell phones?

4 A. After I fiddled with them, then I threw them in the

5 trash can.

6 Q. Okay. Out behind Precious' house?

7 A. Yeah.

8 Q. Where does she live?

9 A. Crossing Street.

10 Q. Crossing?

11 A. Yeah.

12 Q. Okay. Anything else between you and Tarakus that

13 night?

14 A. No, we got together the next morning.

15 Q. Okay. To do what?

16 A. Hang out.

17 Q. Hang out?

18 A. (Nods head.)

19 Q. At some point did you become a little bit nervous

20 about those cell phones?

21 A. Yeah. I got in touch with Rob and he's telling me the

22 police -- he heard the police had found the phones.

23 Q. Okay. So what did you -- did you tell Precious to do

24 something?

25 A. Sprinkle water on them.

1 Q. All right. You told her to go ahead and put water on
2 them. What were you hoping to do?

3 A. Inactivate -- deactivate the phone.

4 Q. All right. You were trying to deactivate them?

5 A. Yeah.

6 Q. All right. So the next day after this robbery, May 1,
7 2014, do you remember -- on the second page there's
8 11:51 PM. This is the next day. Do you remember getting
9 this text message from Robert Wright at 11:51 PM?

10 A. Yes, sir.

11 Q. All right. And he said "Too many police was out there
12 last night. They watching boy. I believe it's too much
13 talking going on about it. They found the phone". So he
14 knew they found that phone from the robbery?

15 A. Yes, sir.

16 Q. All right. And once he -- and that's -- so he's
17 indicating there's too many police out where?

18 A. By his house. By the robbery.

19 Q. Okay. And he somehow knew that the police already
20 found the phones?

21 A. Yeah, that's what he told me; the police found the
22 phones.

23 Q. Did you know at that point?

24 A. No.

25 Q. Okay. All right. Then the next day, 1:52 AM -- or

1 later that night, I guess -- so if he's texting at
2 11:51 PM, two hours later you're texting him "They phone
3 and that's it though. We good, brah". What did you mean
4 when you said that to him?

5 A. They just found the phone. That's it.

6 Q. They found the phone, but you thought y'all were still
7 good?

8 A. Yeah, we're good.

9 Q. Okay. At some point though law enforcement did come
10 and talk to you, didn't they?

11 A. Yes, sir.

12 Q. All right. And do you remember at first you told them
13 you didn't know anything about anything?

14 A. Yes, sir.

15 Q. All right. Why were you doing that?

16 A. Just to keep myself out of the -- you know, what I'm
17 saying, keep myself clear from the situation.

18 Q. You didn't want to get in trouble, right?

19 A. Yeah.

20 Q. At some point did you feel like you had to kind of
21 come clean and tell them about your involvement?

22 A. Yes, when I realized the police kept coming to my
23 house every day.

24 Q. And then when they showed you these phone records, did
25 you kind of --

1 A. Yeah, I knew what time it was.

2 Q. You knew what time it was?

3 A. Yeah.

4 **MR. SCOTT:** Could I get that marked, please?

5 (State's Exhibit Number 20 was marked for
6 identification.)

7 BY MR. SCOTT:

8 Q. State's Number 20. Lorenzo, do you recognize that?

9 A. Yes, sir.

10 Q. That's the statement you gave law enforcement?

11 A. (Nods head.)

12 Q. May 22, 2014, is that when you gave that statement?

13 A. Yes, sir.

14 Q. Do you remember giving it?

15 A. Yes, sir.

16 Q. All right. Does that -- how long after you were
17 arrested did you give that statement?

18 A. I think -- I think I was arrested when I gave the
19 statement.

20 **MR. SCOTT:** Okay. Your Honor, the State offers 20 for
21 admission into evidence.

22 **THE COURT:** Defense?

23 **MS. ZIMMERMAN:** No objection.

24 **THE COURT:** Without objection, Number 20 for the State
25 into evidence.

1 (State's Exhibit Number 20, 5/22/14 statement, was
2 admitted into evidence.)

3 BY MR. SCOTT:

4 Q. All right. Read for the jury what you told law
5 enforcement. And speak up loud in that speaker. It's a
6 big courtroom.

7 A. I got a phone call from Rob saying I need this nigger
8 out the way, so I called my man and he told -- he told me
9 -- he told me what it was, so we -- he decide -- he call a
10 friend and I said I've got one, meet me on the Interstate
11 in ten minutes. We met up and I got -- I got -- I showed
12 him where we was going and they went to do the lick. I
13 wanted -- I waited at the trash dump while they did the
14 lick and seen -- I can't understand the handwriting. I
15 seen them running up, so I pulled out and headed back
16 toward Newberry. Tarakus comes to me -- to my window -- to
17 my homie's where I took the phone and threw it -- threw it
18 away and that was it.

19 Q. Okay. April 3rd I got a phone call from Rob saying I
20 need this nigger out the way, so I called my man and told
21 him what it was, so he called a friend and said I got one,
22 meet me on the Interstate in ten minutes. We meet up and
23 I showed them the house and they went to do the lick. I
24 waited at the trash dump while they hit the lick, seen them
25 running, so I pull out heading back to Newberry. There

1 come -- Four comes to my homie's house with the phone and
2 threw them away in the trash can. When I speak of my
3 friend, I'm speaking of Tarakus Coleman and Rob is Robert
4 Wright.

5 Is that what you wrote?

6 A. Yes, sir.

7 Q. Now it seems to be in this statement you're talking
8 about a mysterious third-party. You're talking about a
9 third person who went in while you waited outside; is that
10 right?

11 A. Yes, sir.

12 Q. Why were you telling law enforcement that?

13 A. Because I was scared at the time trying not to get in
14 trouble.

15 Q. You were still trying to keep yourself out of it?

16 A. Yes, sir.

17 Q. But it really was just you and Tarakus; isn't that
18 right?

19 A. Yes, sir.

20 Q. Okay. You don't want to be here today, do you?

21 A. No, sir.

22 Q. You and I know it, most people in this courtroom don't
23 know it, we've been looking for you all morning, haven't
24 we?

25 A. Yes, sir.

1 Q. Why were you trying to hide from me?

2 A. I didn't want nothing to happen to my family.

3 Q. Have you talked to Robert Wright since this?

4 A. No, sir.

5 Q. You've never talked to him since this?

6 A. We ran across each other, but don't hold no
7 conversations.

8 Q. Okay. You didn't see him at a party a couple of weeks
9 ago?

10 A. A few weeks ago.

11 Q. Did he have anything to say to you?

12 A. The music was loud, but you can -- you can read
13 between the lines to know what he was saying.

14 Q. Okay. Are you scared?

15 A. Basically.

16 Q. Are you telling the truth here today?

17 A. Yes, sir.

18 Q. Anything been offered to you for your testimony?

19 A. No, sir.

20 Q. You've still got armed robbery charges, don't you?

21 A. Yes, sir.

22 Q. You've still got burglary first charges, don't you?

23 A. Yes, sir.

24 Q. You're putting yourself in that house that night,
25 aren't you?

1 A. Yes, sir.

2 Q. But you're telling me the reason you knew about the
3 place is because of Robert Wright?

4 A. Yes, sir.

5 Q. Who lived next door to these people?

6 A. Yes, sir.

7 Q. Do you know these two people?

8 A. No, sir.

9 Q. Do you remember them from that night?

10 A. Now I do.

11 Q. But did you know them before?

12 A. No, sir.

13 Q. Y'all had a gun in there with you, didn't you?

14 A. Yes, sir.

15 Q. It was dark outside?

16 A. Yes, sir.

17 Q. You kicked the door in?

18 A. Yes, sir.

19 Q. Y'all didn't have any consent to be in that house,
20 did you?

21 A. No, sir.

22 Q. All right. Why did y'all take his pants off? I'm
23 just curious about that.

24 A. Because his pockets looked -- it looked like something
25 was in his pockets.

1 Q. Okay. Was there?

2 A. His phone and the weed and the money.

3 **MR. SCOTT:** All right. Answer any questions

4 Ms. Zimmerman has.

5 **THE COURT:** Cross-examination?

6 CROSS-EXAMINATION

7 BY MS. ZIMMERMAN:

8 Q. Before all this you and Mr. Wright were pretty good
9 friends, right?

10 A. Yes, ma'am.

11 Q. Tell me -- you were dating a girl that was good
12 friends with Robert's wife; is that right?

13 A. At the time.

14 Q. So you and your girlfriend and Robert and his wife
15 hung out a lot, right?

16 A. Yes.

17 Q. Y'all played paintball together?

18 A. No.

19 Q. You never played paintball with them?

20 A. No, if I went to Rob's house, my girl, she was
21 invited, too.

22 Q. Okay. Rob's wife actually called and coordinated with
23 you about a surprise birthday party for him; is that right?

24 A. Yes, ma'am.

25 Q. Y'all talked on the phone I think you said every day?

- 1 A. Yes, ma'am.
- 2 Q. Hung out sometimes over at his house?
- 3 A. Yes, ma'am.
- 4 Q. They've got like a deck or something off the back; is
- 5 that right?
- 6 A. Yeah.
- 7 Q. Y'all hang out on the back deck and just kind of
- 8 chill, talk?
- 9 A. Yes, ma'am.
- 10 Q. Okay. You got along well?
- 11 A. Yes, ma'am.
- 12 Q. You didn't have any problems with each other?
- 13 A. No, ma'am.
- 14 Q. Okay. You talked to each other on Facebook?
- 15 A. Yes, ma'am.
- 16 Q. Send messages, post on each other's pages, all that
- 17 kind of stuff, right?
- 18 A. Yes.
- 19 Q. Okay. Now let me ask you about your story to law
- 20 enforcement. You gave law enforcement a couple of
- 21 different stories; is that right?
- 22 A. Yes, ma'am.
- 23 Q. And we know at first you said you didn't go in, you
- 24 didn't have anything to do with it; is that right?
- 25 A. Yes, ma'am.

1 Q. Okay. You also talked to them about Doc and Mad Max?
2 A. Yes, ma'am.
3 Q. Do you remember that?
4 A. Yes, ma'am.
5 Q. Who's Mad Max?
6 A. A friend of mine.
7 Q. Okay. What's his name?
8 A. I don't know him by his real name, just nickname.
9 Q. Okay. How about Doc?
10 A. Antoine Glover.
11 Q. Okay. Mad Max is not Robert Wright?
12 A. No.
13 Q. And that's not Tarakus Coleman?
14 A. No.
15 Q. Some other individual?
16 A. Yeah.
17 Q. Is that right?
18 A. Yes, ma'am.
19 Q. Okay. And you tell law enforcement that Mad Max and
20 Doc were out there and were involved in it; is that right?
21 A. I told them they were in the house where I took the
22 phone.
23 Q. Okay. Did you tell them any other stories besides
24 that you weren't involved and then that you were the
25 lookout?

1 A. No, ma'am.

2 Q. Okay. You didn't just offer up Robert Wright; is that
3 correct? Investigators came to you and said tell us how
4 Robert was involved?

5 A. Yes.

6 Q. Okay. They asked you specifically about whether
7 Robert was involved in this?

8 A. They asked me who was involved and I told them.

9 Q. Okay. Do you always do whatever Robert tells you to?

10 A. Who?

11 Q. Do you always do whatever Robert Wright tells you to
12 do?

13 A. No, ma'am.

14 Q. You don't?

15 A. No.

16 Q. He doesn't control where you go or what you do?

17 A. No, ma'am.

18 Q. Okay. Well, you did what he told you to this time
19 supposedly; is that right?

20 A. Yes, ma'am.

21 Q. Where do you work?

22 A. I'm laid off now.

23 Q. Okay. Where are you laid off from?

24 A. Eagle Construction.

25 Q. Construction? How long have you been out of work?

1 A. Three months.

2 Q. Do you spend a lot of time on Facebook?

3 A. Yes, ma'am.

4 Q. "Throw me to the wolves and I will return leading the
5 pack". Is that you?

6 A. Yes, ma'am.

7 Q. You posted that back in October, right?

8 A. (Nods head.)

9 Q. Yeah. You're used to be --

10 **THE COURT:** You need to verbally respond to the
11 question.

12 A. Yes, ma'am.

13 Q. You're used to being the leader of the pack?

14 A. I'm not a leader. That was just Facebook.

15 Q. Okay. How about "Stop posting pix of money before
16 somebody throws you a surprise party"? Did you post that?

17 A. Yes, ma'am.

18 Q. How about "It ain't a crime if you don't get caught"?

19 A. I posted that, too.

20 Q. That's how you feel, too, right?

21 A. No, ma'am.

22 Q. As long as you don't get caught, you can do stuff; is
23 that right?

24 A. Yes, ma'am.

25 Q. Okay. And basically you got caught for this, right?

1 A. Yes, ma'am.

2 Q. Now you're trying to find a way out?

3 A. I'm not trying to find a way out. I'm trying to get
4 everything over with.

5 Q. You're expecting to get some favor out of pointing to
6 Rob?

7 A. I don't get any favors.

8 Q. You're not expecting any favors from the State?

9 A. No, ma'am.

10 Q. You've got a whole bunch of pending charges. You're
11 not expecting them to go light on you on all those charges
12 you've got pending?

13 A. No, ma'am.

14 Q. Let me ask you about that. Did Robert Wright tell you
15 to commit any of the other crimes that you've got pending?

16 A. No, ma'am.

17 Q. No? Did he tell you to commit that drug offense that
18 you've been convicted of?

19 A. No, ma'am.

20 Q. So just on this one particular occasion you decided to
21 do whatever Robert Wright told you to, but normally you
22 think for yourself?

23 A. Yeah.

24 Q. Is that a yes?

25 A. Yes.

1 Q. Okay. Just this one night whatever Rob told you to do
2 you was gonna go do?

3 A. Yes.

4 **MS. ZIMMERMAN:** I beg the Court's indulgence.

5 **THE COURT:** Sure. Take your time.

6 BY MS. ZIMMERMAN:

7 Q. Let me ask you just one other question. You said you
8 had been to Mr. Wright's house, right?

9 A. Yes.

10 Q. Okay. From his house can you see Mr. Mayers' house?

11 A. Yes.

12 Q. Okay. They're in view of each other, there's nothing
13 blocking the way or anything like that?

14 A. No.

15 Q. Okay. And so you had hung out at Mr. Wright's house
16 before so you had been able to see this other house next
17 door, right?

18 A. Yes, ma'am.

19 **MS. ZIMMERMAN:** Okay. No further questions.

20 **THE COURT:** Anything in redirect, Solicitor?

21 REDIRECT EXAMINATION

22 BY MR. SCOTT:

23 Q. "It ain't a crime until you get caught". That's what
24 you put on Facebook?

25 A. Yes, sir.

1 Q. That's kind of how you handled this case, right?

2 A. Yes, sir.

3 Q. You kind of tried to tell law enforcement I didn't
4 have anything to do with it and then you tried to blame it
5 on some other person, right?

6 A. Yes, sir.

7 Q. Until they showed you the evidence that you couldn't
8 deny, then you had to come clean, didn't you?

9 A. Yes, sir.

10 Q. And you didn't have to put Robert Wright in it, did
11 you?

12 A. No, sir.

13 Q. You just testified y'all never had a problem with one
14 another, didn't you?

15 A. Yes, sir.

16 Q. So what possible reason would you have to put Robert
17 Wright in on it?

18 A. I don't have a reason.

19 Q. Because he's the one who told you to do it, isn't he?

20 A. Yeah.

21 Q. Do you know what an opportunist is?

22 A. Yes, sir.

23 Q. That's kind of what you are, aren't you?

24 A. Yes, sir.

25 Q. Where there's an opportunity presented, you're gonna

1 take advantage of it, aren't you?

2 A. Yes, sir.

3 Q. And Mr. Wright presented an opportunity talking about
4 a lot of money and a lot of dope in this house next door to
5 him, didn't he?

6 A. Yes, sir.

7 Q. And that was pretty appealing to a construction worker
8 who was out of work, wasn't it?

9 A. Yes, sir.

10 Q. You don't do everything Robert Wright tells you to do,
11 but when he offers you an opportunity you're gonna take it,
12 aren't you?

13 A. Yes, sir.

14 Q. Now that's interesting. You never had any problem
15 before this, did you?

16 A. No, sir.

17 Q. And you had no reason to put his name in it, did you?

18 A. No, sir.

19 Q. But you put yourself and Tarakus Coleman in it, didn't
20 you?

21 A. Yes, sir.

22 Q. Okay. And those phone records we just showed you,
23 that happened that day?

24 A. Yes, sir.

25 Q. And that text was sent that night right before the

1 robbery?

2 A. Yes, sir.

3 Q. It's undisputed?

4 A. (Nods head.)

5 Q. And then he texted you the next day about them finding
6 the phone. That's undeniable, isn't it?

7 A. Yes, sir.

8 Q. And you were talking with him all that day leading up
9 to that robbery, weren't you?

10 A. Yes, sir.

11 Q. And he was calling you, too, wasn't he?

12 A. Yes, sir.

13 Q. It's not in dispute, is it?

14 A. No, sir.

15 **MR. SCOTT:** Thank you.

16 **THE COURT:** Recross?

17 **MS. ZIMMERMAN:** No, sir.

18 **THE COURT:** Thank you for your testimony, sir. You
19 can step down.

20 (Witness excused.)

21 **MR. DANIEL:** Lieutenant Garrett Lominack, Your Honor.

22 **THE COURT:** Okay.

23 GARRETT LOMINACK,

24 having been duly sworn, testified as follows:

25 **THE CLERK:** Please state your name.

1 **THE WITNESS:** Garrett Lominack.

2 DIRECT EXAMINATION

3 BY MR. DANIEL:

4 Q. You're an investigator with the Newberry County
5 Sheriff's Office?

6 A. That is correct.

7 Q. Detective?

8 A. Investigator, yes.

9 Q. Were you the on-call investigator the night of
10 April 30th of 2014?

11 A. Yes, I was.

12 Q. Okay. And did you go out to a call at a residence
13 located at 2890 Holy Trinity Church Road in Little
14 Mountain?

15 A. I did.

16 Q. And that's in Newberry County, but close to Chapin,
17 correct?

18 A. That's right. Just outside the city limits of Little
19 Mountain.

20 Q. Okay. And there were other units already on-scene?

21 A. Yes, sir. Patrol deputies.

22 Q. All right. What information did you receive once you
23 arrived?

24 A. The basic information I got when I was notified and
25 called was about a home invasion so to speak that occurred

1 at that address where Mr. Mayers lived on Holy Trinity
2 Church Road; that Mr. Mayers and his girlfriend or common
3 law spouse, however they consider their relationship, they
4 were in a house and at some point I think the dispatch call
5 came out about 23:11 -- about a quarter after eleven and
6 that two unknown black men kicked in the door, held them at
7 gunpoint and robbed them, took Mr. Mayers pants, and then
8 fled the scene.

9 Q. And did the victims, Cedric and Precious Mayers, did
10 they identify the suspects at all?

11 A. They were unable to identify any suspects because they
12 were -- their faces were covered, the ones that came into
13 the residence.

14 Q. All right. Tell us what you do while you're on-scene
15 at this incident location.

16 A. See if there's any evidence that could be collected
17 that would lead to anybody or that would assist in our
18 investigation, photographed the scene, tried to take some
19 fingerprints of some areas where the suspects would have
20 touched, take DNA samples of any particular areas where
21 somebody would have touched something like a drawer, a
22 door handle or anything like that just to try to locate
23 anything, footprints, tire prints, and, of course, there
24 wasn't much that we were able to locate.

25 Q. Okay. And you arrived on-scene, what, you said after

1 11:00 PM?

2 A. The dispatch time came in, I think, at about 11:18 PM
3 according to our dispatch center. The first deputy arrived
4 on the scene at 11:27 and then at some point after the
5 deputies arrived on the scene they notified me because of
6 being on call and my arrival time was probably somewhere a
7 little before midnight, a quarter till twelve or so.

8 Q. Okay. And eventually you clear the scene. What was
9 the break in this investigation? How were you able to
10 develop suspects?

11 A. The next morning, it was a Thursday morning on
12 May the 1st, Mr. Mayers, the victim in the case called me
13 basically around 8:00 that morning, about the time I got
14 to the office, and said that he had been -- he had an
15 application on his phone called Find My iPhone app and it
16 was hitting off of Crossing Street. Crossing Street is in
17 the West End section here in the city of Newberry and it
18 had an address of about 325 where it was pinging. He came
19 to our office that morning, Mr. Mayers did. We got on our
20 phones and we started doing the app, too, with him and,
21 again, it was indicating that his phone was pinging by
22 using that application about the address of 325 Crossing
23 Street. Myself and a few other investigators go over. We
24 start looking -- looking around curbside to see if it
25 maybe had been thrown out of a car at the time because we

1 didn't know why that phone would go all the way from Little
2 Mountain into the city of Newberry and we looked around for
3 a while and, of course, at first we were unable to find it.

4 Q. This was the very next day after this incident?

5 A. This was 8:00 in the morning the next day, so probably
6 about the time that Mr. Mayers travelled from Little
7 Mountain to our office that we got a few guys together and
8 we probably started searching for that phone probably
9 around 9:00 that morning.

10 Q. Okay. And eventually you were able to locate the two
11 cell phones?

12 A. That is correct. It was in a curbside cart at the
13 address of 346 Crossing Street, which at the time was
14 occupied by Precious Bates, I believe.

15 Q. I'm gonna hand you what's been admitted in evidence as
16 State's Number 8 and 9. And what is that?

17 A. Number 8 is the front of the address of 346 Crossing
18 Street. Of course, you can see the numbers on the mailbox
19 out front. And then Exhibit Number 9 is just a little
20 bit more to the left of the house. You can see where the
21 curbside cart -- trash cart was in the backyard.

22 Q. Okay. And did you have a chance to talk to a resident
23 of that address?

24 A. We did. We talked with Ms. Precious Bates and let her
25 know that we had located a phone. We were calling it while

1 we were there and we were able to hear it come through the
2 trash can and we located it. She gave us permission or
3 consent to look further and everywhere inside the house,
4 outside the house and, of course, to go along with the cell
5 phones in the trash can we were able to find the house keys
6 or some car keys -- or a set of keys that belonged to
7 victims.

8 Q. Okay. I'm gonna show you what's been admitted into
9 evidence as State's Number 12 and 13. What is that for the
10 jury?

11 A. Just exactly what I just described; two cell phones
12 and a set of keys.

13 Q. And the Find My iPhone app, that's just -- it acts
14 like a homing beacon whenever a phone is lost or stolen?

15 A. It's just an application that you can download to your
16 phone for, you know, a reason that you may lose your phone.

17 Q. And that's unique to iPhones, correct?

18 A. To my knowledge. I don't know what all it's limited
19 to.

20 Q. And you speak to the homeowner, Precious Bates, at
21 346 Crossing Street where the phones are recovered,
22 correct?

23 A. That is correct.

24 Q. All right. And what information did you receive after
25 speaking with Ms. Bates?

1 A. She indicated that on the previous night -- when we
2 asked why are these phones here, there's probably, what, a
3 fifteen, twenty mile difference between where the incident
4 took place and where we found the property of the victims,
5 and she said well, last night she had several people over.
6 One the names that she mentioned was Lorenzo Jones, Hootie
7 Mack, who testified earlier. In, you know, just talking
8 with Ms. Bates she indicated that Mr. Jones -- that Lorenzo
9 was the one who was there that night and had thrown some
10 items in the trash can.

11 Q. So after hearing Lorenzo Jones' name being at that
12 location where the phones were recovered, at that point is
13 he a person of interest?

14 A. That is correct.

15 Q. Okay. Did you suspect Lorenzo Jones' involvement
16 prior to this?

17 A. Didn't know any involvement. Just wanted to know why
18 at that point -- how did he gain access to the property of
19 the victims.

20 Q. And were you able to activate any of these phones?

21 A. I took them back to the victims. I can't remember
22 if they had a code on them, a password or anything. I
23 took them back to the Mayers and Ms. Mayers, Ms. Precious
24 Mayers, when she turned on her phone and activated it she
25 noticed that she had a phone call that came from the cell

1 phone at the time that was listed to Lorenzo Jones.

2 Q. Okay. And so is that the first time you were able to
3 identify a phone number associated with Lorenzo Jones?

4 A. We had already talked to Lorenzo probably on the same
5 day that we had returned the phones to them, which was on
6 that Friday, once we had found out that Lorenzo was at the
7 house where Ms. Bates lived on Crossing Street. We went
8 and picked him up. He voluntarily came to the office and
9 talked with us. He was Mirandized, you know, read his
10 warnings. He talked to us and, of course, at the time he
11 indicated no involvement.

12 Q. Okay. So the first time you interviewed Lorenzo Jones
13 he denied involvement?

14 A. He denied any involvement in the incident.

15 Q. And do you recall the -- and he identified his phone
16 number for you?

17 A. He did. He let us look at his phone. He gave us
18 permission to look at his phone and scroll through it.

19 Q. Okay. At what point, if any, did you decide to obtain
20 Mr. Jones' phone records?

21 A. We did it that day. I sent in the information on
22 Friday, May the 2nd, to his cell phone provider because he
23 told us where it was from. We sent it off that day. Of
24 course, it takes a little time to get that information
25 back, so it wasn't for another week or two until we got his

1 phone records after we got a circuit court to sign a search
2 warrant for his phone.

3 Q. Okay. And you did eventually -- you got a court order
4 for phone records for that number?

5 A. A court order for phone records and I contacted a SLED
6 agent who was able to download and explain all that stuff
7 to you and once we were able to do that it showed that
8 Lorenzo Jones -- his cell phone had hit off the towers in
9 Little Mountain during the time that the incident occurred.

10 Q. All right. And you basically -- you direct the court
11 order to the cell phone carrier and they respond by sending
12 you-all the digital content of the phone?

13 A. The information that we requested were the incoming
14 and outgoing phone calls, incoming and outgoing texts,
15 voicemails. Just any of that information. Plus who the
16 phone is registered to.

17 Q. I'm gonna show you what's been admitted into evidence
18 as State's 15. What is that?

19 A. That is a disk that should -- that should have the
20 information provided that -- that the cell phone company
21 gave to us with the information that we requested.

22 Q. Okay. That would contain Lorenzo Jones' cell phone
23 information and phone records?

24 A. That is correct.

25 Q. Okay. Tell me how Robert Wright was identified as a

1 suspect.

2 A. We then, with the information that we got from the
3 cell phone provider, obtained an arrest warrant for Lorenzo
4 Jones for this incident. We picked up Mr. Lorenzo Jones.
5 Again, we read his Miranda warnings to him. He waived
6 those warnings, he talked to us and even at first, again,
7 it was just -- he-hawed around about the information and he
8 finally said okay, let's get real, and then he explained to
9 us why he was going from Newberry to Little Mountain and he
10 was the one that brought the name of Robert Wright in.

11 Q. Okay. So at first he's denying involvement again?

12 A. That's correct.

13 Q. So what prompted him to come clean so to speak? Did
14 you show him any of the evidence, anything like that?

15 A. We showed him the evidence of the cell phone pinging
16 in Little Mountain during the time of the -- of the
17 incident.

18 Q. You may have some evidence up here already. So you've
19 had a chance to review what's been admitted into evidence
20 as State's 16?

21 A. Yes.

22 Q. It's a summation of these phone records?

23 A. That is correct.

24 Q. Okay. Now when we talk about what prompted Mr. Jones
25 to come clean, you said the cell phone records?

1 A. The cell phone records of phone calls that he made and
2 basically that a SLED agent was able to download and do a
3 graph of his phone that night leaving Newberry, travelling
4 through Prosperity, going to Little Mountain, staying in
5 Little Mountain and coming back was one of the areas that
6 we provided Mr. Jones of the proof that he was there and
7 then after that he came forward with the other information.

8 Q. Okay. Now this summation, you've had a chance to
9 review this summation of Lorenzo Jones' phone records?

10 A. Yes.

11 Q. Is it kind of a fair and accurate representation of
12 what's on the disk containing these records?

13 A. That is correct.

14 Q. Okay. And you are able at this time to identify the
15 phone number associated with Robert Wright?

16 A. That is correct.

17 **MR. DANIEL:** Your Honor, do we want to, for the
18 record, handle the stipulation?

19 **THE COURT:** Right. I think -- ladies and gentlemen
20 of the jury, previously the attorneys stipulated, which
21 means agreed, that the Defendant's cell phone number during
22 the time in question was 803-201-4329.

23 BY MR. DANIEL:

24 Q. So it's uncontested at this point that that number,
25 803-201-4329, is Robert Wright's number?

1 A. Yes, sir.

2 Q. Okay. And I guess going through this summation, some
3 of them -- the cell phone company they send you incoming
4 and outgoing calls, correct?

5 A. (Nods head.)

6 Q. It's not a wiretap, so we don't -- we don't know
7 what's said on these phone conversations, correct?

8 A. No, it just shows that -- any call that Lorenzo made
9 it shows the number that it was made to, any call that came
10 in to his phone it shows the phone number where it came
11 from, plus the date and time.

12 Q. Okay. And also the cell company will provide you with
13 incoming and outgoing text messages?

14 A. Text messages in the same format of when it came in,
15 from who, and the same thing going out.

16 Q. Okay. And I'm looking here at April 30th --
17 April 30th of 2014 is the headline here and is there a text
18 that Lorenzo Jones sent to Robert Wright?

19 A. According to what was given to us by the cell phone
20 provider, at approximately 10:45 PM a text was sent to
21 Robert Wright's phone from Lorenzo Jones and it says
22 "Should I kick the door in?".

23 Q. And then directly -- right after that it looks like at
24 10:47 PM there's a call to Robert Wright?

25 A. Several phone calls. The first two are only five and

1 six seconds long. I don't know if the phone call didn't go
2 through. And then at 10:47, a twenty-four -- thirty-four
3 second phone call, and at 10:48, another one second call,
4 then 10:52, a two-minute call, and at 11:08, almost a
5 four-minute conversation came from Lorenzo Jones to Robert
6 Wright.

7 Q. Okay. And then -- and so you shared all this
8 information with Lorenzo Jones about these corresponding
9 around the time of the armed robbery?

10 A. That is correct.

11 Q. Okay.

12 **MR. DANIEL:** I beg the Court's indulgence.

13 BY MR. DANIEL:

14 Q. And did Robert Wright ever send any texts to Lorenzo
15 Jones? Was Robert Wright the recipient? Excuse me. Did
16 Robert Wright send any out that Lorenzo Jones received?

17 A. It looks like that on the following day, on May the
18 1st, of course it was later on that night, which would have
19 been approximately twenty-four hours after the incident
20 occurred, that -- from Robert Wright's phone at 11:51 PM,
21 and I'm just reading it word for word because it's a little
22 difficult to understand, "Too many police was out there
23 last night. They're watching boy. I believe it too much
24 -- too much talking going on about it. They found the
25 phone".

1 Q. Okay. And what listed address do you have for Robert
2 Wright?

3 A. It's next door. I don't remember the exact numbers
4 without looking at it, but it was on Holy Trinity Church
5 Road next door to the incident location. According to the
6 report, his listed address was 2864 Holy Trinity Church
7 Road and the incident location was 2890 Holy Trinity Church
8 Road.

9 Q. And you've interviewed a lot of suspects in your
10 career?

11 A. Yes, sir.

12 Q. Is it common for suspects to kind of minimize their
13 role at first?

14 A. Yeah. If everyone came forward at first, it would
15 make my job a whole lot easier.

16 Q. And so that -- is that a common tactic showing them
17 the evidence of what you have to get people to talk?

18 A. The first time we went to Lorenzo, all we had was him
19 at the location where the phones were found and then once
20 you go back and show more information that you've been able
21 to collect that basically puts him on the crime scene like
22 we were able to do, then he, of course, he-hawing around
23 and came forward with the information he provided.

24 Q. Okay. So Lorenzo Jones was charged -- you charged
25 Lorenzo Jones with armed robbery and burglary in the first

1 degree, correct?

2 A. That is correct. And, of course, he also gave
3 information that Tarakus Coleman was a co-defendant as
4 well.

5 Q. And you eventually interviewed Tarakus Coleman about
6 this incident?

7 A. He was taken into custody, he was interviewed and
8 then -- and pretty much the same thing, you know. The
9 very first minutes just bla, bla, bla and then, you know,
10 indicate what -- the evidence that you've got and he
11 provided the same information that Lorenzo did.

12 Q. State's 19 and 20. Did you interview -- that's you
13 conducting the interview for both Tarakus Coleman and
14 Lorenzo Jones?

15 A. That is correct.

16 Q. And based on these interviews, did you seek arrest
17 warrants on Robert Wright?

18 A. That is correct. After these two giving statements,
19 we also take him into custody.

20 Q. And you had the phone records?

21 A. From Lorenzo Jones, yes, sir.

22 **MR. DANIEL:** No further questions.

23 **THE COURT:** Cross-examination?

24 CROSS-EXAMINATION

25 BY MS. ZIMMERMAN:

1 Q. Investigator, is that the right title?

2 A. That's fine with me.

3 Q. Okay. Investigator Lominack, you were the first
4 investigator on the scene, correct?

5 A. That is correct, after two or three patrol deputies
6 had arrived first.

7 Q. They always get dispatched first, right?

8 A. That is correct. Once the 9-1-1 call comes in, they
9 give it to the shift lieutenant and then, of course, the
10 shift supervisor dispatches the closest units and explains
11 to them how to respond to the incident location and how
12 many units to respond.

13 Q. Okay. And then based on the severity of the crime and
14 kind of how things unfold they determine if they need to
15 bring investigation in?

16 A. That is correct. We have an investigator on call
17 after hours, on weekends, for incidents that may require
18 additional assistance beyond what a patrol deputy can
19 provide.

20 Q. Okay. And then when you arrive on-scene, do you kind
21 of take over the scene?

22 A. We take over the crime scene, yes, it's by the
23 investigators and I was assisted by a second investigator
24 that night who was able to help me just, you know,
25 interview the victims at the time. So, you know, we try

1 to photograph, look for any evidence that was left behind,
2 and try to collect and -- and document anything.

3 Q. So anybody that's watched CSI, all that evidence that
4 gets gathered, stuff like that, that comes from you and the
5 other investigator, right?

6 A. Except for we don't get it solved within one hour.
7 That is correct though.

8 Q. DNA, fingerprints, all that stuff?

9 A. Blood and that type of stuff, yes.

10 Q. Okay. And you evaluate the scene to determine what
11 all was taken; is that right?

12 A. That is correct. Anything that I feel like is of
13 evidentiary value.

14 Q. And then who makes the decision as far as things like
15 you mentioned getting this court order for phone records?
16 Is that also your call?

17 A. That was my call as well, yes, ma'am.

18 Q. Okay. So once it's turned over to you as the
19 investigator on the case, it's your ball to run with,
20 right?

21 A. That is correct.

22 Q. Okay. I want to talk about a few of the things that
23 you did. You actually took DNA from this scene; is that
24 correct?

25 A. We -- I took swabs of certain areas of possibly where

1 the suspects may have touched.

2 Q. Okay. Was any of that ever submitted for any
3 analysis?

4 A. Nothing was ever submitted. After we located
5 Mr. Jones and Mr. Coleman and they indicated that they
6 were in the house, then we really didn't need to send
7 anything down with their admitting what they gave us.

8 Q. Okay. And you also found a piece of a glove; is that
9 correct?

10 A. Mr. Mayers a day or so later brought in a piece of a
11 glove that might have been a piece of a latex glove.
12 Wasn't sure who it involved, wasn't sure if it was -- don't
13 know really what its involvement, even if it was brought in
14 by anybody other than it originally being there. So, yes,
15 he did bring it in and that was not submitted.

16 Q. Okay. And the phones -- once you found the phones,
17 did you look through the phones to see what was on them?

18 A. The phones in the trash can?

19 Q. Yes, sir.

20 A. Once we got them to the victims, because I think they
21 had passwords to it, which I was not privy to at the time,
22 and the first thing we did was we did try to fingerprint
23 it, even though there might have been some water, some
24 condensation had gotten on it from being in the trash can,
25 and we didn't locate anything on it.

1 Q. Let me ask you, when you talked about Mr. Jones'
2 phone, I think you said that with the assistance of SLED
3 you were able to get information and I think, correct me if
4 I'm wrong, but you said ping cell towers; is that right?

5 A. That is correct, and that's something that I have no
6 knowledge in, so we also asked for the tower sites, cell
7 phone sites, and so that's when we called SLED to come down
8 with it and explain to us and then map them for us.

9 Q. And that helps you to tell where that phone was?

10 A. That is correct.

11 Q. Okay. Did you try to ping the cell towers for either
12 of the phones that belonged to the Mayers?

13 A. No, we did not.

14 Q. Okay. How about Robert Wright's phone? Did you ping
15 the cell tower on it?

16 A. No, we did not.

17 Q. Did you get Robert Wright's phone records?

18 A. We did not get his phone records.

19 Q. But you did have his phone number, correct?

20 A. We had his phone number that we collected off of
21 Lorenzo's phone.

22 Q. Okay. The phones were found at the home of Precious
23 Bates; is that correct?

24 A. That's where she was staying at the time. I don't --
25 I don't know if she's the homeowner or she was renting

1 there, but she was living there and in control of the
2 house.

3 Q. Okay. And through the course of your investigation
4 you found out several people had been at the house that
5 night, correct?

6 A. Mr. Jones -- or Lorenzo Jones and Precious indicated
7 that there were other persons at the house, the two
8 nicknames you mentioned earlier, Mad Max and Doc, those
9 names were brought up by more than one person.

10 Q. Let talk about them. Do you know who Mad Max is?

11 A. Mad Max, what was given to us, goes by the name of
12 Christopher Penny. I was unable to locate him and talk to
13 him. Antoine Glenn was possibly identified as Doc. I was
14 unable to locate him.

15 Q. Okay.

16 A. And these were names that were stated that was at the
17 house on Crossing Street.

18 Q. Let me ask you a question. The supplemental incident
19 reports that have at the top of them Officer Garrett
20 Lominack, who typed those?

21 A. I typed those.

22 Q. So if it has your name, you would have typed that, not
23 somebody -- you don't have a secretary that types them for
24 you?

25 A. I wish.

1 Q. It's all from you?

2 A. That is correct. It's from me.

3 Q. Okay. And if something goes in the incident report,
4 is that a hundred percent accurate?

5 A. I'm not sure what you're asking.

6 Q. If you type it, is it actually what -- what happened?

7 A. If we're typing it, we're typing what we observe or
8 what was told to us.

9 Q. Okay. So you wouldn't put something in this incident
10 report that you didn't see or that wasn't told to you,
11 correct?

12 A. If it's something that I didn't see, I wouldn't put it
13 in there. My opinion would not go in there, no.

14 Q. Okay. So let's talk about your incident report. Do
15 you remember putting in your incident report that Mr. Jones
16 initially told you that Mad Max and Doc were out there at
17 the Mayers' house?

18 A. Are you referring to on May the 5th, is that the
19 incident time? You notice I start each paragraph off with
20 the date of when I'm entering that.

21 Q. Actually May 22nd.

22 A. Okay. All right. How far down can I look on that?

23 Q. Let's see. It looks like eleven lines down when
24 you're asking him specifically about his phone records and
25 Mr. Jones told you when you asked him about the text

1 "Should I kick the door in?", he said that he let Mad Max
2 and Doc use his phone?

3 A. That's correct. That's something that Mr. -- that
4 Lorenzo told me.

5 Q. Okay. So there was at least some indication at some
6 point in time that two other individuals were involved in
7 this home investigation?

8 A. That's what's coming from Lorenzo.

9 Q. Okay. And we've got possible DNA and possible
10 fingerprints, but we really never followed up to see if
11 those two were involved in this crime?

12 A. We don't know if they were wearing gloves that would
13 explain -- no, nothing was submitted to SLED for any kind
14 of DNA testing or anything once both Mr. Jones -- Lorenzo
15 Jones and Tarakus Coleman admitted to their part of being
16 there and that they were the only two there. Now at first,
17 of course, Lorenzo would bounce around a little bit, too,
18 but nothing was submitted to SLED.

19 Q. Okay. So how many different stories did Lorenzo
20 bounce around to you?

21 A. The first day that we talked to him, which was on
22 May the 2nd, he said that he wasn't there; that, you know,
23 he was over on Crossing Street. Then we picked him up the
24 day he was arrested, that might have been the 22nd perhaps
25 was the date, and at first he started out and then at some

1 point, you know, as he put in his own words, which I think
2 I indicated in my supplemental, okay, let's get real, and
3 that's when he told us his involvement in it. So it would
4 be safe to say perhaps two stories before we got the -- his
5 admission to it.

6 Q. Well, let's talk about you telling him to get real
7 because I think that's back on the 22nd, the same time, and
8 I want to ask you about something that you said --

9 A. I didn't tell him to get real. He indicated "Let's
10 get real".

11 Q. I'm sorry. Thank you for correcting that. When he
12 said "Let's get real". I think you indicated earlier that
13 he was the one that brought Robert Wright's name into this,
14 not you; is that right?

15 A. Right. He was the one that told us that he was
16 contacted through Robert Wright about this incident.

17 Q. Well, that's not what your incident report says, is
18 it?

19 A. Okay. Explain to me what you're looking at.

20 Q. Your incident report says that you went and showed
21 him a picture of Robert Wright and asked him what Wright's
22 involvement was and at first he said that he was related
23 to Subject 3, which is Robert Wright.

24 A. That is correct, yes.

25 Q. Okay.

1 A. During the time that we did look at the phone, we did
2 -- when we discovered the phone text "Should I kick the
3 door in?" is when we researched the phone number and it
4 indicated it came back to Mr. Wright.

5 Q. Okay. So you asked him about Mr. Wright being
6 involved?

7 A. I guess essentially I did, yes.

8 Q. Okay. And he still denied any involvement by
9 Mr. Wright?

10 A. Indicated that he was related to him.

11 Q. Okay. And at that point said well, Mad Max and Doc
12 used my phone, right?

13 A. That is correct.

14 Q. And we keep on talking and he finally gets around to
15 trying to pull Mr. Wright into being involved, correct?

16 A. That is correct.

17 Q. Okay. Any idea how long you were out there with him
18 on the 22nd?

19 A. We took him into custody pretty quick, so we were in
20 the sheriff's office when this was done. As far as waiting
21 time, no, I don't remember how much time we talked to him.

22 Q. Okay. Let's talk about Tarakus Coleman for a minute.
23 Tarakus bounced around a few different stories, too, right?

24 A. Yes.

25 Q. He first said -- and to help you, I'm looking at your

1 supplemental report on 6-9.

2 A. Okay.

3 Q. He first said he wasn't involved and then he said he
4 was the lookout; is that right? Excuse me, I skipped
5 ahead. He said he wasn't involved and then he said they
6 asked him, but he said no, and then he said he was the
7 lookout.

8 A. Okay. Direct me to where you're looking at,
9 Ms. Zimmerman.

10 Q. I'm looking at the first paragraph under 6-9. It's
11 down toward the bottom of that page. Do you see that?

12 A. Let me get there.

13 Q. He denied being involved. Do you want me to show you
14 my copy?

15 A. Yeah, you might as well.

16 Q. Okay.

17 A. What part are you asking me?

18 Q. I'm asking you his first story is he denied being
19 involved, right?

20 A. Yes, Subject 2 denied -- Subject 2 in this report is
21 Tarakus Coleman -- being involved in the incident, correct.

22 Q. Okay. And then after that he states that they asked
23 him about hitting a lick and he said no?

24 A. Okay. I'm not sure what you're talking about being
25 a lookout. I don't think I remember putting the word

1 "lookout" anywhere in the supplemental.

2 Q. Later admitted being there, but stated he did not go
3 into the residence. You're right. I was assuming that
4 meant lookout.

5 A. That's right. That's right. He did not -- he did not
6 go in there. That's what he explained to us.

7 Q. Okay. And then he writes his first written statement,
8 right?

9 A. That is correct.

10 Q. And that was back in 2014 when he gave that written
11 statement?

12 A. That is correct.

13 Q. And then he gave another statement earlier this year
14 -- or, excuse me, earlier in 2015. I forget we have a new
15 year.

16 A. And there was another time that -- that he indicated
17 that -- we talked more into it, so we took a second
18 statement from him.

19 Q. He reached out to y'all or y'all reached out to him?

20 A. It was up here in court. He reached out to us, I
21 believe. I don't quite remember how the interaction came
22 about.

23 Q. So he was over here at the courthouse when that
24 happened?

25 A. He was in the courthouse.

1 Q. Okay. Now once you made the decision to actually
2 charge Robert Wright, you and I talked, correct?

3 A. You called me the day that you learned that we had
4 active warrants on him, explained that you wanted him to
5 -- correct me if I'm wrong, you were gonna have him turn
6 himself in the next day and I met you at the magistrate's
7 office and we spoke about it.

8 Q. And he did surrender himself, correct?

9 A. He surrendered himself to the -- to the jail, yes,
10 ma'am.

11 Q. Without incident?

12 A. Without incident.

13 **MS. ZIMMERMAN:** No further questions.

14 **THE COURT:** Redirect?

15 **MR. DANIEL:** Just briefly, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. DANIEL:**

18 Q. You testified earlier that Mr. Jones was not
19 forthright to you at first about his involvement, correct?

20 A. That is correct.

21 Q. And the same goes for Tarakus Coleman?

22 A. That is correct.

23 Q. And that's pretty common?

24 A. Yes. If everybody would -- I probably would be doing
25 a different job if everybody told the truth from the

1 get-go.

2 Q. And the phone records is what prompted them to start
3 disclosing more about the incident, correct?

4 A. That is correct.

5 Q. And did both Tarakus Coleman and Lorenzo Jones come up
6 with the name Robert Wright independently? I guess were --
7 they were interviewed separately, Lorenzo Jones and Tarakus
8 Coleman?

9 A. Yes, they were -- they were separate times, yes, sir.

10 Q. And both their statements at one point are consistent
11 with Robert Wright being the individual?

12 A. That is correct.

13 **MR. DANIEL:** No further questions.

14 **THE COURT:** Recross?

15 **MS. ZIMMERMAN:** No, sir.

16 **THE COURT:** Okay. Thank you, sir, for your testimony.
17 You can step down.

18 (Witness excused.)

19 **MR. SCOTT:** The State rests, Your Honor.

20 **THE COURT:** Okay.

21 All right. Mr. Foreman and ladies and gentlemen of
22 the jury, this will be a good time to take an afternoon
23 break and so I'll ask you to go back to the jury room.
24 Again, I'll remind you no discussion among yourselves
25 about this case and we'll take about a fifteen-minute

1 break, a twenty-minute break and get you back out, okay?

2 (Whereupon, the jury retires to the jury room at
3 2:48 PM.)

4 **THE COURT:** Okay. We'll take about a ten-minute break
5 for us and then we can put on the record whatever we need
6 to, okay?

7 **MS. ZIMMERMAN:** Thank you, sir.

8 (Recess taken.)

9 **BAILIFF:** All rise.

10 **THE COURT:** Thank you. Have a seat.

11 Okay. We're back on the record and the State has
12 rested its case. Any motions you want to make,
13 Ms. Zimmerman?

14 **MS. ZIMMERMAN:** Judge, we're moving to dismiss both
15 charges based upon a failure to -- to show any evidence
16 supporting either charge. I'm sorry, Judge. I got a
17 little distracted there.

18 **THE COURT:** That's all right.

19 **MS. ZIMMERMAN:** I believe at best the State has
20 provided evidence that my client may have said that there
21 were drugs and money in the house, but no evidence to
22 support that he counseled, hired or otherwise procured any
23 felony, which is what's required for the accessory, nor any
24 evidence that he worked in combination with two or more
25 individuals for the purpose of accomplishing an unlawful

1 object or any unlawful means.

2 I mean, I think if we believe everything the State's
3 shown and we take the evidence in the light most favorable
4 to the State, all he's said was this guy's got drugs and
5 money in the house, and I don't think that that rises to
6 the level of a criminal act. I mean, if I tell somebody
7 that, you know, I know where the solicitor lives and I've
8 seen his house and he has nice things there and then they
9 go rob him, that does not mean that I have in any way been
10 an accessory to them doing that, and that's the best
11 evidence that the State has is that he said there's drugs
12 and money there.

13 So I just don't think the State has met the burden of
14 showing any criminal activity on his part. Just simply him
15 stating an observation of what's over there at the house
16 does not rise to the level of him putting this whole
17 burglary, armed robbery scenario together.

18 **THE COURT:** All right. Thank you very much. Viewing
19 the evidence in the light most favorable to the State,
20 finding the existence -- not the weight, but the existence
21 of any evidence, I find that there has been the evidence
22 to justify denial of your -- of your motion to direct a
23 verdict as to -- as to both charges.

24 Okay. Anything else?

25 **MS. ZIMMERMAN:** Judge, I believe we may need a little

1 bit of time before I can call my first witness, who is
2 actually an employee of the State. I had her under
3 subpoena. She was here, she left. I got in touch with
4 her supervisors, they had her come back, but I believe
5 we're having some trouble getting her to testify, so.

6 **THE COURT:** Okay. Well, my plan was to go ahead and
7 just stop for the day. Of course, I did not know if you
8 were gonna put up a case, but just for my benefit do you
9 anticipate calling anybody else other than this one State
10 witness?

11 **MS. ZIMMERMAN:** I do not believe so.

12 **THE COURT:** Okay. And I'm not gonna hold your feet to
13 the fire. Things may change. Okay. Let me do this. Let
14 me go ahead and examine the Defendant concerning his right
15 to testify, then he can let me know tomorrow, but let me
16 get this out of the way and we can just start back in the
17 morning. We've been working on the charge and I'd like to
18 get y'all a draft of the charge before we all head out
19 today, but let's -- let's do that and get the jury back out
20 and break for the day.

21 **MR. SCOTT:** I think she's got that witness on the way
22 over here, Your Honor.

23 **THE COURT:** Oh, you do? I did not understand that.

24 **MS. ZIMMERMAN:** Well, she's on her way, but she is on
25 her way with the intention of saying that she's not gonna

1 testify and I really believe maybe -- I would like some
2 time to talk to her before I go through the motions of
3 putting her on the stand and --

4 **THE COURT:** Oh, okay. That's fine. If she's on her
5 way, then let's -- let's just go ahead and just recess for
6 a little bit and -- when do you think she'll get here?

7 **MS. ZIMMERMAN:** Probably within the next minute or
8 two. When I talked to -- like I said, she was here and she
9 left with every intention of not testifying and I called
10 her during the break and she was --

11 **THE COURT:** Okay. Was that the female deputy that
12 came in?

13 **MS. ZIMMERMAN:** Yes, sir. I think she's very
14 uncomfortable testifying for my side.

15 **THE COURT:** I understand. Well, let's -- let me just
16 bring the jury out and let them know we need a little bit
17 more time and recess to take care of a few matters and then
18 to be patient with us and then you take whatever time you
19 need.

20 **MS. ZIMMERMAN:** Thank you, sir.

21 **THE COURT:** Okay.

22 All right. Madam Bailiff, if you will bring the jury
23 out.

24 (Whereupon, the jury returns to the courtroom at
25 3:13 PM.)

1 **THE COURT:** All right. Let the record reflect that
2 the jury is back out.

3 Mr. Foreman and ladies and gentlemen of the jury, I
4 wanted to bring you back out just to explain to you that
5 this recess that we're in is gonna be a little bit longer.
6 There's a few matters that need to be attended to and I
7 didn't want to leave you back there. I told you about a
8 fifteen-minute, twenty-minute break. It's gonna go a
9 little bit longer. I wanted to explain that to you. So if
10 you will go back to your jury room and just take a little
11 bit longer break. You ought to feel good that the jury
12 room and the jury box are so close together. If you were
13 in Newberry, then you would be walking a pretty good
14 distance back and forth. So if you don't like to walk,
15 then you're in luck because of the distance between the two
16 spots. But, anyway, if you'll go back to the jury room,
17 please.

18 (Whereupon, the jury retires to the jury room at
19 3:14 PM.)

20 **THE COURT:** We'll be in recess until you can get your
21 situation --

22 **MS. ZIMMERMAN:** Do you want to advise him about his
23 right to testify?

24 **THE COURT:** I'm gonna go ahead and wait until you can
25 tell me what -- what you're gonna do as far as the case or

1 not, so we'll wait on that.

2 **MS. ZIMMERMAN:** Okay.

3 (Recess taken.)

4 **THE COURT:** All right. Let's go on the record,
5 Madam Court Reporter. And, Madam Clerk, will you put the
6 Defendant under oath.

7 (Whereupon, Robert Wright, was duly sworn by the
8 Clerk of Court.)

9 **THE COURT:** Mr. Wright, at this time I'm going to
10 explain to you certain of your rights. If you do not
11 understand anything that I say, please let me know. If
12 you want me to explain anything in more detail, please let
13 me know that as well. Do you understand, sir?

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

15 **THE COURT:** We have now reached the stage of the trial
16 where you may present your defense. You have the right to
17 claim the protections given to you by the Fifth Amendment
18 to the Constitution of the United States. This amendment
19 states, in part, that no person shall be compelled in any
20 criminal case to be a witness against himself. This means
21 that you cannot be required to testify in this case. You
22 have the right to testify on your own behalf; however, no
23 one can make you testify. This is a personal right. No
24 one can waive this right except you. If you decide to
25 testify, you will be subject to the same rules that govern

1 other witnesses and you may be examined and cross-examined
2 on any relevant issue in this case.

3 In addition, if you have any convictions involving
4 dishonesty or a false statement or for crimes punishable
5 by imprisonment for more than one year and this Court
6 determines that the probative value of admitting this
7 evidence outweighs its prejudicial effect to you, the
8 solicitor would be able to introduce your record to attack
9 your credibility. If you decide to testify, this decision
10 on your part must be freely, voluntarily and intelligently
11 made with knowledge of the protections given to you by the
12 Fifth Amendment and the consequences of your decision to
13 testify. If you decide not to testify, I will instruct
14 the jurors that they cannot give the fact that you did not
15 testify any consideration whatsoever and that there is to
16 be absolutely no prejudice to you because you did not
17 testify. It is left entirely up to you whether or not you
18 testify. Certainly you have the right, and I'm sure you
19 have, to talk with your attorney your family, friends,
20 anyone else, but the final decision is to be left entirely
21 up to you. Have you understood what I've explained to you
22 so far?

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

24 **THE COURT:** Okay. Do you have any questions about
25 what I've explained to you?

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

2 **THE COURT:** Okay. Have you had ample time to discuss
3 this matter with your attorney, family and friends about
4 whether or not to testify?

5 **THE DEFENDANT:** I don't want to testify, sir.

6 **THE COURT:** Okay. But have you had ample time to
7 discuss this with them?

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

9 **THE COURT:** Okay. And do you need any more time to
10 talk to your attorney about this matter?

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

12 **THE COURT:** Okay. Have you made a decision whether or
13 not you will testify?

14 **THE DEFENDANT:** I am not testifying.

15 **THE COURT:** Okay. Has that decision not to testify
16 been made by you freely, voluntarily and intelligently?

17 **THE DEFENDANT:** All me, sir.

18 **THE COURT:** Sir?

19 **THE DEFENDANT:** All me, sir.

20 **THE COURT:** What did he say?

21 **MS. ZIMMERMAN:** It's all him. His decision.

22 **THE COURT:** All right. But, again, freely,
23 voluntarily and intelligently that decision has been made?

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

25 **THE COURT:** Thank you very much, and I so find. Thank

1 you, sir. You can have a seat.

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

3 **THE COURT:** All right. We'll bring the jury out and
4 defense can rest and then I will excuse the jury to come
5 back in at probably ten. I've got a Greenwood matter
6 that's coming over at 9:15, it should not take too long,
7 and give us ample time to discuss the charge, so I think
8 probably 10:00 would be good.

9 Madam Bailiff, if you will bring the jury back out,
10 please.

11 (Whereupon, the jury returns to the courtroom at
12 3:34 PM.)

13 **THE COURT:** All right. Let the record reflect that
14 the jury is back in. Is the defense ready?

15 **MS. ZIMMERMAN:** Yes, Your Honor. At this time the
16 defense rests.

17 **THE COURT:** Okay. Thank you very much.

18 Okay. The evidentiary record in this case is now
19 closed. Ladies and gentlemen of the jury, we're at the
20 stage of this trial where the lawyers will make their
21 closing arguments to you and I will instruct you on the
22 law. However, I need to review with the lawyers my charge
23 on the law because they may have some requested charges,
24 some requested changes, and so that will take a little
25 while. So I think we're probably in a position where we

1 will go ahead and adjourn for the day and have you back
2 here at 10:00 in the morning at which time we will then
3 -- the lawyers will make their closing arguments, I will
4 charge you on the law and then give you the case to begin
5 your deliberations in order to reach a verdict.

6 So you're good to go for today. Again, I remind you
7 anybody that you come into contact with, family, friends,
8 anybody, do not engage in any discussion whatsoever with
9 them. And also as we've already talked about several
10 times, don't -- don't spend the evening on the Internet
11 researching this case or anything related to this case,
12 and we will see you in the morning at 10:00. Have a good
13 evening. Get you some rest, too, okay?

14 (Whereupon, the jury is excused for the evening at
15 3:36 PM.)

16 **THE COURT:** Okay. If you folks will just hang around
17 a little bit, I'll try to get you a draft of the charge and
18 you can look over it this evening.

19 **MR. SCOTT:** Okay. And we can e-mail you some, I
20 guess, proposed charges as well?

21 **THE COURT:** Yeah. I mean, what -- why don't y'all
22 just come on back here and tell me what you're thinking
23 about and see if that's gonna be covered in what I intend
24 to do.

25 (Recess taken.)

1 **THE COURT:** Solicitor, I think you've got a motion
2 that we discussed in chambers?

3 **MR. SCOTT:** Yes, sir. Customarily after the jury
4 is sworn and the defendant is facing serious charges as
5 Mr. Wright is, and, in addition, he's living next door to
6 my victims, I would ask for his bond to be revoked until
7 the close of trial.

8 **THE COURT:** Okay. And as we discussed it in chambers,
9 in light of the fact that there's been no indication during
10 this last year and a half, even though there have been some
11 accusations made that possibly there's been some improper
12 communication with some of the State's witnesses, at least
13 it's not -- nothing has risen to the level of this Court
14 being involved in connection with your bond, Mr. Wright, so
15 as I indicated to the lawyers in chambers I'm not going to
16 grant the State's bond; however, conditioned upon you
17 staying in Newberry. Ms. Zimmerman indicates that there's
18 some family members in Newberry. From this -- from this
19 point forward, I don't want you anywhere close to Little
20 Mountain until this matter is resolved. It appears it's
21 gonna go to the jury tomorrow and certainly I don't want
22 you or anyone on your behalf to have any communication
23 whatsoever with any of the State's witnesses and certainly
24 if that were to happen and the Court learns of it, then
25 the Court's gonna deal with that very severely. So I'm not

1 going to lift your bond and put you in jail tonight as the
2 State is requesting, but I do want you to stay somewhere
3 other than in Little Mountain and for there to be no
4 communication.

5 Ms. Zimmerman, anything you want to add to that?

6 **MS. ZIMMERMAN:** I just want to go on record and say
7 that his wife, who is here with him, will be going back to
8 the house to get his clothes and things. They came in the
9 same car. He is not gonna go with her, but I do want the
10 State to know that she has to go back there to get some
11 things he'll for court tomorrow.

12 **THE COURT:** Okay. And, Ms. Wright, if you'll
13 accomplish that as -- as promptly and as quickly as you
14 possibly can to get whatever belongings you need and that
15 your husband needs, if you'll get that done quickly, and
16 then you get to Newberry, too, okay?

17 **MS. ZIMMERMAN:** Thank you.

18 **THE COURT:** Okay, ma'am?

19 **MS. WRIGHT:** Okay.

20 **THE COURT:** All right. Anything else?

21 **MR. SCOTT:** Nothing from the State, Your Honor.

22 **THE COURT:** Okay. All right. Very good.

23 And certainly, Mr. Wright, whenever Ms. Zimmerman
24 instructs you to be here tomorrow you need to be here,
25 okay?

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

2 **MS. ZIMMERMAN:** Thank you, Judge.

3 **THE COURT:** All right. We'll be adjourned until in
4 the morning.

5 (Whereupon, the proceedings were concluded for
6 January 5, 2016, at 3:55 PM.)

7 (The following proceedings were held on January 6,
8 2016, beginning at 10:26 AM.)

9 **BAILIFF:** All rise.

10 **THE COURT:** Thank you very much. Have a seat.

11 Okay. Do we need to put anything on the record before
12 we start our closing from the State?

13 **MR. SCOTT:** Nothing from the State, Your Honor.

14 **THE COURT:** All right. From the defense?

15 **MS. ZIMMERMAN:** Nothing from the defense.

16 **THE COURT:** All right. Madam Bailiff, if you'd bring
17 the jury out, please.

18 (Whereupon, the jury enters the courtroom at
19 10:27 AM.)

20 **THE COURT:** All right. Let the record reflect that
21 the jury is back in.

22 Good morning, ladies and gentlemen. As I indicated
23 to you when we adjourned yesterday that what we have left
24 in this trial are the closing arguments that the lawyers
25 will make. The State will make their closing argument,

1 then the defense will make theirs, and then more than
2 likely we'll take a little short break after -- after that
3 and then I will instruct you on the law in the case and
4 then give you the case for you to begin your deliberations.

5 So the lawyers have worked extremely hard and just,
6 please, give them your very close and undivided attention
7 during their closing arguments.

8 Solicitor, are you ready?

9 **MR. SCOTT:** Yes, Your Honor.

10 **THE COURT:** Very good.

11 **MR. SCOTT:** Justice. What is justice? You'd think
12 that kind of would be the theme of almost every case we
13 have here and, I don't know, I was thinking about what this
14 case was about and that was the word that kept coming to
15 mind here. There's so many quotes about justice. What is
16 it? Justice consists not in being neutral between right
17 and wrong, but finding out the right and upholding it,
18 wherever found, against the wrong. That's Teddy Roosevelt.

19 We all know Martin Luther King, Junior. Injustice
20 anywhere is a threat to justice everywhere. Of course, we
21 know, too, that justice is blind. And the last verse of
22 our Pledge of Allegiance, there should be justice for all.

23 So where's the justice for the Mayers? Isn't that why
24 we're here? Where's the justice for them? We spent a day
25 and a half here listening to the testimony and listening to

1 this horrible crime. It's uncontested that it happened.
2 We know for a fact that they were broken into at night, had
3 a pistol held to their heads while two men ransacked their
4 house looking for whatever they were looking for. We know
5 that. So how about a little justice for the Mayers?

6 Y'all heard from two co-defendants, and let me tell
7 you, that's the flip side of the justice issue. They're
8 gonna get their justice. Trust me on that. Justice is
9 coming for Mr. Jones and justice is coming for Mr. Coleman.
10 They sat up there and they admitted to y'all what they had
11 done, how they had terrorized these two. Let me tell you
12 this. In case y'all are wondering, let me put your mind at
13 ease. Justice is coming for those two.

14 But why not hold them all accountable? Why not let's
15 make it three for three? Because there were most certainly
16 three people involved here. Do you have any doubt in that?
17 Let's hold all parties accountable, everyone involved in
18 this trial. His hands ain't clean, let me tell you that.
19 He may stand back and say well, I didn't get anything, they
20 didn't put me in the house. Because he was the puppet
21 master, right? Let's hold the shock collar accountable,
22 too. But for Robert Wright would this have ever happened?
23 Did y'all ever think about that? But for Robert Wright
24 would these two have been terrorized that night? The
25 answer is no. It's as simple as that.

1 You know, to stand back and say, you know, I'm sitting
2 in my house, I didn't go in their trailer, my hands are
3 clean, you can't find me guilty, that is just a legal
4 falsity. By no means do I compare the two, by no means do
5 I compare the two, and by no means do I compare the crimes,
6 but how many of us know Charlie Manson? Do you realize he
7 never killed a person? He never killed one person. He was
8 the puppet master in that case. And, again, I am not
9 comparing these two people and I'm not comparing their
10 crimes. I'm here to tell you that it is very possible to
11 commit the crime of burglary first and armed robbery while
12 sitting in the comfort of your own trailer fifty feet away.
13 Isn't that what Robert Wright did?

14 We know for a fact that this burglary first happened.
15 We know for a fact the house was broken into at night. We
16 know for a fact a gun was held to them. We know for a
17 fact certain items were stolen; drugs, some money, some
18 phones. It's uncontested. There's been no evidence to
19 the otherwise. We know for a fact the victims and Robert
20 Wright lived about fifty feet apart. We know that. That's
21 uncontested. We know that only Robert Wright knew these
22 victims. We know Tarakus Coleman didn't know them. We
23 know Lorenzo Jones didn't know them. We know Jones and
24 Coleman were the ones who went and did the job.

25 And we know about those phone records. And aren't

1 those difficult for Mr. Wright to explain, those phone
2 records? Do you understand that that's not been contested?
3 Do you understand that is the evidence; that those phone
4 records are the communications between Lorenzo Jones and
5 Robert Wright the day of the crime and the day after?
6 Y'all will have all of these back there, so you can analyze
7 them. It might be kind of hard to see from there, but
8 every one of these yellow calls are calls that Lorenzo
9 Jones made to Robert Wright on April 30th. Every one
10 that's distinguished in red are calls that Robert Wright
11 made to Lorenzo Jones. All leading up to this text message
12 at 10:45 from Lorenzo Jones to Robert Wright, "Should I
13 kick the door in?". What do I do, shock collar? How am I
14 gonna do this, Robert Wright? Kick the door in? Is that
15 what you want me to do? You know, Robert has already told
16 them there ain't gonna be nothing but he and his girlfriend
17 in there. You're gonna find eight thousand dollars, you're
18 gonna find some crack. And here's their address by the way
19 because I live next door to them. Do you ever wonder if
20 somebody has the gall to do this to a neighbor what they
21 could be capable of? It's fifty feet away. It's his
22 relative.

23 I just want y'all to think about some of this stuff
24 because I was trying to write down just different points
25 that occurred to me throughout this thing and, you know,

1 Lorenzo Jones, Tarakus Coleman, they have no ties to Little
2 Mountain. They live up here in Newberry. Who has ties to
3 Little Mountain? It's the Mayers, it's Robert Wright. Who
4 has ties to the Mayers? It's Robert Wright. They never
5 met Tarakus Coleman, they never met Lorenzo Jones, and
6 vice versa, Lorenzo Jones they didn't know who they were,
7 Tarakus Coleman didn't know who they were. They did know
8 who Robert Wright was and they did say they didn't get
9 along with Robert Wright despite being some kind of cousins
10 or something. They didn't get along, there was bad blood
11 there. We know that. Did y'all notice that Tarakus
12 Coleman and Lorenzo Jones both put Robert Wright in
13 independently? Because the defense attorney was talking
14 about the stories kind of changed as they went along. Did
15 that surprise y'all? Especially if one of you -- if any
16 one of you've got kids, what happens when you kind of catch
17 them? They're gonna -- they're gonna give you just enough
18 information to hopefully throw you off and then when you
19 kind of produce some evidence; well, the cookie jar is
20 open and you've got cookie crumbs on your hands, then they
21 might give you a little more truth and the more evidence
22 you show them there's gonna be a little bit more truth
23 until the full story comes out. Isn't that pretty much
24 what Tarakus and Lorenzo did? I didn't have anything to
25 do with it. Well, explain this. Uh-oh, well, maybe I did

1 have something to do with it. It's kind of like pulling
2 teeth. That's what you've got to do with these people.

3 And I'm not making any excuses for my witnesses. I
4 really wish I could have put two pastors up there or, you
5 know, two school teachers up there as my witnesses. I
6 wish I could have put pillars of the community up there
7 to testify for the State. I didn't pick those as my
8 witnesses. You know who picked them as my witnesses?
9 Robert Wright. Do you know who knew those two guys?
10 Robert Wright. He made them my witnesses, not me. But I
11 submit to you they were completely and totally credible.
12 Did it occur to any of you that they put themselves right
13 in the middle of these very serious crimes? They stood
14 up there under oath and they're gonna be subject to the
15 fallout of that testimony and those admissions. But, yeah,
16 we broke into that house; yeah, we had a gun; yeah, we
17 robbed those people. Why would they do that if they
18 weren't telling the truth? Why would they admit to
19 something like that? Then let me ask you this. Why would
20 they put Robert Wright there? How does that help them one
21 single bit? It doesn't exonerate them one single bit.
22 It's because that's what happened.

23 You know, the defense attorney was asking Lorenzo
24 Jones well, you and Robert Wright, y'all were buddies,
25 right? You didn't have anything against him. Yeah, we

1 were friends. So tell me what's his reason for putting his
2 friend in this? It doesn't help them one bit. There's
3 absolutely no reason for him to put Robert Wright into this
4 except that Robert Wright is the one who told him about
5 this house, told him about all this money and all this dope
6 they were gonna find there. It's because Robert Wright set
7 the wheels in motion. I want you to understand it doesn't
8 minimize their involvement one single bit. All they're
9 saying is yeah, we did it, but there was one other person
10 involved. And that's why we're here. That's why we're
11 here to have this trial.

12 And, again, the one thing that -- that is so pesky
13 for Mr. Wright are these phone records. Don't you kind
14 of wonder what was talked about for two minutes and six
15 seconds at 10:52 PM? Don't you kind of wonder what was
16 talked about for three minutes and fifty-five seconds at
17 11:08 PM? It keeps going on. Is there any question what
18 Robert Wright meant when he texted Lorenzo Jones the very
19 next day at 11:51 to say, "Too many police was out there
20 last night. They watching boy. I believe that too much
21 talking going on about it. They found the phone". Why
22 does that concern him if he doesn't have anything to do
23 with it? Why does he care there's too many police? I
24 don't think there'd be enough if somebody robbed my next
25 door neighbor. And why would he care about the phone?

1 How would he know about it? It's very important to Robert
2 Wright about the phone because that's gonna link his
3 conspirators back to the crime and possibly lead the police
4 to him, which ultimately it did, and we all know that and
5 we're thankful for that.

6 You know, the Court allowed me two hours to stand up
7 here and argue. I'm not gonna do that, and I know y'all
8 are thankful for that, but there's not really a whole lot
9 in my mind to argue about. I think it's pretty crystal
10 clear. And I don't think a lot of lawyers give juries
11 the respect they deserve as freethinking and educated
12 and logical people, but I do want to address something.
13 Defense attorney I think in cross-examination was talking
14 to one of the law enforcement officers, and I'm not saying
15 that she's disrespecting your intelligence or anything,
16 but part of their job is to really just kind of throw all
17 kinds of stuff out there for you to consider even though
18 they have absolutely nothing to do with the case, and I
19 submit to you that's to confuse you and take your eye off
20 the ball, which is just plain as day from right here.

21 But one of the things she kind of threw out there,
22 because we all watch TV and a lot of you guys don't do
23 this every day like I do, so certain things like DNA and
24 fingerprints, those are really cool to watch on TV and a
25 lot of times that will crack the case wide open, you know,

1 in the first episode based on DNA. You know, all those --
2 every case seems to have DNA or fingerprints involved when
3 you watch TV. It ain't like that in real life, let me tell
4 you that. But she was asking about DNA to compare, and I
5 don't know if y'all remember that yesterday, she said y'all
6 didn't even turn any DNA samples in, and I submit to you
7 that was to make y'all go ah-ha, they didn't turn DNA in.
8 Man, I wish I could have got DNA evidence like they do on
9 Law & Order.

10 Let me ask you this because I know y'all have so much
11 common sense and logic that you will understand that DNA in
12 this case would have had no value whatsoever. Let's say
13 that swabbed the whole house, the Mayers' house. You know
14 what they would have found? The Mayers' DNA and maybe
15 Lorenzo Jones' DNA and maybe Tarakus Coleman's DNA. We're
16 not saying that Robert Wright went in there. We don't
17 expect to find Robert Wright's DNA. It's uncontested that
18 he did not go in there. We're not saying that. So that
19 point I want to clear up first and foremost because I
20 didn't want y'all to think well, she mentioned DNA so I
21 wonder why that was important. It's not. It's not
22 important in this case.

23 Again, I'll address another. She talked a lot about
24 the co-defendants kind of -- their stories getting more
25 detailed over time. I submit to you they're crooks. I

1 submit to you that they're criminals, they've admitted it
2 under oath. You've got to pull this information out of
3 them and that's what happened. You've got to show them
4 that you've got the evidence that tells the whole story
5 until they finally do give up the whole story. I submit
6 to you that they came clean in the end, put themselves
7 right in the middle of it. They had no reason whatsoever
8 to put Robert Wright in it unless he did it. Why did they
9 put him in it? What do they get out of it? That's my
10 only thing, and I'm beating a dead horse here, but what do
11 they get out of it putting Robert Wright in it?

12 Again, she's gonna say they don't have any evidence
13 he went and did these burglaries, these armed robberies.
14 He didn't go in, but he's just as guilty as Lorenzo Jones
15 and Tarakus Coleman. But for Robert Wright this never
16 happens. Those two fellas stay up here in Newberry.
17 They've got no reason to go down to Little Mountain and
18 it never happens.

19 So the crimes he's charged with are accessory before
20 the fact, and that's the crime that addresses somebody who
21 is kind of a puppet master like I'm saying who encourages
22 somebody to commit a crime, who aids or abets somebody
23 else in committing a crime, who incites someone to commit
24 a crime. That's what's accessory before the fact is, and
25 he is an accessory to two crimes because two crimes were

1 committed there, a burglary first, and that's when you
2 break into somebody's house and you do it without consent,
3 and, again, it's uncontested that they didn't give Lorenzo
4 Jones and Tarakus Coleman consent to enter the house. You
5 typically don't kick the door in if you've got consent to
6 go in. And to make it a first degree, there needs to be
7 what we call aggravating factors. In this case there's
8 two aggravating factors. They were armed, they talked
9 about having that pistol, and it was nighttime.

10 You know, I probably ask some kind of goofy questions.
11 I know I kept saying well -- I think one time they said
12 it was about 10:00 and I said okay, so it was nighttime,
13 right? That's the only reason I ask a question like that.
14 But it was uncontested. It was nighttime, they were armed.
15 That makes it an aggravated burglary and that ups it to a
16 burglary first. That was one crime that was committed on
17 April 30, 2014, and the principals there were Lorenzo Jones
18 and Tarakus Coleman. They broke into the house armed and
19 it was nighttime, that's a burg first.

20 The second crime that was committed was the armed
21 robbery. They took certain things by force from these
22 two. They took phones, they took money, they took some
23 marijuana. I think they mentioned finding some crack
24 cocaine in there, ID's. They took those things and they
25 took it while they were armed, that's an armed robbery,

1 okay, so they're guilty of that. Tarakus Coleman and
2 Lorenzo Jones is guilty of that. And the theory of
3 accessory before the fact makes Robert Wright guilty of
4 those as well.

5 All right. Accessory before the fact. The State must
6 prove the Defendant, that's Robert Wright, either -- it
7 could be any of these -- advised, agreed, urged, counseled,
8 he didn't hire, or in some way aided or abetted another
9 person to commit a crime and that the Defendant was not
10 present when the offense was committed. We know he wasn't
11 present, we know he wasn't on the scene, but did he not
12 advise them that there would be dope and money in this
13 trailer? Did he not counsel them that it would only be
14 Cedric and Precious in the trailer at the time?

15 Aided and abetted. There's the definition for those.
16 Aid means to help, to promote, to give support to, give
17 assistance to. Abet means to encourage or appear to favor
18 or support. Did he not encourage them to kick the door in
19 when they asked how do we get in there? Yes, he did all
20 these things. He aided, he abetted, he advised, he urged
21 he counseled, he promoted this crime all from an easy
22 chair, all from a cell phone, yet he might as well have
23 been in the trailer with Jones and Coleman.

24 Conspiracy is the other indictment y'all are gonna
25 consider. For conspiracy, the State must prove the

1 Defendant combined with one or more persons for the
2 purpose of committing an unlawful act, or, committing a
3 lawful act by an unlawful means. There must be a mutual
4 understanding, agreement, or common intention and plan.
5 So, again, it's similar to the accessory charge, but it
6 just involves two or more people who come together to form
7 an agreement to commit an illegal act. And that was the
8 agreement when he had all these conversations with Lorenzo
9 Jones and then when he got on the speakerphone with Tarakus
10 Coleman that the agreement was "I need this dude out the
11 way". The understanding was y'all go over here, y'all get
12 them out of the way, here's what's in it for y'all, some
13 crack and some money. That's the conspiracy.

14 I've got my idea of why this happened. I think it's
15 very shallowly -- or a very shallow burial, just under the
16 layers, of the intent of Mr. Wright, why he needed him out
17 of the way, why he needed his neighbor out of the way.
18 I'm gonna respect you guys in coming up with that on your
19 own. Y'all heard Lorenzo Jones' testimony yesterday,
20 didn't you? I think the inference is there, but we won't
21 talk about it, but I think we understand why he needed
22 them out of the way.

23 But let me tell you because I was talking about
24 justice is blind. Nothing justifies that crime. There's
25 nothing that justifies kicking in a door in the middle of

1 the night and holding a gun on somebody. If you do that to
2 your neighbor, where does it stop?

3 My standard is beyond a reasonable doubt. Everybody
4 from California to New York that's ever been convicted by
5 a jury has to be proven guilty beyond a reasonable doubt.
6 You know, the defense attorney kind of makes it sound
7 sometimes like it's this impossible standard, you can't
8 have any doubt. They say it's got to be beyond all doubt,
9 but it doesn't. That's not right. It's got to be beyond a
10 reasonable doubt. Do any of you have a reasonable doubt
11 that Robert Wright is not guilty of what I'm telling you
12 he's guilty of? Do any of you have a reasonable doubt
13 that it didn't happen this way? Do any of you have a
14 reasonable doubt that your mind and your eyes are fooling
15 you when you look at those phone records? No. The answer
16 is no. And the judge is gonna tell you -- the best way I
17 understand reasonable doubt is -- he's gonna say it twice.
18 He's gonna use the term firmly convinced. He's going to
19 say if you're firmly convinced he did it, you must find
20 him guilty. Firmly convinced. Are you not firmly
21 convinced that Robert Wright didn't have a role in this?

22 I'm gonna sit down. I think y'all are firmly
23 convinced and I think there is only one verdict. And I
24 think there ought to be twelve united voices here speaking
25 together and I think y'all ought to go back there and

1 deliberate and consider everything and I think y'all ought
2 to come up with the only reasonable conclusion, and that is
3 to find the third person involved with this accountable.
4 Hold him accountable. Find him guilty. Don't let him
5 stand back and say well, y'all didn't catch me in the
6 house. Go ahead and let Coleman and Jones go -- you know,
7 be held accountable, but, you know, I was smart enough to
8 kind of stay behind and be the puppet master. Hold the
9 puppet master accountable. Render the only verdict that
10 is just here because justice is what this case is about
11 and there should be justice for all. Hold him accountable
12 and find him guilty of accessory before the fact and
13 conspiracy. Thank you.

14 **THE COURT:** Thank you, Solicitor. Ms. Zimmerman, are
15 you ready?

16 **MS. ZIMMERMAN:** Yes, sir. I know you guys are
17 probably very sick of hearing us talk, and I promise you
18 that we're almost to the end and you're not gonna have to
19 listen to us anymore, but I want to comment on several
20 things that I think are very important. And there's a lot
21 of stuff that I agree with the solicitor about. This is
22 certainly something very serious and it is extremely
23 important that you use your common sense and that you think
24 very carefully about everything that you've seen and heard
25 in this courtroom.

1 I started out talking to you about fiction and I told
2 you that a good fiction writer bases the story that they
3 tell you in facts, and you certainly heard a lot of facts.
4 There are a lot of things that absolutely no dispute they
5 occurred. This burglary, I agree with the solicitor, it
6 occurred. An absolute tragedy. An armed robbery occurred.
7 Where we run into differences of opinion comes with whether
8 my client was involved, and that's really what it's all
9 about.

10 And I'm gonna tell you there were a lot of questions
11 that I asked, a lot of questions the solicitor asked, and
12 we asked those for a very important reason, because he's
13 right, we want justice. It is very important that we get
14 justice for all, for everybody that's involved in this. So
15 you need to analyze everything that you've seen and heard
16 and you need to separate the facts from the fiction.

17 I want to talk to you about some of the things that
18 the solicitor said. We didn't dispute the phone records.
19 No doubt my client talked on the phone with Lorenzo Jones.
20 You guys saw the phone records for that day and we don't
21 dispute that that happened. As a matter of fact, we
22 admitted that they were friends, they hung out together.
23 Mr. Jones has been to my client's house. The fact that
24 they talked on the phone does not prove beyond a reasonable
25 doubt that my client was involved in this crime. That's a

1 fact that works really well in this fiction.

2 And I talked a lot about the various different stories
3 that these individuals told, and that's a very important
4 fact. Let me tell you I've never written a novel, but
5 I've written a lot of papers, and you go through a lot of
6 different drafts when you're telling a story and a lot of
7 times you know where that story needs to end up and so you
8 end up and you have to throw out drafts that don't fit
9 into the story real well because we've got to get to where
10 we're trying to get, and I submit to you that that's what
11 happened here.

12 You know, we heard from Deputy Carnes. He went out,
13 he responded to this scene, and he talked about what he saw
14 and he called investigations. Fact. We agree with that.
15 We heard from Precious Mayers who talked about the horrible
16 thing that she experienced. Fact. We agree with that.
17 She also talked about the fact that she and my client lived
18 next door to each other and they both went about their own
19 separate lives. My client has not been over to her house.
20 She goes over because they share a water bill and she goes
21 over once a month and gives my client's wife her portion
22 of the water, and other than that, they do their thing, the
23 Wrights do their own thing. Mr. Mayers, he got up there
24 and he told about the horrible things that occurred that
25 night. Fact. We don't dispute that that happened. And

1 he said the same thing; we mind our business, they mind
2 theirs, and go about our separate ways.

3 Then we get into where it really gets interesting
4 because we hear from Tarakus Coleman and Tarakus told the
5 solicitor yeah, the story that I told today that's the
6 same story I've been telling all along. Well, that, my
7 friends, is fiction because we heard that his first story
8 was I wasn't there, I wasn't in it, and I'll give the
9 solicitor that that's probably not an unusual first story,
10 but then he said in the second story Lorenzo asked me to
11 do it and I said no. And then in his third story he said
12 well, I went, but I stayed outside the whole time. And I
13 readily admit my own error. I put the word "lookout" in
14 there, that was not part of his statement, but he said I
15 stayed outside the whole time, I didn't go in. And then in
16 his fourth statement he said okay, here's what happened.
17 Lorenzo and I, we went out there, we went in, we robbed
18 these folks.

19 And then in February of 2015, months and months after
20 this all occurs, after my client had been charged with the
21 crime, after my client had voluntarily turned himself in,
22 knowing that he was facing these allegations, Tarakus is
23 brought over here to court to deal with his charges and at
24 that point he says okay, I'll write a story that puts
25 Robert Wright in this. That's the first time he mentions

1 Robert Wright, who by the way, he admits he didn't even
2 know. And at that point -- and you have this statement so
3 you can read it, what he actually says is that Lorenzo
4 called Black Rob and told him that we were there, had him
5 on the speakerphone, and Black Rob said wait. So even his,
6 what is this, fifth attempt at telling the truth he still
7 says that Rob said wait.

8 Now I submit to you that his most truthful statement
9 was when I asked him are you putting Robert Wright in this
10 to get yourself out of trouble; yes. And the solicitor did
11 a great job of trying to come back up and clarify and see
12 if maybe I had tricked him and Tarakus still said the only
13 reason I'm up here is because I'm hoping that you guys will
14 help me out on the nine charges I have pending. I submit
15 to you that you get to judge the credibility of these
16 witnesses. The judge is gonna tell you that. Believe the
17 statements that seem logical and throw out the statements
18 that seem fictional. Is it logical that he's sitting up
19 here towing the line to get himself out of trouble? You
20 better believe that's logical.

21 He admitted that when he previously committed
22 burglary, when he previously committed armed robbery, when
23 he previously had drug offenses, he made the decision to
24 do all of those on his own. He didn't have my client or,
25 for that matter, even Lorenzo Jones telling him to do it.

1 I think this is all very, very important when you're
2 considering which part of this is fact and which part of
3 this is fiction.

4 And after Tarakus we heard from Lorenzo Jones and
5 Lorenzo Jones got up here and right off the bat he -- he
6 cowered down and he was having trouble speaking where we
7 could even hear him and he told the solicitor that he was
8 real scared. Did he come across as scared the entire time
9 he testified? Did he really seem scared of my client when
10 he said -- when he admitted that "Throw me to the wolves
11 and I return leading the pack"? That's kind of a mantra
12 of his. He posted it on Facebook, real proud of that, when
13 he admitted to me that he posted on Facebook "Stop putting
14 pix of your money out there or we'll throw you a surprise
15 party". When he admitted "It's not a crime unless you get
16 caught". Does that sound like somebody that is oh, so
17 afraid of my client? He, too, admitted that he's got
18 twelve pending charges and he did come in here yesterday
19 because he wants help with those. And he also admitted
20 that when he's previously been in trouble it wasn't my
21 client that made him do it. My client certainly didn't
22 make him post all of this on Facebook. All of that is fact
23 and so you can take all of that fact and you can use that
24 to judge his credibility.

25 And I'm gonna tell you one of the things that the

1 solicitor mentioned that I talked about, the DNA and the
2 fingerprints, and I did. And I'm gonna tell you why I
3 did. Because when Lorenzo Jones was up here testifying,
4 we talked about his various different stories, and he's
5 given a lot of versions of what happened, but he said --
6 and Garrett Lominack acknowledged that he was told this.
7 He said first I wasn't involved, then I went but I stayed
8 outside, then I went but I stayed outside and Mad Max and
9 Doc went in, and then Mad Max and Doc were using my phone,
10 and it was not until Investigator Lominack put the picture
11 of my client in front of him and said stop talking about
12 Mad Max and Doc, you tell me how this guy was in it. And
13 even then Lorenzo said that's my cousin, I know him, he
14 wasn't in it. And Investigator Lominack said well, we know
15 you talked on the phone to him, come on, tell me how he's
16 in it, and after he's pushed hard enough then Lorenzo threw
17 out all of those other versions of the story and told the
18 story that fit with the State's fiction. Okay, fine,
19 Robert Wright put me up to it.

20 So why do I think DNA and fingerprints are important?
21 Why do I think it's important that we know who Mad Max
22 and Doc are? Because I think probably that a thorough
23 investigation should have at least included a conversation
24 with two other people who might have been involved in this.
25 Let me tell you, I don't dispute these phone records. I

1 think the phone records are very relevant and you have a
2 summary of the records between my client and Mr. Jones.
3 You also have a disk, and this is a printed out copy of
4 what you have on that disk, and in just a few days time
5 Lorenzo spent a lot of time on the phone. He spent a lot
6 of time texting. And what's relevant about that is that
7 night he spent a lot of time on the phone and a lot of time
8 texting. All throughout the course of while this is going
9 on; a couple of minutes here, a couple of minutes there, a
10 call, call, call, call, call. Look at the records, look at
11 the times while that's going on. And you know what I found
12 interesting about that? When the Mayers testified, both of
13 them talked about what happened. These two guys busted in,
14 they held us at gunpoint, they asked where the stash was,
15 they ransacked the house, they told us to lay down on the
16 floor. At any point in time did either of the Mayers say
17 that one of these two guys was constantly texting and
18 making phone calls? I never heard that. So it is very
19 possible that we are not necessarily getting justice for
20 everybody. Isn't it possible that we have blinders on
21 because we wanted so badly to make the story as we saw it
22 was fit and so we just zero in and ignore everything that
23 didn't fit with our version of the fiction? A thorough
24 investigation looks at everything.

25 And I'm not trying to say that Investigator Lominack

1 is not a good guy. He's a nice guy, nothing wrong with
2 that, but the burden rests upon the State here. There are
3 reasons that our Constitution and that all of our case law
4 and all of our statutes protect individual liberties so
5 strongly. There are reasons that the burden falls upon
6 the State because the just thing to do if we're gonna take
7 someone's liberty, if we're gonna hold them accountable
8 for a crime, we want to make really, really sure that they
9 really did it.

10 And I agree with the solicitor. You need to be firmly
11 convinced. And so if the investigation drops short, if
12 they ignore important details in order to zero in on what
13 they think happened or what they want to have happened,
14 that's important. It's very important to everybody. The
15 Mayers deserve justice, my client deserves justice. And
16 that's your job to look at all of this. And you have every
17 right to question anything that doesn't sound just to you.
18 So, yes, I asked about that evidence that they collected
19 and never even bothered to submit to the lab. Why didn't
20 you submit it? Well, because we had our guy.

21 How about the phone records? You could ping
22 Lorenzo's phone and find out exactly where he went that
23 night. They stole the Mayers phone. Did they bother to
24 ping them and see where they went? No. Did they bother
25 to get Mr. Wright's phone and see where he went and who

1 else he was talking to? No. We didn't even follow up to
2 see if Tarakus had a phone because we had our version of
3 the fiction and so we only want to look at the facts that
4 fit that. All of this is important, ladies and gentlemen.

5 I know that you guys have listened for a long time
6 and you're gonna have to listen just a little bit longer
7 because the judge is about to charge you on the law. And
8 it's not interesting, let me tell you. If I was picking,
9 I would much rather read this book than this one, and I'm
10 sure y'all would, too. Nothing about this is fun, but
11 when the judge talks to you about what the law is, it is
12 important for you to listen very closely. It is important
13 for you to analyze the facts that you've heard and for you
14 to apply that law. It is important for you, just as the
15 solicitor said, to do what is just, and I believe that that
16 is gonna be a verdict of not guilty. Thank you.

17 **THE COURT:** Thank you, Ms. Zimmerman.

18 Ladies and gentlemen of the jury, we're gonna take a
19 very short break before I charge you on the law, so I'll
20 ask you to go back to the jury room and we'll get you back
21 out shortly. And, again, don't start your deliberations,
22 don't discuss anything about this case until I tell you to,
23 and I'll get you back out shortly.

24 (Whereupon, the jury retires to the jury room at
25 11:11 AM.)

1 **THE COURT:** All right. We'll be in recess about ten
2 minutes.

3 (Recess taken.)

4 **BAILIFF:** All rise.

5 **THE COURT:** Thank you. Y'all be seated.

6 Madam bailiff, will you bring the jury out, please.

7 (Whereupon, the jury returns to the courtroom at
8 11:23 AM.)

9 **THE COURT:** Okay. Let the record reflect the jury is
10 back in.

11 And, Mr. Foreman and ladies and gentlemen of the jury,
12 I will now charge you the law applicable to this case and
13 you must consider my charge as a whole and not focus on
14 some portions to the exclusion of other portions.

15 Now the indictments charge the Defendant with
16 accessory before the fact to a felony and also conspiracy.
17 And I'll remind you, once again, the fact that the
18 Defendant was arrested, charged and indicted in this case
19 is not evidence in this case and cannot be considered by
20 you as evidence of guilt in this case, nor does it create
21 any presumption or inference of guilt. Again, these
22 documents, the two indictments, are simply the formal
23 written instruments which contain the charges made against
24 the Defendant. They are the formal documents by which
25 this case is brought into this Court.

1 The indictments in this case alleges two different
2 offenses against the Defendant. The charges are, one,
3 accessory before the fact to a felony, the felony being
4 either -- and/or armed robbery and/or burglary first, and
5 then the second charge is conspiracy. Each indictment
6 charges a separate and distinct offense. You must decide
7 each indictment separately on the evidence and the law
8 applicable to it uninfluenced by your decision as to any
9 other indictment. The Defendant may be convicted or
10 acquitted on any or all of the offenses charged. You will
11 be asked to write a separate verdict of guilty or not
12 guilty for each indictment, and I'll explain that to you
13 at the conclusion of my charge.

14 I will remind you also that during this trial you and
15 I have had certain duties to perform. As the trial judge,
16 it has been my responsibility to preside over the trial of
17 this case and I've also had the duty to rule upon the
18 admissibility of the evidence offered during this trial.
19 You are to consider only the competent evidence before you.
20 If there was any testimony ordered stricken from the record
21 in this case during this trial, you must disregard that
22 testimony. I believe that one time I did order a portion
23 stricken. You are to consider only the testimony which has
24 been presented from the witness stand, any exhibits which
25 have been made a part of the record in this case and any

1 stipulations of counsel.

2 I have the additional duty to charge you the law
3 applicable to this case as I'm doing now. As the presiding
4 judge, I am the sole judge of the law of this case and it
5 is your duty as jurors to accept and apply the law as I
6 now state it to you. If you already have any idea as to
7 what the law is or what the law ought to be and it does
8 not agree with what I now tell you the law is, you must
9 abandon your idea because you are sworn to accept the law
10 and apply the law exactly as I state it to you.

11 In every case tried in this court before a jury, the
12 jury becomes the sole and exclusive judge of the facts in
13 the case. A trial judge cannot intimate, state, comment on
14 or make any statement to a trial jury about the facts in
15 the case. Since you, the jury, are the sole judge of the
16 facts of this case, you are not to infer from what I have
17 said during the progress of this trial in ruling upon the
18 admissibility of evidence or otherwise, or anything that I
19 say now during the course of this instruction to you, that
20 I have any opinion about the facts in this case. The law
21 does not allow me to have any opinion about the facts in
22 this case. This is a matter solely for you, the jury, to
23 determine. As jurors, it is your duty to determine the
24 effect, value, weight, and truth of the evidence presented
25 during this trial.

1 The Defendant has plead not guilty to these two
2 indictments and that plea puts the burden on the State
3 to prove the Defendant guilty. A person charged with
4 committing a criminal offense in South Carolina is never
5 required to prove himself innocent. I charge you that it
6 is an important rule of the law that a defendant in a
7 criminal trial, no matter what the seriousness of the
8 charge or charges may be, are always to be presumed to be
9 innocent of the crime for which the indictment was issued
10 unless guilt has been proven by evidence satisfying of
11 you of that guilt beyond a reasonable doubt. This
12 presumption of innocence does not end when you begin your
13 deliberations, but it accompanies the Defendant throughout
14 the trial unless you reach a verdict of guilt based on the
15 evidence satisfying you of that guilt beyond a reasonable
16 doubt. This presumption of innocence is like a robe of
17 righteousness placed about the shoulders of the Defendant
18 which remains with the Defendant until it has been stripped
19 from the Defendant by evidence satisfying you of the
20 Defendant's guilt beyond a reasonable doubt.

21 Now this presumption of innocence is not just mere
22 legal theory, it's not just a legal phrase that lawyers
23 and judges use, it is a substantial right which every
24 defendant is entitled unless you, the trial jury, become
25 satisfied from the evidence of the Defendant's guilt beyond

1 a reasonable doubt. Again, the State has this burden of
2 proving the Defendant guilty beyond a reasonable doubt.
3 Some of you may have served previously in civil cases where
4 you were told by the judge that it is only necessary to
5 prove that a fact is more likely true than not true, such
6 as by the greater weight or the preponderance of the
7 evidence. In criminal cases, however, the State's proof
8 must be more powerful than that; it must be beyond a
9 reasonable doubt. Proof beyond a reasonable doubt is
10 proof that leaves you firmly convinced of the Defendant's
11 guilt.

12 Now there are very few things in this world that we
13 know with absolute certainty and in criminal cases the law
14 does not require proof that overcomes every possible doubt.
15 If, based on your consideration of the evidence, you are
16 firmly convinced that the Defendant is guilty of the crimes
17 charged, you must find the Defendant guilty. If, on the
18 other hand, you think that there's a real possibility that
19 the Defendant is not guilty, you must give the Defendant
20 the benefit of the doubt and find him not guilty.

21 Now, Mr. Foreman and ladies and gentlemen of the jury,
22 there are two types of evidence which are generally
23 presented during a trial, that being direct evidence and
24 circumstantial evidence. Direct evidence directly proves
25 the existence of a fact and does not require deduction.

1 Circumstantial evidence, however, is proof of a chain of
2 facts and circumstances indicating the existence of a fact.
3 Crimes may be proven by circumstantial evidence. The law
4 makes no distinction between the weight or value to be
5 given to either direct or circumstantial evidence; however,
6 to the extent the State relies on circumstantial evidence
7 all of the circumstances must be consistent with each other
8 and when taken together point conclusively to the guilt
9 of the accused beyond a reasonable doubt. If these
10 circumstances merely portray the Defendant's behavior as
11 suspicious, the proof has failed. The State has the burden
12 of proving the Defendant guilty beyond a reasonable doubt
13 and this burden rests with the State regardless of whether
14 the State relies on direct evidence, circumstantial
15 evidence, or some combination of the two.

16 Now, necessarily, as the trial jury you must determine
17 the credibility of the witnesses who have testified in this
18 case. Credibility simply means believability. It becomes
19 your duty as jurors to analyze and to evaluate the evidence
20 and determine which evidence convinces you of its truth.
21 In determining the believability of witnesses who have
22 testified in this case, you may believe one witness over
23 several witnesses or several witnesses over one witness,
24 you may believe a part of the testimony of a witness and
25 reject the remaining part of the testimony of that same

1 witness, you may believe the testimony of a witness in
2 its entirety or reject the testimony of a witness in its
3 entirety. You may consider whether any witness has
4 exhibited to you any interest, bias, prejudice or other
5 motive in this case. You may also consider the appearance
6 and the manner of a witness while on the witness stand.

7 Mr. Foreman and ladies and gentlemen of the jury, I
8 further instruct you and emphasize that the fact the
9 Defendant did not testify is not a factor to be considered
10 by you in any way in your deliberations and in your
11 consideration on the question of the guilt or innocence of
12 the Defendant. It must not be considered by you in any
13 manner whatsoever. The Defendant has the constitutional
14 right to remain silent and the assertion of this right must
15 not be considered by you in your deliberations. I repeat.
16 Under the oath that you took as jurors yesterday, you are
17 to draw no conclusion whatsoever from the fact that the
18 Defendant in this case did not testify. The fact that this
19 Defendant did not testify should not even be discussed by
20 you in the jury room. The burden of proof, as I have
21 stated to you several times during this charge, is on the
22 State. The Defendant is not required to prove his
23 innocence. The burden of proof remains on the State to
24 prove guilt beyond a reasonable doubt.

25 Now criminal intent is a necessary element of each

1 crime that must be proven by the State beyond a reasonable
2 doubt. Criminal intent is always a matter that must be
3 determined by the jury from the circumstances surrounding
4 the situation. There's no way to prove intent to a
5 mathematical certainty, there's no way medical science can
6 dissect a person's brain to determine what he or she had
7 in mind, so the law states criminal intent may be inferred
8 from the circumstances shown to have existed both before
9 and after the fact. This is how you, the jury, makes a
10 determination of whether or not the element requiring an
11 intent was present. Criminal intent is a state of mind
12 that operates jointly with an act or admission in the
13 commission of a crime. Criminal intent is a mental state
14 of conscious wrongdoing, so it is up to you, the jury, to
15 determine what the Defendant intended to do based on the
16 circumstances shown to have existed. I tell you the State
17 must prove criminal intent beyond a reasonable doubt just
18 as the State must prove every element beyond a reasonable
19 doubt as I've previously explained to you.

20 Now, again, the Defendant is charged with being an
21 accessory before the fact of a felony, which I will define
22 felony for you in just a moment. In order to prove this
23 crime, the State must prove beyond a reasonable doubt the
24 Defendant either advised, agreed, urged, counseled, hired,
25 or in some way aided or abetted another person to commit a

1 crime, and that the Defendant was not present when the
2 offense was committed. Aid means to help, to promote the
3 course or accomplishment of, to give support to, or to give
4 assistance to. Abet means to encourage or appear to favor
5 or support.

6 Now there are two possible felonies that was presented
7 to you in the evidence in this case that the State must
8 prove beyond a reasonable doubt that the Defendant was an
9 accessory to. The first one is armed robbery. In order
10 to prove this offense, the State must prove beyond a
11 reasonable doubt that personal property was taken from a
12 person or presence of another person. Property is in the
13 presence of a person if it is within the person's reach,
14 inspection, observation or control so that the person
15 could, if not overcome with violence or prevented by fear,
16 keep possession of the property.

17 The State must also prove beyond a reasonable doubt
18 that the property was carried away intending to permanently
19 deprive the owner of the property and keep the property
20 for another person's use. The slightest removal of the
21 property or the complete possession of the property, even
22 for an instant, is sufficient to show a taking and carrying
23 away of the property. The taking and carrying away of the
24 property must have been done by violence or by putting the
25 owner of the property in fear of violence.

1 Finally, the State must prove beyond a reasonable
2 doubt that a person was armed with a deadly weapon during
3 the robbery. A deadly weapon is an article, instrument or
4 substance which is likely to cause death or great bodily
5 harm. Whether an instrument has been used as a deadly
6 weapon depends on the facts and circumstances of each case.
7 A handgun is a deadly weapon.

8 Now the other felony for you to consider is first
9 degree burglary. The State must prove beyond a reasonable
10 doubt that a person entered a dwelling without consent. A
11 dwelling is any building or portion of a building in which
12 a person ordinarily sleeps. A building constructed as a
13 dwelling that has never been occupied cannot be considered
14 a dwelling for purposes of burglary, but a building is a
15 dwelling even if the residents are temporarily absent from
16 the building. In order to prove that a person entered the
17 dwelling, the State does not have to show that the person's
18 entire body entered the dwelling. The smallest entry is
19 sufficient. It may be any part of the body, such as a
20 hand or a foot or even an instrument, such as a hook or
21 other instrument. In addition, the State does not have
22 to prove that force was used to gain entry. If a person
23 enters a building by using deception, artifice, trick or
24 misrepresentation to get consent to enter, this is entry
25 without consent.

1 Next, the State must prove beyond a reasonable doubt
2 that a person intended to commit a crime, either a felony
3 or a misdemeanor, at the time of the entry. The mere entry
4 into a dwelling without consent is not burglary. If the
5 intent to commit a crime is formed after the entry, it is
6 not burglary. On the other hand, if a person intended to
7 commit a crime at the time of the entry it is burglary even
8 if the intent was abandoned after the entry. It does not
9 matter that the intended crime was not completed. Intent
10 may be shown by acts and conduct of the person and other
11 circumstances from which you may naturally and reasonably
12 infer intent.

13 Finally, the State must prove beyond a reasonable
14 doubt that, one, when entering or while in the dwelling or
15 when fleeing, the person was armed with a deadly weapon,
16 which has previously been defined for you. Or, two, when
17 entering or while in the dwelling or when fleeing, the
18 person caused physical injury to anyone not participating
19 in the crime. Or, three, when entering or while in the
20 dwelling or when fleeing, the person used or threatened to
21 use a dangerous object. Or, four, when entering or while
22 in the dwelling or when fleeing, the person displayed what
23 was or appeared to be a knife, pistol, revolver, rifle,
24 shotgun, machine gun, or other firearm. Or, five, a person
25 entered or remained in the dwelling in the nighttime. The

1 nighttime is the period between sunset and sunrise during
2 which there is not sufficient daylight to recognize a
3 person's face except by artificial light or moonlight.

4 That explains the accessory before the fact of a felony.

5 The second charge is conspiracy. The second
6 indictment. The Defendant is charged with conspiracy.
7 The State must prove beyond a reasonable doubt that the
8 Defendant combined with one or more persons for the purpose
9 of committing an unlawful act or committing a lawful act
10 by unlawful means. There must be a mutual understanding,
11 agreement or other -- or common intention and plan. Mere
12 passive knowledge of or consent to the criminal conduct
13 of another is not enough to make a person a conspirator.
14 There must be guilty knowledge and participation. The
15 mere fact that the Defendant may have associated with
16 another person or met with another person and discussed
17 common aims and interests does not necessarily establish
18 proof of the existence of a conspiracy or that the
19 Defendant was involved in a conspiracy.

20 On the other hand, it is not necessary that the
21 agreement be a formal one, that it be in writing, that
22 the person hold a meeting and expressly state the terms of
23 the common plan or that the agreement be stated in words
24 between them. The agreement of a criminal conspiracy may
25 come into being through an implied, mutual understanding.

1 The willful, intentional and knowing adoption by two or
2 more persons of a common plan is sufficient. No overt
3 acts need to be shown to establish a conspiracy. A
4 conspiracy may be shown by circumstantial evidence and the
5 conduct of the parties. In order to convict the Defendant
6 of conspiracy, the State must prove beyond a reasonable
7 doubt not only that the Defendant knew of the unlawful
8 conduct, but that the Defendant agreed to combine with the
9 other person or persons for the purpose of accomplishing
10 the unlawful conduct.

11 Finally, Mr. Foreman and ladies and gentlemen of the
12 jury, a person who has a past criminal record is competent
13 to testify during any trial. A past record does not affect
14 the ability of that witness to testify. The past record
15 may only be considered by you, if at all, in determining
16 the witness's believability. Remember, you are the sole
17 judges of the facts in this case and the sole judge of the
18 believability of any and all witnesses.

19 I know that was a lot. You will have the benefit in
20 the jury room of a copy of what I have just read to you.
21 Now let me come down and show you the verdict form, which
22 will need to be completed once you have reached a verdict.

23 Mr. Foreman, this will be completed by you. It's two
24 pages. The first page just has the identifying information
25 of this particular case. The first question for you to

1 consider as to the indictment, and it lists the number,
2 which charged the Defendant with accessory before the fact
3 to a felony, being the armed robbery; we, the jury, find
4 the Defendant either guilty or not guilty. And then you go
5 to the same indictment concerning the accessory before the
6 fact to a felony involving burglary first; we, the jury,
7 find the Defendant guilty or not guilty, and you will mark
8 accordingly what your verdict is. And then as to the other
9 indictment concerning conspiracy; we, the jury, find the
10 Defendant guilty or not guilty.

11 Now the order that guilty and not guilty appears on
12 this form is of no significance. One has to appear before
13 the other. There's no significance to that. And, also,
14 and extremely important, is that your verdict must be
15 unanimous among all twelve of you, okay?

16 Now I'm gonna ask that all thirteen of you go back to
17 the jury room. Do not begin your deliberations yet. I
18 need to talk with the lawyers to make sure that my charge
19 to you was proper and correct. Either I'll bring you back
20 out for an additional charge or the bailiff will bring to
21 you all of the exhibits, a copy of my charge that I just
22 read to you, and the verdict form. When that is done,
23 then that will be your cue, Mr. Foreman, to begin your
24 deliberations and also for the alternate to leave the jury
25 room and come back out here for further instructions.

1 So, again, all thirteen of you go back to the jury
2 room. Do not begin your deliberations yet, do not begin
3 any discussions about the case, and more than likely what
4 will happen next is that the exhibits, the verdict form
5 and the charge will be brought to you so you can begin your
6 deliberations, okay?

7 (Whereupon, the jury retires to the jury room at
8 11:45 AM.)

9 **THE COURT:** Does the State have any objections or
10 exceptions to the charge?

11 **MR. SCOTT:** No, Your Honor.

12 **THE COURT:** And does the defense?

13 **MS. ZIMMERMAN:** No, sir.

14 **THE COURT:** Okay. Thank you very much. We're off the
15 record and we'll get everything together for them.

16 (Recess taken.)

17 (Whereupon, the exhibits, the verdict form, and a copy
18 of the jury charge was sent back to the jury at 11:47 AM.)

19 (Recess taken.)

20 **THE COURT:** Okay. Bring the jury out.

21 (Whereupon, the jury returns to the courtroom at
22 12:46 PM.)

23 **THE COURT:** Okay. Let the record reflect the jury is
24 back out.

25 Mr. Foreman, I got your question that you have

1 presented to the Court: Can we get official phone records,
2 phone numbers and phone providers?

3 Now we need to know exactly what you are wanting. Are
4 you wanting something that has not been put into evidence?
5 Or, if you can, just explain your question for us a little
6 bit, sir.

7 **THE FOREPERSON:** The question was, was there more
8 evidence of the phone providers, phone records from --
9 communications from Mr. Wright's phone?

10 **THE COURT:** All right. If you are wanting something
11 that has not already been provided to you, then we can't
12 give it to you. You have to base your decision on the
13 evidence that has been presented in this case. So if
14 you're wanting something that has not been put into
15 evidence, then we cannot help you on that, okay? Does
16 that adequately respond to your question, sir?

17 **THE FOREPERSON:** Yes.

18 **THE COURT:** Okay. Thank you very much. If you'll go
19 back to the jury room and continue with your deliberations.
20 Thank you very much. And I hope you enjoyed your pizza.

21 (Whereupon, the jury retires to the jury room at
22 12:49 PM.)

23 **THE COURT:** Here you go, Stacy.

24 (Court's Exhibit Number 1 was marked for
25 identification.)

1 (Discussion off the record.)

2 **THE COURT:** All right. Let's go on the record,
3 Stacy.

4 All right. It's been agreed by -- by both sides that
5 I submit to the jury -- this is in connection with their
6 question that they submitted. "If you want to play the CD,
7 the Court can assist you. Judge". And the other one,
8 "There was a stipulation by the attorneys, Defendant's cell
9 phone number, and then 803-201-4329. Judge".

10 That's been agreed by the parties that that can go
11 back to the jury.

12 Okay. Off the record.

13 (Court's Exhibit Number 2 and 3 were marked for
14 identification.)

15 (Recess taken.)

16 **THE COURT:** Okay. It's my understanding that about
17 twenty, twenty-five minutes ago the jury indicated they
18 reached a verdict. And you were needing some --

19 **MR. SCOTT:** Yeah.

20 **THE COURT:** We'll wait.

21 **MR. SCOTT:** Judge, let me check. I haven't seen them
22 since before -- I think we're ready to go, Your Honor.

23 **THE COURT:** Okay. You don't want to wait to try to
24 find the Mayers?

25 **MR. SCOTT:** No, sir. I think Taylor talked with them.

1 I think they just want us to let them know what the verdict
2 is. They're not gonna be here.

3 **THE COURT:** Okay. All right. Well, before I bring
4 the jury out, there's a couple of folks in the courtroom,
5 but I'll caution everybody that if you believe you cannot
6 control any emotions after the verdict is read, I'd ask
7 that you exit the courtroom. We can't have any outbursts.
8 I'm not suggesting that there will be any, but we can't
9 have any outbursts of emotion when the verdict is read.

10 Madam Bailiff, if you'll bring the jury out, please.

11 (Whereupon, the jury returns to the courtroom at
12 2:07 PM to report its verdict.)

13 **THE COURT:** Okay. Let the record reflect the jury is
14 back in.

15 Ladies and gentlemen, the reason why I didn't bring
16 you out when you notified us you had reached a verdict, we
17 had another matter going on that I had to -- had to finish
18 up before we brought you out to receive the verdict.

19 Mr. Foreman, it's my understanding that you have
20 reached a verdict in this case?

21 **THE FOREPERSON:** Yes.

22 **THE COURT:** Sir?

23 **THE FOREPERSON:** Yes, sir.

24 **THE COURT:** Okay. And without telling me the
25 verdict, because I'm gonna get the verdict form from you,

1 was the-- was the verdict unanimous on both indictments?
2 Your verdict unanimous among the twelve of you on the
3 indictments -- on all indictments?

4 **THE FOREPERSON:** Yes.

5 **THE COURT:** All right. Would you hand the verdict
6 form to the bailiff, please?

7 **THE FOREPERSON:** (Handing.)

8 **THE COURT:** Okay. Madam Clerk, would you publish
9 the verdict for us, please.

10 **THE CLERK:** The State of South Carolina versus
11 Robert Anton -- Antwon Wright. As to Indictment Number
12 2014-GS-36-528, which charges the Defendant, Robert Antwon
13 Wright, with accessory before the fact to a felony, armed
14 robbery; we, the jury, find the Defendant guilty.

15 As to Indictment 2014-GS-36-528, which charges the
16 Defendant, Robert Antwon Wright, with accessory to the fact
17 to a burglary first; we, the jury, find the Defendant
18 guilty.

19 As to Indictment 2014-GS-36-530, which charges the
20 Defendant, Robert Antwon Wright, with conspiracy; we, the
21 jury, find the Defendant not guilty. Signed Hilton
22 Tribble, Foreperson.

23 Ladies and gentlemen of the jury, if this is your
24 verdict, please indicate by raising your right hand?

25 **THE CLERK:** Thank you.

1 **THE COURT:** All right. Let the record reflect that
2 all twelve jurors raised their right hand.

3 Does either side wish individual polling of the jury?
4 State?

5 **MR. SCOTT:** Not from the State, Your Honor.

6 **THE COURT:** Defense?

7 **MS. ZIMMERMAN:** Defense would request polling.

8 **THE COURT:** Okay. All right. Ladies and gentlemen,
9 when your -- the clerk will call out your name and ask you
10 some questions.

11 **THE CLERK:** Lisa B. Kinard, is this your verdict and
12 is still your verdict?

13 **JUROR:** Yes.

14 **THE CLERK:** Amber Worthy, is this your verdict and
15 is still your verdict?

16 **JUROR:** Yes.

17 **THE CLERK:** Susan Martin, is this your verdict and is
18 it still your verdict?

19 **JUROR:** Yes.

20 **THE CLERK:** Hilton Tribble, is this your verdict and
21 is still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Deborah Lipscomb, is this your verdict and
24 is still your verdict?

25 **JUROR:** Yes.

1 **THE CLERK:** Kameka Wilson, is this your verdict and is
2 still your verdict?

3 **JUROR:** Yes.

4 **THE CLERK:** Markeith Wise, is this your verdict and is
5 still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** Marie Libby, is this your verdict and is
8 still your verdict?

9 **JUROR:** Yes.

10 **THE CLERK:** Able Real, is this your verdict and is
11 still your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Rebecca Pitts, is this your verdict and
14 is still your verdict?

15 **JUROR:** Yes.

16 **THE CLERK:** Ramona Moore, is this your verdict and is
17 still your verdict?

18 **JUROR:** Yes.

19 **THE CLERK:** Larry Danielson, is this your verdict and
20 is still your verdict?

21 **JUROR:** Yes.

22 **THE COURT:** Okay. Thank you, Madam Clerk.

23 **THE CLERK:** Yes, sir.

24 **THE COURT:** Ladies and gentlemen of the jury, I want
25 to thank you for your jury service. I hope that you have

1 found service on a jury to have been educational for you.
2 It's a tough job, it's a tough job, it really is, and I've
3 never had the opportunity to serve on a jury, but I've
4 certainly presided over a lot of cases and I know that
5 it's tough, but I do thank you for your jury service.

6 We have no further jury work to do this week, so
7 consequently you are excused for the rest of the week.
8 You are now permitted, if you want to, to discuss this case
9 with anyone, if you'd like. You certainly don't have to.
10 But I hope that if the opportunity arises again, whether
11 it's in the criminal arena or in the civil arena, that
12 you'll have an opportunity at some time in the future to
13 serve once again because, as I told you at the outset on
14 Monday, that it's a very high civic responsibility that
15 all Americans have, and so, again, I thank very much.

16 I like to shake the hands of my jury, so I'm gonna
17 come down and shake your hand. And we have your checks
18 ready and the clerk will hand them to you. I will tell you
19 that -- don't make big plans for those checks because it
20 won't go very far.

21 (Whereupon, the jury was dismissed at 2:14 PM.)

22 **THE COURT:** Okay. We'll be in recess about ten
23 minutes before we go into the sentencing phase and then we
24 can put any motions on the record prior to that, okay?

25 (Recess taken.)

1 (Whereupon, sentencing was deferred until January 7,
2 2016, at 9:30 AM.)

3 (Whereupon, the proceedings were concluded for
4 January 6, 2016, at 2:22 PM.)

5 (Whereupon, the following proceedings were held on
6 January 7, 2016, beginning at 10:23 AM.)

7 **BAILIFF:** All rise.

8 **THE COURT:** Thank you very much. Have a seat.

9 Okay. Is everybody ready for the sentencing phase in
10 Wright?

11 **MR. SCOTT:** Yes, we are, Your Honor.

12 **MS. ZIMMERMAN:** Your Honor, we have some motions
13 before we do.

14 **THE COURT:** That's right. I forgot that we didn't
15 deal with those yesterday. Let's go ahead and deal with
16 the motions first.

17 **MS. ZIMMERMAN:** Your Honor, at this time we'd move
18 for a new trial based on several different things. First
19 of all, we believe it was error to deny the motion for a
20 directed verdict. I believe if -- if the evidence is taken
21 in the light most favorable to the State, there was really
22 no evidence that my client in any way aided or was in any
23 way any type of accessory to this offense. At best, the
24 State's case showed that he might have made a statement
25 about money and drugs being located in that house. I don't

1 believe that rises to the level of the accessory, so I
2 believe that a directed verdict should have been granted
3 at the close of the State's case. I understand that the
4 question is not how strong the evidence was, but it's the
5 existence of some evidence at all. But I believe there's
6 case law out there that says if the only evidence presented
7 is that the Defendant acted suspiciously, that, in and of
8 itself, does not warrant sending the case to the jury, and
9 the reason for that is because it shifts the burden over to
10 the defense to justify his behavior, and that is improper.
11 The burden is supposed to rest on the State not to show
12 that his actions were suspicious or unusual, but that his
13 actions were, in fact, criminal. There has to be some
14 evidence of that.

15 Your Honor, I think that suspicious behavior is the
16 best thing that was shown by the State here. The phone
17 calls, yeah, they talked on the phone a lot, but that is
18 not evidence of the commission of a crime. That is merely
19 evidence of suspicious behavior and, again, I think it's
20 improper to in any way appear that we're shifting the
21 burden over to the Defendant to justify what he did.

22 I also believe that a new trial is appropriate based
23 upon an inconsistent verdict, and I understand that
24 there's a string of case law that makes it appear that we
25 no longer recognize that in South Carolina, but all of

1 those cases state that the reason inconsistent verdict is
2 not recognized is because the verdicts were, in fact, not
3 inconsistent. If there's truly an inconsistent verdict,
4 that is still grounds for a new trial, and here I do not
5 believe that there's any way that this jury could have
6 found that my client enticed or urged these individuals to
7 commit a crime, which we all agree actually was committed,
8 and yet was not a conspiracy. I think what we have here
9 is what we all recognize happens in that jury room from
10 time to time, we have a compromise verdict. I think this
11 jury issued guilty on what they thought to be the lesser
12 included -- or lesser of the charges rather as a way to
13 try to satisfy everybody and that's -- that's not what
14 the jury is supposed to be doing. They're supposed to
15 look at the evidence, they're supposed to look at the law,
16 and weigh it. I just don't think there is any way that
17 this verdict could be considered consistent because I
18 don't think there's any way they could find him guilty of
19 accessory and not think that he was a co-conspirator under
20 these particular facts, and so for that reason I believe a
21 new trial is appropriate in this case.

22 **THE COURT:** Okay. Thank you very much. Solicitor
23 Scott, do you want to state the State's position on that --
24 on the two post-trial motions?

25 **MR. SCOTT:** No, I think I stand by the argument at DV,

1 that there was sufficient and abundant evidence of -- that
2 he either advised, agreed, urged, counseled or in some way
3 aided or abetted another. He certainly helped and promoted
4 the crime giving them the location, giving them the inside
5 knowledge that there would be two people located inside,
6 giving them the information that they should be able to
7 find drugs and money in there. And then, of course, the --
8 the phone messages and the testimony of the co-defendants,
9 what he had told them and now this all came to happen. I
10 think there was sufficient and abundant evidence to sustain
11 the conviction.

12 I don't really know how to argue the second point. I
13 think Ms. Zimmerman's trying to put herself in the mind of
14 a juror and I think many an attorney has probably gone
15 crazy trying to do that. I don't know what goes on in the
16 deliberation room. I've never served on a jury. So I
17 don't know exactly what their conversation was, but to say
18 that it was an inconsistent verdict, they're two separate
19 crimes and one's not a lesser of the other, they're two
20 separate and distinct crimes, they have different elements.
21 To say that they're inconsistent, I would disagree with
22 that, Your Honor, and I would ask that you deny the motion
23 for a new trial.

24 **THE COURT:** Okay. Well, again, I believe that the
25 denial of the motion for a directed verdict was proper,

1 finding that there did exist evidence to justify sending
2 the case to the jury, so I'll deny your motion on that
3 ground. And, you know, notwithstanding the fact that we --
4 the two charges are very similar in nature, the accessory
5 before the fact of a felony and the conspiracy, they're
6 very similar, they are separate offenses, and I think
7 certainly the jury could for whatever reason find for one
8 and not the other. So I'm gonna deny your motion for new
9 trial, but you you're protected on the record.

10 All right. Anything else before we deal with
11 sentencing?

12 **MS. ZIMMERMAN:** Nothing from the defense.

13 **THE COURT:** All right. If everybody will come up,
14 please.

15 Okay. I'll be glad to hear from the State first
16 on the issue of sentencing and then I'll hear from the
17 defense. Solicitor Scott, Daniel?

18 **MR. SCOTT:** Judge, I find myself in a unique position.
19 I've known this man for some time. I prosecuted a cousin
20 of his. He got a life sentence for murder. He sat beside
21 me at a trial, his uncle was killed. The murderers of his
22 uncle got substantial sentences. He has certainly been
23 touched by the judicial system, has seen it firsthand, and
24 has seen the effects of criminal behavior and the power
25 of the judicial system. And having known all that, he's

1 decided to -- to commit these criminal acts and he's
2 continued to do so after -- after seeing firsthand what
3 this behavior is capable of causing in your life and the
4 ramifications of such behavior. I don't think he's gonna
5 learn. I think he's not sorry for doing this, he's sorry
6 he got caught.

7 What I would recommend is a range of seventeen to
8 twenty-one years for this crime, Your Honor, and I think
9 we all are just lucky nobody got seriously hurt in this
10 case, and the facts stand for themselves, and that's my
11 recommendation, Your Honor.

12 **THE COURT:** Okay. All right. Thank you, Solicitor.
13 Ms. Zimmerman, I'll be glad to hear from you.

14 **MS. ZIMMERMAN:** Thank you, Your Honor. I, too, know
15 Mr. Wright very well. I've been involved with his family.
16 I know his wife. This is hard for me because I have to
17 stand up here and I have to recognize the jury's verdict,
18 but I've talked a lot to him about this case. I've talked
19 a lot to him about what happened, and I think that he is
20 truly sorry that it happened.

21 Mr. Wright is a husband, he's a father. He is a
22 resident of Newberry County. He has held down a job in
23 the construction industry for quite some time now. His
24 company actually has assisted in paying my fees for my
25 services. They -- they want him back out there on the job

1 site and understanding now that that is not gonna happen,
2 Judge, we're asking for the minimum sentence on this. I
3 -- I understand that this is a wide range, but I believe
4 fifteen years is a very stiff penalty for the jury's
5 verdict in this case and that's what we're asking for.

6 And I believe my client wants to address the Court --

7 **THE COURT:** Okay.

8 **MS. ZIMMERMAN:** -- and I need to speak with his wife,
9 but I think she also wants to.

10 **THE COURT:** Certainly. I'll be glad to -- who wants
11 to go first? Mr. Wright? Ms. Wright? I'll be glad to
12 hear from both of you.

13 **THE DEFENDANT:** Your Honor, you know, the whole -- I
14 understand that I've still got my position to speak on it,
15 but, Your Honor, those guys -- I don't know -- I know the
16 one guy and whatever he's trying to do get his charges beat
17 or whatever, I had nothing to do with that. That guy --

18 (Discussion between the Defendant and Ms. Zimmerman.)

19 **THE DEFENDANT:** Yes. Right. Well, he -- and if I
20 would have known who you invite, you know, to your place
21 and the actions that they take from a guy who constantly
22 come there, this is like -- you know, you invite somebody
23 there, you know, to sit down and watch TV and they looking
24 all around. What their intentions are, I -- I -- I never
25 know. I never know. And I really didn't know anything

1 about this right here. I knew that this guy he was --
2 he was asking -- he was asking and talking about doing
3 something, which I might have had a knowledge there, but
4 I never consult with none of that and I told them boys to
5 completely fall back, you know, being that me and this
6 guy, we're neighbors, we've been cousins -- we're cousins,
7 we've been staying together, I'm talking about in the same
8 neighborhood, all our life. We never had no altercations,
9 just the altercation that we just don't speak, you know.

10 I -- I really had nothing to do with these guys, sir.

11 I work every day; nine, ten-hour shifts. I've been
12 doing that for quite some time. I mean, I don't go out
13 to no parties or nothing like that, you know, as far as
14 club-wise. I just stay at home and be with my family. I
15 mean, that's all I know. You know, everybody can get up
16 here and paint their picture for them to be innocent. In
17 this right here case, sir, I mean, I did know, but I -- I
18 played no part in that. I played no part in that. I'm
19 sorry I maybe didn't call the police and say oh, these
20 guys, these fools, are about to go do this anyway. And
21 just the fact that fifteen -- you know, just fifteen,
22 twenty-five years of my life, you know, just to go on
23 account of this.

24 And like Mr. Scott said, he know me, which I --
25 Mr. Scott know me and he's from the Chapin area, so, I

1 mean -- I understand that he's the solicitor and he got to
2 make -- he got to make these -- you know, make it seem so
3 bad or make it seem like that to get that sentence, but he
4 know me and it's not no -- that I didn't -- sir, it's not
5 that I didn't -- I had not learned. I mean, you know,
6 since the incident with my uncle I've been a working man;
7 nine, ten hours every day. Coogler Construction, right
8 there in Irmo, they love me there. I don't do nothing.
9 I have no -- no -- these guys, their intentions, was not
10 mine. Where you invite somebody to your house and what
11 they're planning and scheming and plotting on, I couldn't
12 help that, sir, you know?

13 It's just -- sir, I can't say what -- what I deserve
14 or what -- for this right here, I don't think I deserve
15 that. I really didn't play no part in this matter. Just
16 the fact that I knew -- just the fact that I knew them and
17 didn't tell the police, I didn't -- them guys went and
18 robbed that place, something that they're constantly doing,
19 that -- what she said, they got prior charges and charges
20 that's facing these same things. Like that's not -- that's
21 not my MO. And getting somebody hurt, that's not my MO.
22 That's -- that's not my MO. I'm not -- not even that type
23 of person. I work and I do the right thing, you know.

24 I'm really at a loss of words right now. It's not
25 coming out clear or it even sounds bad, but that's just not

1 -- that's not my character. And those guys, they did their
2 crime and they should be punished for their crime. This
3 had nothing to do with me. Just the fact that a guy comes
4 to my house and tries -- you know, hangs out and whatever
5 he's plotting on or trying to do his self, that had -- that
6 had nothing to do with me, sir.

7 And the guy, Tarakus, he admits that he don't know me,
8 never seen me before, but he's just trying to get his time
9 reduced. And I don't -- you know, fifteen, twenty years --
10 I'm sorry.

11 **MS. ZIMMERMAN:** That's okay.

12 **THE DEFENDANT:** I mean, this is the last time I'm
13 being heard and I just want to be heard, you know. I --

14 **THE COURT:** And I'm gonna give you every opportunity
15 to be heard, sir.

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

17 **THE COURT:** You take as long as you want to.

18 **THE DEFENDANT:** Yes, sir. Just -- just taking my life
19 away like that and, you know, everybody be on with their
20 business, you know, this afternoon, where it's -- it's
21 really a good chance that this innocent guy right here is
22 going to jail and really didn't have nothing to do with
23 that. So my thing with taking it to a jury trial even --
24 even less pleas -- even trying to take the jury trial, even
25 just trying to say that I wasn't guilty, I would have

1 copped out a long time. Just saying I was not guilty of
2 this crime because I had nothing to do with it, you know,
3 and I -- I was taking it that far to -- you know, to see
4 justice, but somehow me knowing has got me in a whole world
5 of trouble. But fifteen, twenty -- twenty years because I
6 didn't call the police and say these fools was about to go
7 do this, that's -- that's -- I can't say what the charge
8 is now. I mean, the law's the law.

9 But I apologize to everybody that's going through
10 this, my wife that's sitting there, and telling her that
11 she's got to start her life over. We've been playing fair
12 by the books since that incident, you know, and even been
13 trying to get on before that. My job finally gave me an
14 opportunity to represent myself as far as in the work
15 world, which I probably couldn't get another job unless
16 it's flipping burgers or something, but they finally gave
17 me the chance and now they love me. Like I don't take that
18 for granted. My attendance is perfect there as far as
19 being there on time and working throughout the day, my boss
20 can vouch for that.

21 And I don't -- I don't be out here -- we stay way in
22 Little Mountain, way in Little Mountain. The only way that
23 guy was at my house and coming to my house is because he
24 talks to her cousin. He talks to her cousin, her first
25 cousin, and they chill out, so, he comes down there with

1 her. So, I mean, they kind of involved us in chilling,
2 but where he's sitting at and what he intends on doing in
3 his mind, I just can't, you know -- his intentions was
4 something else completely different. Me and him never sat
5 there and plotted on my neighbor, my first cousin, that
6 I've been knowing forever. Me and my cousin, we might
7 don't speak or nothing like that, but we never had no
8 incidents like this even the whole time -- you know, we
9 stay in the same neighborhood since forever. We never had
10 these type incidents.

11 I mean, the guy who does this, he -- he's all out here
12 in Newberry. This is all he's done. This is all he -- he
13 is a stick-up man, you know. I know he -- he's a stick-up
14 man, this is all he's doing, and whatever reason they feel
15 that, Your Honor, I had -- I had no part in this and just
16 to say you go do, you know, a life sentence, or might as
17 well, that's the rest of your life, you know, and just
18 ain't no telling what things could be from a week from here
19 or a day from here. That's just not -- I mean, looking at
20 my wife and just telling her she's got to go through this
21 and even start over.

22 I'm not up here to paint no picture like I've been no
23 saint, but I have been a good man and all I do is work at
24 a job since I've had it. I don't be out here in these
25 streets. I don't. That's not the part I play being I

1 have, you know, a whole bunch of ideas of even that scene.
2 They couldn't even put me with that scene. All I do is sit
3 at home and basically just watch TV. After I get off work,
4 I don't feel like doing nothing else. I might get a little
5 few things done, but it's nothing else. I mean, that's
6 all -- that's all I have. There's not no sitting out there
7 on the street corners, you know, every day or nothing. I
8 stay right next to Little Mountain trash dump in Little
9 Mountain on Holy Trinity Church Road. It's -- it's nothing
10 going on there. And even -- the officers, even if you ask
11 them their self, they're not putting me on the scene. I'm
12 not no -- no thug that be on no block. I'm a family man.
13 I'm a family man.

14 And it got me stressing, you know, the whole time I
15 sat there I had to listen to the case and couldn't defend
16 myself at all, I guess, because I took those rights, but I
17 ain't had nothing to do with those guys doing that crime,
18 you know, and, I -- you know, Mr. Dale, like he -- like he
19 said, you know, we don't have a relationship. We had -- we
20 had a case involved, you know, but even him -- even looking
21 at my character, the fallout that, you know, we had as far
22 as family time of trying to solve that case, he knows very
23 well that's not my character. Never been no disrespect for
24 the guy, no nothing. Even after all the stuff he was going
25 through trying to solve that case, even just on a whole

1 completely different level, and I'm pretty sure he can
2 agree with that, like I'm not that character. I've never
3 been.

4 I always learned respect, to respect my elders.
5 Respect period. I never caused no harm on my cousin and I
6 never would do that. I mean, like he said, things can turn
7 south. Who knows? Nothing never goes as well as planned.
8 Nothing never goes as you plan it. Anything could happen.
9 I never had no intentions of going and rob my cousin. I
10 never had no intentions on that. All I -- all I did -- we
11 stayed in our own lane. We stayed in our own lane. There
12 wasn't no intention to go and rob him. I never had them
13 intentions. I stayed next to the guy even when I wasn't
14 allowed home. His house is no further from right there to
15 where these guys are standing. We never had no problems
16 and he sat up there and he said that, you know, we just
17 basically go about our business. There's never been no
18 problem before that -- or before the guy coming down to
19 our house scheming and plotting on somebody.

20 I mean, it's just the chance here today, man, you
21 know, sir, the wrong man's going to jail. Those guys,
22 they did their crime. I don't know how my name would even
23 get tied into the situation or either -- you know, me and
24 Lominack had words that night. Even for him to -- he told
25 me that the guy had got robbed, you know, and I said -- I

1 said, you know, I try to mind my own business, you know,
2 but my name wasn't brought no where in the picture. I
3 don't know how he brought a picture and said okay, let's
4 see how this guy's involved with this or whatever vendetta
5 it is, you know.

6 I'm a working man and I've been asking -- even from
7 before the incident I've been asking Mr. Lominack to accept
8 me as an equal. I'm -- I'm a working man now and I don't
9 get in any trouble, but, see, somehow everybody's still
10 figured out oh, I had this and that, and comparing me to
11 what they see out there, that's not it, that's not my
12 character. That's not my character.

13 Your Honor, I mean -- sorry, I'm wasting your time,
14 you know, but I appreciate you guys listening. I mean, I
15 sat -- to sit over there and listen at the whole case, it
16 hurt me. Just to listen at, you know, the things that's
17 going on and I can't even defend for myself or even things
18 I would like for my lawyer to say, you know, there's
19 nothing -- I can't do anything about none of that. I'm
20 sorry all this took place. I'm sorry all this took place.
21 I mean, I'm sorry -- I'm sorry the burglary happened.
22 I'm sorry the whole thing even happened, but that wasn't
23 nothing to do with me. I understand I'm found guilty of
24 this crime, but at least, you know, you guys could take --
25 in y'all's consideration about this, you know.

1 So I don't want -- you know, even if I -- I took it
2 this far, but these are not my expectations and sitting
3 here to even have to paint the picture that's being painted
4 so -- so nasty. I understand that that's -- that's the job
5 that he's got to do, but even to paint the picture so -- so
6 mean or make it look so bad, that's not me, sir. That's
7 not me.

8 I'm not -- I'm not up here dunking or nothing like,
9 you know, what was going on. The other guy, I didn't even
10 know him. I didn't know him from a can of paint. I never
11 seen him before a day in my life, but I -- it's not for me
12 to be looked at with them. That's -- that's definitely
13 what I don't want done. That's not my character. That's
14 not my character, it's never been, and it's -- it's -- it's
15 not. Like I don't want to see nobody in no position like
16 that, to be going through that, you know, and just -- I
17 apologize all this happened, but, you know, as far as them
18 concerned or coming to me and saying okay, we're gonna
19 charge him with this, that was the thing. I was not
20 guilty. Even they tried to come to different charges of
21 this and that. I wasn't gonna plead to that because I had
22 nothing to do with this incident and somehow it's convicted
23 me because I knew -- I knew of the crime, but I didn't
24 report it or -- or what such. And yes, somebody could have
25 got hurt, which eventually it would have ended up coming

1 out, but I -- I planned nothing with those guys and I
2 definitely -- I definitely didn't see this coming, sir. I
3 definitely didn't see this coming.

4 So it's got -- you know, the guys who did the crime,
5 even -- like he sit there and said himself we convicted
6 somebody for my killing my uncle and cutting off his head
7 and they didn't even -- the time that he recommended for
8 me they didn't even receive that time and one guy got
9 fifteen years that was nonviolent. I wish the fight was
10 that strong for that. One guy -- they amputated his head
11 after he was dead after twenty days. These guys received
12 no where near that time. Killed and leave him somewhere
13 else and even he didn't even recommend that much time.
14 They got their crime and it was nonviolent -- one of them
15 got that time and it was nonviolent, which I said the hands
16 of one should be the hands of all. My hands was not in
17 this mess that's over here, but, you know, these guys
18 commit murder and, you know, the thing -- Mr. Scott, he
19 recommend more time for me saying that I had knowledge of
20 something, which I had -- well, I am. I -- because I
21 didn't report it to the police or, you know, it could have
22 turned worse and somebody could have got hurt, but fools --
23 I mean, these guys -- there's a lot of people out here
24 that's crazy these days. Who knows what their intentions
25 are, you know, or even before they do it how could you lock

1 them up? If I go say okay, these guys are about to do a
2 robbery, can you lock them up before they do it? How is
3 the charge -- how is the charge there only if they was
4 thinking about, you know, robbing somebody?

5 I just -- they got murderers out there and this, that
6 and the third that's getting less time than this and all
7 it was was my knowledge of the situation. I just -- you
8 know, I was hoping for justice, but, you know, even -- even
9 what the justice was saying in different eyes, I wasn't
10 expecting this to be my justice because this don't -- this
11 don't carry my character. I do not rob nobody or do that
12 such thing. I do not. I do not do -- I might have had a
13 few drug charges, that's all, just trying to survive or get
14 myself into something that I had shouldn't have, but that
15 other picture that's painted for me, that's not me, you
16 know, as far as taking somebody gun or being out there,
17 this tough guy who needs to be seen with cars and rims and
18 nothing like that, that's -- that's not my character.
19 That's not my character.

20 And, you know, I don't -- I don't understand the
21 situation. Even Lominack, he stays not even a hundred
22 feet up the street. Not -- my wife say -- he stay right
23 up the street from me. Even when we had an incident --
24 again, it's -- it's not that type of -- it's not that type
25 of thing. Like I said, I stay in Little Mountain. I don't

1 be out here or wherever a lot of things take place. I'm
2 a family man. I have my ring, but they -- they took it
3 from me, and -- all I do is work. Nobody mentioned that.
4 I'm a working man, a good man. Nobody mentioned a guy
5 that stays out of trouble, hasn't been in trouble. Nobody
6 mentioned none of it.

7 It's like I had to listen to that whole case and
8 tried and being convicted to get twenty, twenty-five years
9 not even speaking or not even getting to speak -- express
10 my opinion or even things I wanted her to say, you know.
11 You've got -- you know, you've got a lawyer that -- let's
12 -- let's -- let's say you've got a lawyer that -- that
13 she -- we -- we've got a relationship because we've had
14 -- we had prior things going on. And me and him got a
15 relationship on prior things going on, but you've got two
16 people that are trying -- one person trying to fight for
17 your life and one person trying to destroy your life, it's
18 just their job, and they've got to paint -- she's got to
19 paint her picture as clear as possible and he's got to
20 paint his picture as crude as possible, but I don't -- I
21 don't want -- even, sir, I didn't -- I don't want nobody
22 looking at me like that or even compare to me with these
23 guys that went up there because that's not my MO.

24 The only -- the only thing that would even have that
25 guy around me or at my house is because he was talking to

1 my wife's cousin. Otherwise, he wouldn't. They -- they
2 chill out. Her and her cousin chill out a lot, which he
3 goes with her so he comes down there with her. If sitting
4 there watching activity of what's going on from a house
5 that's no farther from here to there is -- I guess he was
6 already plotting in his mind on his intentions, you know.
7 Even right here on -- Mr. Lominack knows his self even
8 right here on the West End store somehow to where this guy
9 -- even he just committed another armed robbery, which he
10 -- they already said they got the warrants and just haven't
11 served him with it yet, but he comes in here to testify
12 on me and, you know -- and go ahead about his business.
13 Twelve pending charges since 2000 and whatever and -- I'm
14 not -- I'm not up here to paint his picture either, you
15 know, or even try to make a slur look like on him, but,
16 like I said, you know, these guys know and he know I'm not
17 about that violence or nothing like that, so he -- he got
18 to paint his picture because he's the solicitor and he has
19 to make it, you know, look as -- as if he's doing his job.

20 And Lominack, he stays right up the street, so I don't
21 understand, you know, and I sit there and constantly try to
22 talk to him, you know, and say, you know -- except I be
23 funny about it. I say hey, you can accept me as an equal
24 now, you know, I do work, I do -- you know, I'm on the good
25 guy list now, I do work. I see him all the time and I joke

1 with him, which he probably can't stand to get mad about
2 it, but I really be serious because I don't want him to
3 look at me like that anymore. It's not, you know, I see
4 them walk by and hold -- hold my head down like a tough guy
5 or nothing like that. I sit there and try to be a smart --
6 a smart guy, a smart A-S-S, whatever you want to call it,
7 you know, like shake my hand, you know, accept me as an
8 equal now, you know. Accept me as an equal. I'm a working
9 man; this and that to the third, but whatever -- whatever.

10 I'm just sorry that y'all had to go through this
11 thing, you know, and, you know, if it is, you know, a
12 whole lot of time at least my voice got heard. At least
13 my voice got heard and somebody at least heard me instead
14 of just sitting over there and -- and somebody just passing
15 judgment on me on what they think I look like or think I
16 might be into out there. That's not my character, you
17 know. It's -- it's a whole speech you can go through all
18 day, but I'm sorry this ever even took place, you know.
19 I'm sorry about the whole thing. I'm sorry about -- for
20 my cousin and them because they know better. They know
21 better. We never had no altercation like this. We even --
22 you know, we never had no words even of violence. We just
23 staying in our own lane. The guy does his thing, I does --
24 I do mine. This -- we have no -- no problems with each
25 other or nothing like that. It comes off of you can't --

1 you can help who you invite to your house, but you do not
2 have the knowledge of what intentions these guys plan on
3 doing. That's why, you know, I cut it out a long time
4 ago. You invite somebody to your house and instead of
5 them sitting down and TV -- watching TV, just of me
6 thinking in this matter, that they probably looking for a
7 way to enter this or your TV looks nice or something like
8 that. So, you know, you can't put judgement past nobody
9 these days because you're in for a surprise and there's
10 never no telling.

11 So, you know -- and even if -- Mr. Dale, he a good
12 dude, you know, and I -- you know, I hate that he had to
13 paint the picture so bad, but I guess that's -- that's his
14 job, that's what he's got to do, but I imagine, sir, that
15 you don't -- you know, you don't look at me like that or
16 definitely look at me or even compare me with those fools
17 that was up there, straight fools they are, you know, and
18 I really had no participation, no doing, no involvement in
19 this matter.

20 You know, I hate my wife had to go through this, just
21 sitting there. You know, they tell her life got to go
22 somewhere else from here, you know, it seems like there's
23 no out for me, there's no choice. My chances being slim to
24 none. It's like the whole -- the whole system is fighting
25 against me, but my options are slim to none. Even not

1 being able to speak. I have to get my lawyer, like I said,
2 a lady who's fighting for me like the man's trying to
3 destroy me, I've got to give her a summary so she can put
4 these in her own words to try to make it look decent or
5 whatever, but even things I wanted to say during the trial
6 I couldn't say myself, even speaking for myself, I -- I
7 know my situation from the beginning has been a lose-lose
8 situation. Even for them to say come plead to this charge
9 of -- plead to this and let the judge give you -- you know,
10 let the judge decide whether he gonna give you open zero
11 to whatever like that and I was not taking -- even -- my
12 charge was all -- all -- already a no win zone. It's take
13 this charge and let the judge give you an open plea from
14 zero to ten and, I mean, there's no telling what -- how
15 this goes. I wasn't gonna go sit there and say I was
16 guilty to that because even if I took a lesser plea, a plea
17 that wasn't even involved with nothing but probation, that
18 still -- that still would have been involving me in that
19 incident and I rode with it to the grave thinking that
20 justice was gonna be served and it didn't get served in my
21 manner, and this all right now is just -- you know, gonna
22 do fifteen to twenty-three years? I mean, even ten years
23 from now you -- you have no idea what you yourself will be
24 doing or if either one of us will be alive or whatnot.
25 I'm not out there harming, terrorizing nobody. It's

1 not my character. Even fifteen years of my life been
2 taken away for this right here matter is -- it's
3 ridiculous, but from the beginning I'm left choices, I'm
4 left choices, and, like I sit there and said, he didn't
5 even recommend that for the guys who killed my uncle. They
6 waited, what, ten days after he was dead and went back to
7 the body and cut off his head. Desecration to a grave,
8 right, was the charge?

9 **MR. SCOTT:** He got fifty years.

10 **THE DEFENDANT:** He got fifty years?

11 **MR. SCOTT:** Fifty years was the murderer's sentence.
12 I don't know where -- what he's coming up with with that.

13 **THE DEFENDANT:** Miss Mandy got fifty years, but
14 Timothy got twenty nonviolent. I understand it's not the
15 case here, but, you know, even -- even getting worked up,
16 you know, on that incident is just -- this right here is a
17 whole -- a whole lot of hearsay, so -- but for everybody
18 to go on about their business of being home and eating
19 dinner or even five years from now enjoying their kids or
20 whatever, it's a chance here that this guy not doing this
21 crime, but he got locked up today over hearsay, probably
22 will die in jail or something like that as far as
23 health-wise, but it's -- it's not of no crime he committed,
24 just off of hearsay, and now I even have to go do fifteen
25 to twenty-five years of my life because of that? I mean,

1 that just brings tears to my eyes. It's -- even my cousin
2 know like -- he -- he know better than that and I mean, he
3 stood on the stand and said it himself, but, you know, he's
4 a solicitor, he got to paint -- he got to paint his picture
5 with his ability as much as he -- as much as he -- you
6 know, the worst he can get it, the worst of the worst, to
7 make -- to convince what he's trying to convince.

8 It's just -- you know, I mean, I've got a good family
9 back there, you know. They a good family. It's not --
10 it's not everybody, you know, that you -- that people can
11 point their finger to. In a way you've got some and you've
12 got some that's not and then you got some people who you
13 can't help are your family to -- you can't help who --
14 who's your -- who's gonna be your next of kin or even how
15 you're born into the -- this world. It's not your choice.
16 My choice is -- I made -- I made no choice in this incident
17 that happened. I had nothing to do with those guys going
18 to rob him. And they sitting there -- it's not no I did
19 the crime or anything like that, but just saying that I
20 had the knowledge of it and that's -- that's fifteen to
21 twenty years out of my life just -- I mean, even leaving
22 from here you say you've got to do a minimum of anything.
23 Like I didn't see myself doing nothing at all. Even I was
24 told -- I mean, this -- from my perspective this was a
25 wonderful case and I couldn't see myself pleading guilty

1 or even giving in and saying that I had -- I'm gonna take
2 a lesser charge, I'm gonna take a lesser charge, lesser
3 charge. I had nothing to do with this, so I was not gonna
4 plead guilty to a crime I had no involvement in. I had
5 no involvement in this crime, sir.

6 I'm sorry all this happened. You know, I'm sorry
7 everybody be going on with their life while I sit in a
8 jail cell and rot. I had no knowledge of what was going
9 on. I knew -- I knew -- I knew he had ran it by me, sir.
10 Yes, I did have knowledge of it. I did have knowledge
11 of it, but because I didn't call the police and say they
12 was gonna doing that, you know, that's -- that's really
13 worth twenty-three years? I mean, you know, just a
14 recommendation. Go do the twenty-three years I recommend
15 and let's just go home and eat dinner like it's nothing,
16 you know. Especially for an innocent guy.

17 I'm sorry y'all had to go through this, Your Honor,
18 you know, and I -- I appreciate you even taking the time
19 to listen to me and not even -- you know, just somebody to
20 hear me out, you know. I -- I appreciate it and it's just
21 sad, you know. Half -- half of these -- the court system
22 in here that work they all know me because of the incident
23 that we've had before, sitting down one on one going
24 through trial trying to convict two people separately. I
25 mean, I spent a lot of time in here, you know, and it's

1 not -- that's not no mind of somebody who's trying to hurt
2 somebody, you know, just saying where I wanted to see
3 justice served. Them guys admit to doing their crime,
4 they did that. I had no play in that whatsoever, sir.

5 I'm sorry. I feel sorry that y'all had to go through
6 this and listening to this, even the people out here, at
7 least somebody heard me because sitting over there going
8 through this case and hearing what's all going on and
9 hearing, you know, one picture being painted, the other
10 picture being painted, and one picture being painted and
11 just me having -- can't say anything at all, even walk
12 through the facts that was going on to defend myself, sir,
13 that's -- that's -- if there was a chance that -- that's
14 not -- I mean, you know, fifteen, twenty years behind that,
15 sir. I mean -- and then there's a chance that -- there's
16 a chance that you guys know in y'all heart this guy can
17 really be innocent. Fifteen to twenty years behind that,
18 even for a recommendation, you know, that -- that's kind of
19 -- I can't say how the system goes and how it goes, but my
20 whole point was I was thinking to get some justice out of
21 it and being convicted of it still -- I mean, if I thought
22 I had any intentions of -- or even did this crime I would
23 have pled guilty to a lesser charge, a lesser charge.

24 I had no play in this and I sat there and told my
25 lawyer that I would ride it out because I really had

1 nothing to do with these fools doing this. It's
2 ridiculous. Ridiculous. And the only few times that we
3 hung out is because he talks to her cousin and he came
4 down there a few times. It's not no -- we might see each
5 other or might, you know, but it's not no every day we
6 chill. I go up -- I don't even come to Newberry. It's
7 not no I come up here, I be around him, no none of these
8 to this, that to the third. The only reason why he was
9 even down at my house was because he was with my wife's
10 cousin. It's not no -- I don't -- them guys come down
11 there, you know, they chill out, her and her cousin chill
12 out or whatever. So, I mean, I guess that would, you know
13 -- of course, they'll say, you know, I'm about -- she'll
14 say I'm about to come down there, do you mind if I bring,
15 you know, Hootie, you know, and then him and you can chill
16 out, but as far as he didn't know where they stayed or he
17 don't know nothing about it no how and all this and that to
18 the third, the man has nine prior charges, twelve, whatever
19 you call it, it speaks for itself. And these are not no
20 different charges. All of them are burglary or either
21 armed robbery. It's not no other charge that's in there
22 besides that and this is what -- this is what this guy
23 does. Anybody who's back there or even know this guy they
24 know that this -- this is his reputation; not working,
25 always thinking and plotting on what somebody else has.

1 You know, the streets talk and you can hear -- hear about
2 it, but I wasn't thinking of no intentions like that way
3 down there in Little Mountain or even the few times that
4 he came around, I never would have thought that, you know.
5 He even coming that far to do such a thing. I never would
6 have thought that. Your Honor, I'm sorry for your time,
7 and thank you for hearing me out.

8 **THE COURT:** Thank you, Mr. Wright. Ms. Wright, would
9 you like to say anything, ma'am?

10 **MS. WRIGHT:** Of course, sir. I stand before you
11 today, sir, and I'm not standing before you as a woman who
12 always knows what her husband does. I'm standing beside
13 him because I believe in his innocence. I know his family
14 stands behind me and they believe as well. For ten years
15 I've been in a relationship with Mr. Wright. I've never
16 known for him to exhibit any type of violent nature towards
17 me. He's a wonderful husband, he's a great stepfather,
18 he's an even better father. You know, he's a great
19 employee. I've never known for him to strike, to even
20 speak with any type of harm to deliberately, intentionally
21 hurt someone, whether physical, mental or even verbally.
22 I've never known him to be that type of person.

23 He has had incidents, he has had run-ins with the law.
24 Dale is familiar with him in that incidence and I also
25 heard the solicitor also state that Robert Wright is a guy

1 who's never gonna learn. Never learn from what? The
2 incidents that he's been in? People do learn, people do
3 change. And, in fact, the last time that Rob was in court
4 he has made a remarkable change since then. One of those
5 changes, for instance, he keeps speaking of is important.
6 For a long time Rob did not work. For a long time I was
7 the sole provider of the household. I didn't fault him
8 for that because he had a hard time finding and seeking
9 employment, you know, so I stepped up as a woman and I did
10 what I had to do for our household. But now, a complete
11 change. He hasn't been in any trouble since before this
12 incident, you know.

13 So I ask you today, Judge -- he recommends seventeen
14 to twenty-one. If the minimum is fifteen, I'm not gonna
15 be pleased with any sentence because, like I say, I stand
16 beside my husband and I maintain his innocence, but I would
17 please ask that you consider fifteen so that he can return
18 home to his family and get back to what he's normally
19 accustomed to doing. He doesn't deserve to be sentenced to
20 seventeen to twenty-three years. I think that the minimum
21 penalty should be good enough.

22 **THE COURT:** Thank you, Ms. Wright.

23 **MS. WRIGHT:** You're welcome.

24 **THE COURT:** Ms. Zimmerman, anything further?

25 **MS. ZIMMERMAN:** No, sir.

1 **THE COURT:** Solicitor, what is the prior record?

2 **MR. SCOTT:** I think his -- I think he's from
3 Philadelphia, somewhere in Pennsylvania, but there's some
4 theft by unlawful taking in '02; distribution of crack,
5 2008; possession of crack second, 2014. Currently from
6 April of last year I've got pending a failure to stop for
7 blue lights and a possession of controlled substance, which
8 I'd like to plea into this today, but those are still
9 pending.

10 **THE COURT:** What's the other pending? Failure to stop
11 for blue lights and what's the other one?

12 **MR. SCOTT:** Possession of a controlled substance.

13 **THE COURT:** Okay.

14 **THE DEFENDANT:** Sir, could I -- I can't say nothing
15 else?

16 **THE COURT:** Sure. Go ahead.

17 **THE DEFENDANT:** That possession of controlled
18 substance --

19 **MS. ZIMMERMAN:** I'm sorry, Judge, but I have to --
20 we're not entering a guilty plea to that --

21 **THE COURT:** Right.

22 **MS. ZIMMERMAN:** -- and so I -- I'm gonna advise my
23 client to remain silent on that.

24 **THE COURT:** And certainly any pending charges that
25 you have not been convicted of will not be taken into

1 consideration whatsoever.

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

3 **MS. ZIMMERMAN:** Thank you.

4 **MS. WRIGHT:** Sir, can I also add one thing?

5 **THE COURT:** Excuse me?

6 **MS. WRIGHT:** Can I say something?

7 **THE COURT:** Sure.

8 **MS. WRIGHT:** I do want to let you know that we still
9 reside beside the same neighbors. We have not had any
10 incidents with them. It's never been mentioned that they
11 even thought that my husband had anything to do with this
12 crime, it's never -- you know, and as far as us going our
13 separate ways, Mr. Mayers and I have had a chance to have
14 a conversation. Ms. Precious, I've never had -- I've
15 never -- you know, we've never had a conversation, but
16 Cedric and I have. And I -- I also asked him what he
17 thought because I felt -- I wanted to know exactly what
18 he thought and he told me that he really didn't think that
19 my husband had anything to do with it either.

20 **THE DEFENDANT:** And he also told them that, too.

21 **MR. SCOTT:** That's not true. That's not true. Don't
22 put words in my mouth.

23 **THE DEFENDANT:** I didn't put words in your mouth, sir.
24 I -- Lominack, that's what I was referring to. I didn't
25 say Mr. Scott.

1 **THE COURT:** Okay. Anything further from either side?

2 **MR. SCOTT:** Not from the State, Your Honor.

3 **THE COURT:** From the defense?

4 **MS. ZIMMERMAN:** No, sir.

5 **THE COURT:** Ms. Zimmerman, is there any credit from
6 the time he was arrested and when he got out on bond?

7 **MS. ZIMMERMAN:** He -- he was released the same day.

8 **THE COURT:** Oh, okay. All right.

9 **MS. ZIMMERMAN:** Judge, I would point out to the
10 Court though, and we did mention this during Investigator
11 Lominack's testimony, that we did voluntarily surrender on
12 this offense.

13 **THE COURT:** Okay. All right. Thank you very much.

14 For purposes of the record, pursuant to Section
15 16-23-500, this is a violent crime as relates to future
16 ownership and possession of any firearms.

17 Mr. Wright, the -- I have to accept one hundred
18 percent the verdict of the -- of the jury. That's my job
19 to accept that and I have to accept that. Secondly, the
20 -- as everyone is aware, there are -- the law provides
21 that an accessory before the fact of a felony carries the
22 same punishment as the actual felony. I can't do anything
23 about that. That's what that -- that's what the law says.
24 Whether I agree with it or disagree with it is of no
25 significance, I have to accept it. And as everyone is

1 aware, there is a mandatory minimum of fifteen years.
2 Again, I've got to accept that. Whether I agree with it
3 or disagree with it is of no significance. I've got to --
4 I've got to accept that.

5 The sentence of the Court is, Mr. Wright, you be
6 comitted to the State Department of Corrections for a
7 period of sixteen years. Good luck to you, sir.

8 **MS. ZIMMERMAN:** Thank you for the hearing, Judge.

9 (Whereupon, the proceedings were concluded at
10 11:15 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and partial transcript of record of the
proceedings had and the evidence introduced in the hearing
of the captioned case in Circuit Court on the 4th - 7th day
of January, 2016.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

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

April 25, 2016

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Newberry
 STATE VS.
Robert Antwon Wright

AKA:

Race: AFRICAN AME Sex: M Age: 30DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED] Church RoadCity, State, Zip: Little Mountain, SC 29075DL#: [REDACTED] SID#: [REDACTED]*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: Accessory before the fact to a Felony (underlying felony being Burglary in the 1st degree, sentence under cdr: 0079)

in violation of § 16-01-0040 of the S.C. Code of Laws, bearing CDR Code # 0002

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-15
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Daniel, Taylor100588
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 16 ☒ days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms: 1 Elizabeth P. Folk, Clerk of Court, Newberry,

☐ Set by SCDPPPS South Carolina, do hereby certify that this is a true
 Copy of the original on file in this office.

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCJA Surcharge)

3% to County (if paid in installments)

TOTAL

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2167Sentence Date: 11/7/16

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

INDICTMENT FOR

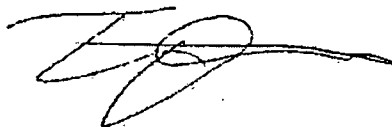
**Accessory before the fact to a Felony
§16-01-0040**

At a Court of General Sessions, convened on the 29th day of August, 2014, the Grand Jurors of Newberry County present upon their oath:

That Robert Antwon Wright did, on or about April 30, 2014, in Newberry County, feloniously, willfully and unlawfully aid, abet, or assist a person or persons in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed, to wit: the said Defendant did counsel, hire, or otherwise procure a person or persons to commit a felony(s), and the said Defendant assisted in the commission of a felony(s) with knowledge that the said person or persons who was assisted was going to commit the act of Armed Robbery, Burglary and/or any lesser offenses, in violation of Section 16-1-40 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 cases made and provided.

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.
Elizabeth P. Folk
Clerk of Court
SEP 22 2017



Assistant Solicitor

WITNESSES

Garett Lominack
Newberry County Sheriff

WARRANT NUMBER

2014A3610100344

TRUE BILL

[Signature]

Foreman of the Grand Jury

Date: *8-29-14*

VERDICT

Guilty

Walter Phillips 01/06/16

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

August Term, 2014

Indictment # 14GS36- 0528

THE STATE

vs.

Robert Antwon Wright

INDICTMENT FOR

Accessory before the fact to a Felony

§16-01-0040

CDR: 0002

I, Elizabeth P. Folk, Clerk of Court, Newberry,
South Carolina, do hereby certify that this is a true
Copy of the original on file in this office.

SEP 22 2017

Elizabeth P. Folk
Clerk of Court

ARREST WARRANT

2014A3610100344

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Newberry

THE STATE
against

14-03755

Robert Antwon Wright

Address [REDACTED] Church Rd

Little Mountain, SC 29075-

Phone [REDACTED] SSN [REDACTED]

Sex M Race B Height 6 Weight 170

DL State SC DL # [REDACTED]

DOB [REDACTED] Agency ORI # SC0360000

Prosecuting Agency Newberry County Sheriff

Prosecuting Officer Garrett Lominack - 050

Offense Accessory / Accessory before the fact to a Felony,
general provision (violent if violent Felony)

Offense Code: 0002

Code/Ordinance Sec: 16-01-0010, 0050

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Personally
on 6-13-14Charles F. Wilbanks
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
1226 College Street
PO Drawer 10
Newberry, SC 29108

ORIGINAL

Entered in Computer 6-11-14Case # 14-03755

JAMES LEE FOSTER, Sheriff

Newberry County Sheriff's Office

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Newberry

Personally appeared before me the affiant Garrett Lominack

being duly sworn deposes and says that defendant Robert Antwon Wright

did within this county and state on or about 4/30/2014

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Newberry

in the following particulars.

DESCRIPTION OF OFFENSE: Accessory / Accessory before the fact to a Felony, general provision (violent if violent Felony)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts

That on or about 04-30-14 Robert Antwon Wright did willfully and unlawfully solicit another person, Lorenzo Cedell Jones and
Tarakus Orazco Coleman, to commit a felony by soliciting to have the said co-defendants commit the offense of Armed Robbery on
the victim's, and that the said defendant with the intent that the aforesaid crime be committed, enticed, advised, invited, ordered or
otherwise encouraged the co-defendants to commit the crime of Armed Robbery. This offense occurred at 2890 Holy Trinity Church
Road in the Little Mountain section of Newberry County and is in violation of the South Carolina Code of Laws, 1976 as amended,
I, Elizabeth P. Folk, Clerk of Court, Newberry,
South Carolina, do hereby certify that this is a true
Copy of the original on file in this office.

SEP 2 2 2017

Signature of Affiant
Clerk of Court

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Newberry

Affiant's Address 520 Wilson Road
Newberry, SC 29108-

Affiant's Telephone (803)321-2211

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/30/2014

defendant Robert Antwon Wright

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Newberry

) as set forth below:

DESCRIPTION OF OFFENSE: Accessory / Accessory before the fact to a Felony, general provision (violent if violent Felony)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 6/11/2014

Judge's Address 3239 Louis Rich Road

Newberry, SC 29108-1540

Judge's Telephone (803)321-2144

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

State of South Carolina)

vs.)

Robert Antwon Wright)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

VERDICT FORM

2014-GS-36-0528

2014-GS-36-0530

PLEASE ANSWER THE QUESTIONS BELOW:

- (1) As to Indictment No. 2014-GS-36-0528, which charges the Defendant, Robert Antwon Wright, with Accessory before the fact to a Felony (Armed Robbery), we the jury find the Defendant:

☒

GUILTY

☐

NOT GUILTY

- (2) As to Indictment No. 2014-GS-36-0528, which charges the Defendant, Robert Antwon Wright, with Accessory before the fact to a Felony (Burglary 1st), we the jury find the Defendant:

☒

GUILTY

☐

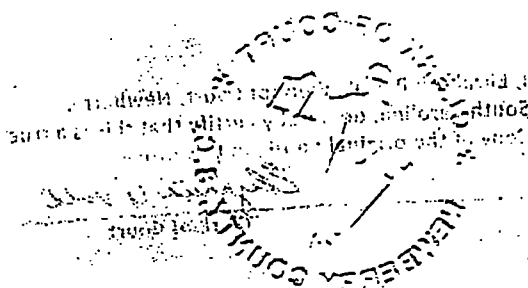
NOT GUILTY

NEWBERRY, South Carolina
January 6, 2016

I, Elizabeth P. Folk, Clerk of Court, Newberry,
South Carolina, do hereby certify that this is a true
Copy of the original on file in this office.

SEP 22 2017

Elizabeth P. Folk
Clerk of Court



- (3) As to Indictment No. 2014-GS-36-0530, which charges the Defendant, Robert Antwon Wright, with Conspiracy, we the jury find the Defendant:

 GUILTY
 ✓ NOT GUILTY

Hilton J. Gaddy
Foreperson

NEWBERRY, South Carolina
January 6, 2016

CLERK OF COURT
I, Elizabeth P. Folk, Clerk of Court, Newberry,
South Carolina, do hereby certify that this is a true
Copy of the original on file in this office.
Elizabeth P. Folk
SEP 22 2017
Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF Newberry)

State of S.C.)

vs.)

Robert Antwood)

Wright)

X

Court of General Sessions

Court of Common Pleas

Case Number: 146536-0528

BENCH ORDER

Defendant was found
Guilty & Accessory Before
the Fact to a Felony on 1/6/16.
Sentencing shall take place
on 1/7/16 at 10:00 AM NCDC
shall transport him to the
court house. While the Defendant
is at NCDC, he shall be
placed in isolation.

So Ordered.

Newberry SC 18000 FO 3820
JACKIE S. BOWERS
1-6-16

2016 JAN 6 PM 2 25

NEWBERRY COUNTY

FILED



Donald B. Hocker
Circuit Court Judge

I, Elizabeth P. Folk, Clerk of Court, Newberry,
South Carolina, do hereby certify that this is a
Copy of the original on file in this office

SEP 22 2017

Clerk of

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 ROBERT A. WRIGHT,)
)
 DEFENDANT.)
 _____)

CASE NO.: 2014-GS-36-0528
2014-GS-36-0530

TRANSCRIPT OF RECORD

MARCH 3, 2016
NEWBERRY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD HOCKER, JUDGE

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

ATTORNEY FOR PLAINTIFF:

DALE SCOTT, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

MINDY ZIMMERMAN, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(NO EXHIBITS INTRODUCED)

1 THE COURT: We're on the record this morning in the
2 matter of the State of South Carolina versus Robert Wright,
3 indictment number 14-GS-36-528. This is a hearing on
4 certain post-trial motions that the Defendant has filed as a
5 result of a trial and conviction having taken place on
6 January 6th of this year.

7 Ms. Zimmerman, I want you to address as far as oral
8 argument one and three. You certainly clearly set out your
9 argument concerning the directed verdict on number two. But
10 I'm more concerned with one, and to some extent with number
11 three. But let me ask you first. Number one -- and I
12 realize the subject matter jurisdiction can never be waived.
13 I understand that. Was that ever addressed at trial, the
14 arguments in number one?

15 MS. ZIMMERMAN: No, sir. In complete candor, I'll be
16 honest with the Court, I had not even seen this statute
17 until after the trial when I was researching, and that was a
18 hundred percent my fault.

19 THE COURT: I'm not trying to -- I'm not putting blame
20 anywhere. I just didn't recall this being discussed.
21 Because I think I would have remembered that if it had been.
22 I'll be glad to hear from you.

23 MS. ZIMMERMAN: Thank you, Your Honor. You know, it's
24 our contentions that based on the requirements in this
25 statute that -- essentially there was two options. Either

1 my client could have been tried with the co-defendants,
2 which would have certainly changed the outcome because the
3 Solicitor could not have called them to testify if they were
4 actually in the trial being tried with him, or
5 alternatively, they could have been tried first, and after
6 their conviction my client could have been called to trial.
7 But because the statute is so very specific on when a person
8 can be prosecuted for accessory, I think that the Court just
9 didn't have jurisdiction to hear that trial at the current
10 posture because neither of the co-defendants had been tried,
11 nor were they facing trial. And I think that because their
12 testimony was such a crucial part of the State's case, I
13 think we certainly have prejudice to my client, because
14 absent that we would have been in a completely different
15 situation. And I understand that prejudice is not
16 necessarily required when there's a subject matter
17 jurisdiction issue, but I still think that that's important
18 for the Court to realize that it would have very likely
19 changed the outcome of the case if we didn't have their
20 testimony.

21 THE COURT: And subsection two would provide for the
22 Defendant having been indicted for the actual felony
23 involved --

24 MS. ZIMMERMAN: Correct.

25 THE COURT: -- vis-a-vis burglary or armed robbery, or

1 both.

2 MS. ZIMMERMAN: Correct. He could have been prosecuted
3 for the actual offense but not for the accessory.

4 THE COURT: All right. Before we get to any of the
5 other arguments let me here from the State with respect to
6 number one.

7 MR. SCOTT: The statute, Your Honor, subsection two
8 seems to indicate statutorily that it is a valid strategy by
9 the prosecution. But just experience tells me I can do it,
10 and I have done it. I've done it in Laurens on a murder
11 case where I prosecuted the accessory before I prosecuted
12 the principal, and that's what I intended to do here. And I
13 think statutorily I can do it. I think case law tells me I
14 can do it. I've got a case -- there's a case called *State*
15 *vs. Prince*.

16 THE COURT: *Prince*?

17 MR. SCOTT: Yes, sir. That's a 1993 case. 316 S.C.
18 53. Likewise, there's a 2005 *Sellers vs. State*, stands for
19 the proposition the accessory can be convicted even if the
20 principal is unknown, if there's evidence that there was
21 some principal who committed the primary offense. So
22 essentially, what if we have a situation where the principal
23 no longer exists? What if they died? What if I had the two
24 co-defendants in this case that were unavailable for
25 whatever reason? Ms. Zimmerman's proposition is that Wright

1 can never be tried, and that's not what the law says at all.
2 I've got a newer case. I've got *State vs. Blakely*. That's
3 a 2013 case, 402 S.C. 650. The --

4 THE COURT: That's *Blakely*?

5 MR. SCOTT: Yes, sir, *Blakely*. B-l-a-k-e-l-y. That is
6 a Laurens County case apparently. This is a Court of
7 Appeals holding. And I quote, "Today the accessory's
8 culpability no longer shadows that of the principal.
9 Accordingly, an accessory may be convicted even if the
10 principal is not charged, is acquitted, or is not yet
11 prosecuted." And then also they cite a *Massey* case,
12 M-a-s-s-e-y, 267 S.C. 229 -- rather 267 S.C. at 44. The
13 full -- let's see if I can find the full citation of *Massey*.
14 But that is cited in that -- this particular case for that
15 proposition. At any rate, Your Honor, subject matter
16 jurisdiction did lie with this Court and there is absolutely
17 no requirement that a principal be tried before an
18 accessory. Never has been.

19 THE COURT: Okay. But the statute kind of seems to
20 indicate otherwise. And I certainly will read all those
21 cases that you cite. And, too, I recognize that as far as
22 common practice, accessory before the fact are commonly
23 tried before anything is done with the principal.
24 Understanding all that. But the statute kind of indicates
25 to the contrary, the way I'm reading it.

1 MR. SCOTT: Let me -- before I address -- *State vs.*
2 *Massey* is 267 S.C. 432.

3 THE COURT: 432?

4 MR. SCOTT: Yes, sir. That's a 1976 case. I'm going
5 to give you one more that stands for the same proposition.
6 That's 290 S.C. 489 and that is a *State vs. Cox*, C-o-x. And
7 I assume the statute is the indictment and conviction of
8 accessories.

9 THE COURT: Right. 16-1-50.

10 MR. SCOTT: I guess that's how you interpret the
11 substantive felony section of -- or wording --

12 THE COURT: Right.

13 MR. SCOTT: -- of subsection two.

14 THE COURT: Does any of those cases that you've cited,
15 Solicitor, does it address the statute? I mean, evidently
16 this kind of -- I would assume this very same argument that
17 Ms. Zimmerman is making was possibly made in those cases.
18 I'm curious to see how the Court reconciled the statute, or
19 interpreted the statute.

20 MR. SCOTT: I need to go back and read it. But there
21 is a *State vs. Lewis*. Judge, I think -- I was surprised to
22 see how many cases that were on point with this. But
23 there's a *State vs. Lewis*, L-e-w-I-s. That's a 1987 case.
24 293 S.C. 107. That does address the statute. And again,
25 that's the provision -- or stands for the proposition

1 rather. "Accessory may be convicted and notwithstanding
2 fact that principal has not been convicted of a subsequent
3 crime, there was no consistency between reversal of
4 principal's conviction and affirmance of accessory's
5 conviction." Apparently what happened in that case is that
6 the principal's conviction was later overturned but they
7 upheld the accessory's conviction.

8 I don't know, Your Honor. The way I read it initially
9 was -- if I skip subsection one, a person who hires,
10 counsels or otherwise procures a felony committed may be
11 indicted and convicted of a substantive felony whether
12 principal felon has or has not been convicted. What I think
13 they mean by substantive felony, they're talking about that
14 accessory charge. I don't think -- because why would it
15 otherwise be under the accessory provision. They're not
16 talking about the principal offense. The substantive charge
17 they're talking about is the accessory charge itself. And I
18 think that's what subsection two stands for. Poorly worded,
19 I would agree, but there's no other explanation. If it's
20 under the accessory statute why would they be referring to
21 somebody being convicted of principal offense.

22 THE COURT: Ms. Zimmerman, anything in response there?

23 MS. ZIMMERMAN: First of all, Your Honor, this statute
24 was passed in 1993. So I think any of the cases before '93
25 obviously are not really applicable. The second point that

1 I would make is I think that the Solicitor's reading is a
2 very forced reading because the actual accessory statute
3 that defines the punishment says that if someone is
4 convicted of accessory before the fact, they can be
5 sentenced as if convicted of the substantive felony. So I
6 think we have to read substantive felony here the same way
7 we would read it in the penalty statute for accessory. It
8 has to mean the underlying offense. Any other
9 interpretation I think is illogical. So, you know, in
10 response to his comment that I think my client could never
11 be tried if we couldn't find the two co-defendants, that is
12 absolutely not my position. I think he could have been
13 tried for burglary first degree or for armed robbery. I
14 just don't think he could be tried for accessory before the
15 fact unless it meets the requirements of provision number
16 one.

17 THE COURT: I want to study up on that and read these
18 cases. So I'll take that under advisement. And let me hear
19 from you on number three. And again, as far as the alleged
20 comments that, Ms. Zimmerman, you claim Solicitor Scott made
21 during closing. I don't have any independent recollection
22 of that. Was that -- was that addressed at all at trial?

23 MS. ZIMMERMAN: No, sir. Again, this was an issue that
24 I did not object to at trial. It was an error in judgment
25 on my part yet again. As a common courtesy, I guess -

1 THE COURT: Right.

2 MS. ZIMMERMAN: -- I usually stay in my seat during
3 closing arguments and --

4 THE COURT: Right. Right.

5 MS. ZIMMERMAN: However, I do think that the comment
6 that my client cannot explain the phone records is certainly
7 a burden shifting. And I will tell the Court, I have
8 requested the transcript. It was a rather lengthy
9 transcript and the court reporter has not yet had time to
10 provide it. So I would encourage the Court, if you want to
11 see the language from that transcript, I am happy to provide
12 that to you as soon as the court reporter gets it to me. I
13 requested it immediately following the trial. But I think
14 that shifts the burden to my client, and I think it also is
15 a comment on his decisions remain silent. He did not
16 testify in this case. And I think the implication to the
17 jury is that there was some fault on his part for not
18 explaining the phone records.

19 And again, I go to the issue of whether he was
20 prejudiced by this, and I look particularly at the question
21 that the jury sent out, because the jury obviously was
22 affected by these phone records because they sent a question
23 out asking --

24 THE COURT: What specifically was the question that
25 they sent out? I vaguely remember some question about phone

1 records.

2 MS. ZIMMERMAN: The handwritten question that they sent
3 out said, "Can we get official phone records, phone numbers
4 and phone providers." And like I said, my fear is, based
5 upon the Solicitor's comment that my client can't explain
6 the phone records, and they obviously wanted an explanation
7 for the phone records, you know, it seems to show that there
8 was concern about that. And I fear that they held it
9 against him for not explaining something. That it was the
10 Solicitor's burden to explain, not my client's. If they
11 needed an explanation there, that has to come from the
12 State. My client has no burden to get up and explain or
13 justify anything, as the Court well knows. So I think that
14 question shows that that was a concern of the jury, and I
15 think that the weight may have shifted to him, which I
16 believe is certainly inappropriate.

17 THE COURT: All right. Thank you. Solicitor, do you
18 recall making that statement? I'm sure certainly you don't
19 agree with the effect of that statement in closing argument.
20 Do you recall -- and you may not.

21 MR. SCOTT: I think probably the Defense was pretty
22 much I wasn't there. You know, it was I wasn't there. You
23 don't have anything on me. But we had this -- his phone
24 records. And I think the gist of what I argued in closing
25 was the one glaring thing that Mr. Wright can't escape. I

1 don't think I said explain. I think the one glaring issue
2 that he can't escape, no matter what his story is on the
3 rest of it, was these black and white phone records. And
4 that was kind of the one thing that really sank him. I
5 mean, he had I was over at my house. I was here. I wasn't
6 at the scene, so I can't be convicted. And that was kind of
7 my closing. Well, the one thing you're not going to be able
8 to escape is these phone records because we got them.
9 They're right here. The jury is going to see them. And
10 that was the gist of it.

11 I would again say I recall no objection at the time, so
12 it must have been fairly harmless. And I would stand by the
13 -- my recollection was that the one thing that we can't
14 escape, rather than the one thing he can't explain.

15 Although again, I don't know how many -- I've probably
16 tried two or three cases since then. So it's difficult for
17 me to remember everything I say in a closing. But I would
18 argue that it was probably more along the lines of the one
19 thing that he's not going to be able to escape, and the
20 evidence that the Solicitor has shown against him is these
21 phone records. I think taken at any angle it would be
22 harmless though and not prejudicial to the Defendant.

23 THE COURT: Yeah, I would -- I think I would need a
24 copy of the transcript, at least with respect to the closing
25 argument. So as soon as you get that, if you could furnish

1 that to me.

2 MS. ZIMMERMAN: I will furnish it to you as well as the
3 Solicitor.

4 THE COURT: Right. So I'm going to take this under
5 advisement. And again, I mean, I'll certainly give every
6 consideration to your argument number two. But I don't
7 think I need any oral argument on that. So I'll take it
8 under advisement and start reading these cases on the
9 accessory issue. And then as soon as I get the transcript
10 on the closing argument I'll give that every consideration.

11 Appreciate your all's hard work. Thank you very much.

12 MS. ZIMMERMAN: Thank you for the hearing, Judge.

13 - - - END OF TRANSCRIPT OF RECORD - - -

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1 Certificate of Reporter

2
3 I, the undersigned, Tara T. Scott, Official Court
4 Reporter for the Eighth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all the
7 proceedings had and evidence introduced in the trial/hearing
8 of the captioned case, relative to appeal, in the Circuit
9 Court for Newberry County, South Carolina, on the 3rd day of
10 March, 2016.

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

13
14
15 Tara T. Scott

16 Tara T. Scott, CVR
17 Circuit Court Reporter
18 August 26, 2016
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

State of South Carolina)

vs.)

Robert Wright,)
Defendant)

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

POST TRIAL MOTIONS

2016 JUN 15 PM 4:49
JACKIE S. BOWMAN
CLERK OF COURT
NEWBERRY COUNTY
FILED
P Y

This matter comes before me upon motion of, Mindy W. Zimmerman, attorney
for the above Defendant, requesting that the Court grant the following relief:

**1. Motion for a New Trial based upon a lack of subject matter jurisdiction and
a Violation of SC General Statute § 16-1-50.**

"The jurisdiction of a court over the subject matter of a proceeding is fundamental." *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001). "Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by court." *Nix v. Columbia Staffing, Inc.*, 471 S.E.2d 718 (S.C.App. 1996) and *State v. Walton*, 603 S.E.2d 873 (S.C. Ct. App. 2004). "Issues relating to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by Court of Appeals on its own motion." *Bunkum v. Manor Properties*, 467 S.E.2d 758 (S.C.App. 1996).

SC General Statute Section 16-1-50 states:

SECTION 16-1-50. Indictment and conviction of accessories.

A person who counsels, hires, or otherwise procures a felony to be committed may be indicted and convicted:

(1) as an accessory before the fact either with the principal felon or after his conviction; or

(2) of a substantive felony, whether the principal felon has or has not been convicted or is or is not amenable to justice, and may be punished as if convicted of being an accessory before the fact.

Obviously, the Court of General Sessions is the proper Court to preside over the charge of Accessory Before the Fact to Armed Robbery and Burglary, but there are certain procedural hurdles that must be followed for the Court to actually obtain jurisdiction in any particular case. For example, the Court of General Sessions does not obtain jurisdiction to hear a case until there is an indictment. *State v. Guthrie*, 352 S.C. 103, 572 S.E.2d 309 (Ct. App. 2002). Based upon the plain language of SC General Statute Section 16-1-50, there is an additional procedural hurdle when the charge is Accessory Before the Fact. That statute makes it clear that to be convicted of "as an accessory before the fact" one must be tried "with the principal felon or after his conviction." Until the occurrence of one of these two events, the hurdle has not been met, thus the Court does not have the jurisdiction to convict.

In the present case, Mr. Wright was convicted of Accessory Before the Fact to Armed Robbery and Burglary; however, Mr. Wright was **not tried with the principal felon, nor was his trial after the principals' conviction**. Thus, the Court did not have subject matter jurisdiction to hear, and thus allow the conviction of Mr. Wright, as to the issue of the accessory before the fact. Since Mr. Wright was not charged with the substantive felony (burglary and armed robbery), subsection 2 does not apply.

"Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), citing *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000). That is the exact problem facing the court in the present case. Based upon a plain reading of SC General Statute § 16-1-50, it is clear that Mr. Wright could not be convicted by this Court at this time as an accessory. It is important to note that this is not a challenge to the indictment, as in the *Gentry* case. The indictment here was sufficient to charge Mr. Wright with the accessory; however, the problem with the case at hand was that the Solicitor called the case in violation of § 16-1-50. Because Mr. Wright was not tried with the principal felon, nor was the trial after the principals' conviction, the Court lacked jurisdiction.

2. Motion to Renew and to Reconsider the Denial of Defendant's Motion for a Directed Verdict or in the alternative, for a New Trial based upon a complete lack of competent evidence:

At the close of the State's case, the Defendant Moved for a Directed Verdict, based upon the fact that there was "a failure of competent evidence tending to prove the charge in the indictment." SCRCP 19(a). Taking the evidence in the light most favorable to the State, a directed verdict should have been granted in Mr. Wright's favor, as the State failed to provide any evidence of criminal activity by the Mr. Wright. Even if the jury took all the State's evidence as true, the only facts the State could establish is that Mr. Wright may have said the victim's home contained \$8,000 in cash and at least 4 ounces of crack cocaine, which was in fact inaccurate. The mere statement that the house contained these items does not rise to the level required by SC General Statute Section 16-1-40, which states as follows:

A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed is guilty of a felony and, upon conviction, must be punished in the manner prescribed for the punishment of the principal felon.

There was absolutely no evidence that the defendant "advised, agreed, urged, counseled, hired, or in some way aided or abetted" Jones or Coleman to commit these charges.

In essence, this statement is no different than any individual stating his neighbor had drugs or money in their home. If the listener decides to commit a robbery, where the crime for the speaker? If an individual makes a passing mention that his or her neighbor bought a nice, new television or a cool stereo, and the listener steals the electronic, has the speaker committed an accessory?

In the present case, there is no evidence of actual guilt by the defendant. In fact, the Solicitor mentioned several times on the record that "the defendant could not

explain the phone records,” but of course, Mr. Wright has no obligation to explain anything.

These records, which might look suspicious, are not evidence of his guilty. See *State v. Walker*, 349 SC 49, 562 SE2d 313 (2002) (“Construing the evidence in the light most favorable to the State, we find it merely raises a suspicion of Petitioner’s guilt. See *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (lower court should grant motion for directed verdict where evidence merely raises the suspicion accused is guilty). We therefore REVERSE the decision of the Court of Appeals.”), *State v. Buckmon*, 347 SC 316, 555 SE 2d 402 (2001) (“The trial court erred by not granting appellant’s motion for a directed verdict on the charges of murder and attempted armed robbery because the State’s evidence against appellant merely raised a suspicion appellant is guilty”), and *State v. Martin*, 340 SC 597, 533 SE 2d 572 (2000) (“The trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty”. Citing *State v. Irvin*, 270 S.C. 539, 243 S.E.2d 195 (1978).), which all held that a directed verdict should be granted when the evidence merely raises a suspicion that the accused is guilty.

For the same reasons, the Defendant would argue that a New Trial is appropriate.

3. Motion for a New Trial based upon Solicitor’s Comments during closing: Violation of Defendant’s Fundamental Right to Remain Silent as Provided by the Constitution and Inappropriate Burden Shifting.

During his closing argument, the Solicitor explained to the jury that “the one thing [Robert Wright] cannot explain is the phone records.” He went on to argue that Robert had neither given any explanation for why he spoke to Lorenzo Jones so much during the incident, nor explained the text messages between them. These comments were improper to the point of warranting a mistrial on two separate grounds. First, it is inappropriate for the Solicitor to comment on the Defendant’s right to remain silent, which is a fundamental constitutional right. Second, it is inappropriate for the Solicitor to argue that the burden should shift to the Defendant to explain his actions, which the State has the sole burden of proving guilt.

a. Right to Remain Silent:

"The Fifth Amendment to the United States Constitution provides in part that 'No person ... shall be compelled in any criminal case to be a witness against himself.' U.S. Const. amend. V.1 As a corollary of the right to remain silent, a prosecutorial comment upon a defendant's failure to testify at trial is constitutionally impermissible. *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); *State v. Hawkins*, 292 S.C. 418, 357 S.E.2d 10 (1987), overruled on other grounds, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Because neither party is entitled to draw any inference from a witness's invocation of privilege, it is desirable the jury not know that a witness has invoked the privilege against self-incrimination. *State v. Hughes*, 328 S.C. 146, 150, 493 S.E.2d 821, 823 (1997)."
State v. Graddick, 345 S.C. 383, 387, 548 S.E.2d 210, 211–12 (2001)

"It is impermissible for the prosecution to comment directly or indirectly upon the defendant's failure to testify at trial. *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). However, even improper comments on a defendant's failure to testify do not automatically require reversal if they are not prejudicial to the defendant. *Id.* The defendant bears the burden of demonstrating that improper comments on his refusal to testify deprived him of a fair trial. *Id.* Furthermore, even if the solicitor makes an improper comment on the defendant's failure to testify, a curative instruction emphasizing the jury cannot consider defendant's failure to testify against him will cure any potential error." *Id.*
Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001).

In the present case, the Judge gave the following instruction on this Defendant's failure to testify during the course of his entire charge to the jury:

I instruct you and emphasize that the fact the defendant did not testify is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of guilt or the innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant has the constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact this defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

~~It is important to note that this was not a curative instruction, and none was given. Instead, this was given in the course of the entire charge. A curative instruction would of course have placed much more emphasis on the error, but none was given in the case at hand.~~

Ordinarily, this might be sufficient to cure the harm done by the Solicitor; however, in the present case, there is specific evidence from the jury that this did not correct the wrong. During the course of their deliberations, the jury sent out one question, which specifically asked:

"Can we get official phone records/phone numbers and phone providers?"

In response, the Judge explained that they could only consider the records that were already in evidence. They had the records from the co-defendant, but the State did not obtain Mr. Wright's records.

Based upon the fact that the only question asked by jury was specific to the inappropriate comments of the Solicitor, it is evident that the Judge's instructions was

not sufficient to cure the wrong done. Since the Defendant's phone records were not put into evidence, the Judge advised the jury that they could not be provided. Shortly after, the jury found the Defendant guilty of the Accessory Before the Fact. The logical determination here is that the comment affected the jury, thus "depriv[ing] him of a fair trial." The *Gill* Court makes it clear that a mistrial is not automatic, but when the inappropriate comment is made, the instruction given, and the Defendant is still deprived of the right to a fair trial, reversal is the only option remaining. Although "improper comments on a defendant's failure to testify do not automatically require reversal," if they are "prejudicial" then that should be the result. *Id.* (See *Vaughn v. State*, 362 S.C. 163, 607 S.E.2d 72 – "While the trial judge correctly instructed the jury to consider only the evidence received during the trial, the jurors were obviously concerned with the witnesses who did not testify and the arguments about them probably only added to their concern.")

"The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence." *Vaughn v. State*, 362 S.C. 163, 607 S.E.2d 72, citing *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996).

"[T]he relevant question in determining if a defendant's rights were violated is whether the solicitor's comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.' *Donnelly v. DeChristoforo*, 416 U.S. 637, 642, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974). In *Darden v. Wainwright*, 477 U.S. 168, 182, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986), the United States Supreme Court held that comments by a solicitor failed to meet the test set out in *Donnelly*, because 1) the comment was an 'invited response' to defense counsel's argument, 2) the evidence against the defendant was overwhelming, and 3) the trial court instructed the jury several times that its decision was to be made on the basis of evidence alone and the arguments of counsel were not evidence. See also *State v. Hawkins*, 292 S.C. 418, 357 S.E.2d 10 (1987).

Vaughn v. State, 362 S.C. 163, 607 S.E.2d 72.

In the present case, if we apply the *Darden* test, we would likewise find the appropriate relief to be for the Court to set aside the conviction. First, the comment by the Solicitor was not an "Invited response," as the Solicitor closed first, and there had been no prior comments by the Defense in regards to the Defendant's failure to testify. Second, the evidence here was far from overwhelming. In fact, at best, the phone records might be considered suspicious. (See paragraph no. 2 hereinabove). Finally, the trial court instructed the jury that comments by the attorneys were not evidence and that the defendant had the right to remain silent. Nevertheless, the jury was obviously affected by the Solicitor's "constitutionally impermissible" comments. *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); *State v. Hawkins*, 292 S.C. 418, 357 S.E.2d 10 (1987), overruled on other grounds, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). As in *Vaugh*, here "the solicitor's response was unfair and prejudiced the petitioner," thus reversal is warranted.

b. Burden Shifting:

"Prosecutorial comment, whether direct or indirect, on the defendant's failure to testify is impermissible." *State v. Sweet*, 342 S.C. 342, 536 S.E.2d 91 (2000), citing *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); *348 *State v. Cooper*, 334 S.C. 540, 514 S.E.2d 584 (1999).

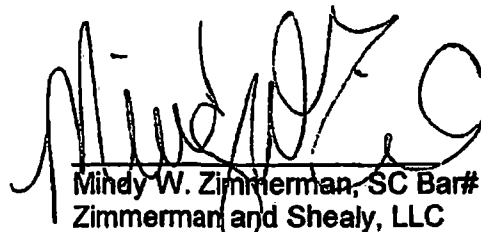
In the *Sweet* case, "the assistant solicitor stated only Sweet could rebut Verba and Holliday's testimony. Specifically, he told the jury 'nobody else knows what happened that night except Tony Sweet and those two girls,' and then stated '[t]here isn't any testimony that conflicts with [the statements of the two girls].'" Clearly, the comment referenced Sweet's failure to testify and was not merely a comment on the evidence. *Cf. State v. Rouse*, 262 S.C. 581, 584-85, 206 S.E.2d 873, 874 (1974) (holding solicitor's closing argument statement, 'As I stated earlier it is uncontradicted what happened in that store that day,' did not constitute a comment on defendant's failure to testify, given appellant's defense

was alibi and the comment did not state that it was uncontradicted as to appellant's participation in the events in question, but rather, simply referred to what actually took place); *Robinson*, 238 S.C. at 158–59, 119 S.E.2d at 680 (where solicitor's closing remarks could have applied to evidence other than that which might have been introduced on the defendant's behalf, trial judge did not err in refusing to grant defendant a new trial).

State v. Sweet, 342 S.C. 342, 536 S.E.2d. 91 (2000).

The Sweet Court "determined the solicitor's closing argument constituted an impermissible comment on Sweet's failure to testify." *Id.* Further, the Court determined that "the assistant solicitor's comments deprived him of a fair trial." *Id.* Much like the present case, "the only evidence of Sweet's involvement was the contradictory testimony of the confessed burglars." *Id.* Sweet's conviction was reversed and remanded for a new trial based upon the fact that the State's evidence was weak and given the "impermissible" comments by the Assistant Solicitor, the State shifted the burden to Sweet to prove his innocence, which is a violation of the constitutional protections guaranteed to Mr. Sweet. Those same protections should be given to Mr. Wright. The State had the burden of proving his guilt, and it was improper for the State to make a comment about his failure to testify, which certainly operated to shift the burden over to him. As such, his conviction should be reversed and a new trial should be granted.

I so move,



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STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
vs.)
ROBERT WRIGHT)
Defendant)

ORDER
14-GS-36-528

The Defendant was convicted by jury on January 6, 2016 with Accessory Before the Fact to Armed Robbery and Burglary. The Defendant timely filed three Post-Trial Motions. The State is represented by Dale Scott and Taylor Daniel. Mindy Zimmerman represents the Defendant.

Motion for New Trial Based Upon Lack of

Subject Matter Jurisdiction

The Defendant argues that Section 16-1-50(1), Code of Laws for South Carolina (1976) as amended, precludes the State from prosecuting the Defendant on Accessory Before the Fact to Armed Robbery and Burglary, for lack of subject matter jurisdiction, because the Defendant was not tried either with the principal felon or after the conviction of the principal felon. Section 16-1-50 appears to have been passed in 1993.

The case of State vs. Blakely, 402 SC 650 (2013) supports the State's position that it had every right to indict and prosecute the Defendant without first convicting the principal felon or trying them at the same time. While the Court of Appeals did not reference Section 16-1-50, it

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held that "Today, the accessory's culpability no longer shadows that of the principal.

Accordingly, an accessory may be convicted even if the principal is not charged, is acquitted, or is not yet prosecuted". The Blakely Court cited to State vs. Massey, 267 SC 432 (1976) essentially holding to the same proposition.

Accordingly, the Defendant's Motion for New Trial on this issue is denied.

Motion for New Trial based upon

Lack of Evidence and Renewal of Motion for Directed Verdict

The Court denies this Motion and incorporates by reference herein the oral rulings made on the record at trial.

Motion for New Trial based upon

Solicitor's Closing Argument

The Defendant argues that the Solicitor made an improper closing argument when he said the following:

Pages 202-203: "And we know about those phone records. And aren't those difficult for Mr. Wright to explain, those phone records? Do you understand that that's not been contested?"

Page 206: "And, again, the one thing that--that is so pesky for Mr. Wright are these phone records. Don't you kind of wonder what was talked about for two minutes and six seconds at 10:52 PM? Don't you kind of wonder what was talked about for three minutes and fifty-five seconds at 11:08 PM? It keeps going."

"They found the phone. Why does that concern him if he doesn't have anything to do

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with it? Why does he care there's too many police? I don't think there'd be enough if somebody robbed my next-door neighbor. And why would he care about the phone?"

The Defendant claims that the above was an improper comment on the Defendant's Fifth Amendment right to remain silent and furthermore, it was an improper attempt to shift the burden of proof to the Defendant.

Right to Remain Silent: The Court must find prejudice to the Defendant. See, Gill vs. State, 346 S.C. 209 (2001) or an element of unfairness to the Defendant so strong as to deny him his due process rights. Vaughn v. State, 362 S.C. 163. The Court finds neither in this case.

The Gill Court dealt with a similar situation wherein the Solicitor, in closing, argued "They are limited as to what they can do in the case. What can they do to put up a defense in the case? There is no defense in this case." While the Gill Court did not find prejudice it held that if there were prejudice, the Court's curative instruction to the jury for the jury not to consider the Defendant's failure to testify was sufficient to cure any prejudice resulting. While in this case a curative instruction was not given, as none was requested, this Court did give the jury the standard charge for them not to consider the Defendant's failure to testify.

As to whether or not the comments in closing by the Solicitor constituted an element of unfairness thus denying the Defendant his due process rights, this Court compares the comments in this case with the comments made by the Solicitor in the Vaughn case. In the Vaughn case, the Solicitor improperly argued his personal observations about the veracity of a state's witness

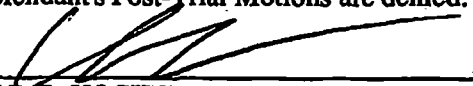
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which was not an argument on the evidence in the case. Here, the Solicitor's argument, in part, was based upon the evidence in the case.

Burden Shifting: In light of the fact that this Court does not find a violation of the Defendant's constitutional right to remain silent, the logical conclusion to make is that the Solicitor's closing did not shift the burden of proof to the Defendant.

Finally, counsel for the Defendant made the decision at trial not to object to Solicitor's closing, move for a mistrial, nor seek an immediate curative instruction.

For all of the forgoing reasons, the Defendant's Post-Trial Motions are denied.


DONALD B. HOCKER
CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

Laurens, South Carolina

Date:

5-6-16

#21

APPEAL IN A GENERAL SESSIONS CASE

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

**APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge**

Appellate Case No. 2016-001013

General Sessions Case No. 2014-GS-36-528

Robert Wright,

Appellant,

v.

State of South Carolina,

Respondent.

INITIAL BRIEF OF APPELLATE

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May 31, 2016

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STATEMENT OF ISSUES ON APPEAL

1. **Whether the Court erred in denying Appellant's Motion for a New Trial based upon a lack of subject matter jurisdiction and a Violation of SC General Statute § 16-1-50?**
2. **Whether the Circuit Court erred in denying Appellant's Motion for a Directed Verdict and subsequent Motion for a New Trial, based upon the complete lack of competent evidence?**
3. **Whether the Circuit Court erred in denying Appellants Motion for a New Trial based upon Solicitor's Comments during closing: Violation of Defendant's Fundamental Right to Remain Silent as Provided by the Constitution and Inappropriate Burden Shifting?**

STATEMENT OF THE CASE

Appellant was indicted for Accessory Before the Fact to a Felony (2014-GS-36-528) and Criminal Conspiracy (2014-GS-36-530) related to incidents that occurred on April 30, 2014. The case was tried in Newberry County before The Honorable Donald B. Hocker, by jury, beginning on January 4, 2016. On January 6, 2016, the jury returned a verdict of not guilty as to the criminal conspiracy, but guilty as to the Accessory Before the Fact. On January 7, 2016, Judge Hocker sentenced the Appellant to sixteen years incarceration. The Appellant timely filed Post trial motions seeking relief from the conviction based upon the same three grounds raised on this appeal. On May 6, 2016, Judge Hocker issued an order denying the requested relief. This appeal followed.

STATEMENT OF FACT

On April 30, 2014, at least two individuals entered the home of Cedric and Precious Mayers. The Mayers were held at gunpoint and were robbed. Following the robbery, Ms. Mayers was able to call law enforcement to respond. During the robbery, among other things, they took a telephone belonging to the Mayers. The phone was tracked to the residence of Precious Bates. She indicated that Lorenzo Jones and Tarakus Coleman had brought the phone to her home late on the evening of the robbery. These two individuals were arrested and charged with the burglary and robbery.

Immediately, law enforcement sought a connection to the Appellant. He was a next door neighbor of the victim, and the lead investigator was convinced that he was involved. The lead investigator interviewed Coleman and Jones, who both gave multiple different accounts of the evening. Each initially denied involvement, but eventually their stories grew. After multiple interviews and multiple attempts by law enforcement to involve Appellant, Mr. Jones finally gave in to the pressure of law enforcement and claimed that Appellant planned the crime.

The Solicitor presented phone records showing that Jones text Appellant one time asking whether to kick in the door; however, there is no response from Appellant. The phone records also show that Appellant and Jones regularly talked on the phone, both before and after the incident. At trial, Jones testified that Appellant told Jones that if he robbed the victim, he would find drugs and money. No other evidence tied Appellant to the crime.

ARGUMENT

1. Whether the Court erred in denying Appellant's Motion for a New Trial based upon a lack of subject matter jurisdiction and a Violation of SC General Statute § 16-1-50?

"The jurisdiction of a court over the subject matter of a proceeding is fundamental." *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001). "Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by court." *Nix v. Columbia Staffing, Inc.*, 471 S.E.2d 718 (S.C.App. 1996) and *State v. Walton*, 603 S.E.2d 873 (S.C. Ct. App. 2004). "Issues relating to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by Court of Appeals on its own motion." *Bunkum v. Manor Properties*, 467 S.E.2d 758 (S.C.App. 1996).

SC General Statute Section 16-1-50 states (emphasis added):

SECTION 16-1-50. Indictment and conviction of accessories.

A person who counsels, hires, or otherwise procures a felony to be committed may be indicted and convicted:

(1) as an accessory before the fact either with the principal felon or after his conviction; or

(2) of a substantive felony, whether the principal felon has or has not been convicted or is or is not amenable to justice, and may be punished as if convicted of being an accessory before the fact.

Obviously, the Court of General Sessions is the proper Court to preside over the charge of Accessory Before the Fact to Armed Robbery and Burglary, but there are certain procedural hurdles that must be followed for the Court to actually obtain jurisdiction in any particular case. For example, the Court of General Sessions does not obtain jurisdiction to hear a case until there is an indictment. *State v. Guthrie*, 352 S.C. 103, 572 S.E.2d 309 (Ct. App. 2002). Based upon the plain language of SC General Statute Section 16-1-50, there is an additional procedural hurdle when the charge is Accessory Before the Fact. That statute makes it clear that to be convicted of "as an accessory before the fact" one must be tried "with the principal felon or after his conviction." Until the occurrence of one of these two events, the hurdle has not been met, thus the Court does not have the jurisdiction to convict.

In the present case, Mr. Wright was convicted of Accessory Before the Fact to Armed Robbery and Burglary; however, Mr. Wright was not tried with the principal felon, nor was his trial after the principals' conviction. Thus, the Court did lack subject matter jurisdiction to hear or convict Mr. Wright of the accessory before the fact. Since Mr. Wright was not charged with the substantive felony (burglary and armed robbery), subsection 2 does not apply. S.C. Gen. Stat. §16-1-50.

"Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), citing *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000). If a General Sessions Court lacks subject matter jurisdiction, it cannot issue a conviction. Based upon a plain reading of SC General Statute § 16-1-50, it is clear that Mr. Wright could not be convicted by this Court at this time as an accessory. It is important to note

that this is not a challenge to the indictment, as in the *Gentry* case. The language of the indictment here was sufficient to charge Mr. Wright with the accessory; however, the problem with the case at hand was that the Solicitor called the case in violation of § 16-1-50. Because Mr. Wright was not tried with the principal felon, nor was the trial after the principals' conviction, the Court lacked jurisdiction.

In its Order, the Trial Court cites *State. V. Blakely*, 402 S.C. 650 (2013) and *State v. Massey*, 267 S.C. 432 (1976) as stating the State can proceed against the accessory without the principal. These cases; however, do not address the issue at hand, because they do not consider South Carolina General Statute Code Section 16-1-50. The Appellant acknowledges that at common law, there is no requisite correlation between the order in which cases are prosecuted and the question so jurisdiction. If, as here, the General Assembly, in its wisdom, makes the decision to enact a statute that requires cases to be prosecuted in a particular order, then the Court is obligated to follow that instruction. This is exactly what the General Assembly did with S.C. Gen. Stat. § 16-1-50. The plain language gives clear direction. While the Court in *Blakely* and in *Massey* addressed the question of the priority or hierarchy of an accessory as compared to the substantive offense, those courts did not make their decision based upon §16-1-50. In fact, they do not address that statute. §16-1-50 must be read as to require that the substantive offense be tried before or with the accessory. Any other reading of the plain language of that statute is illogical.

2. Whether the Circuit Court erred in denying Appellant's Motion for a Directed Verdict and subsequent Motion for a New Trial, based upon the complete lack of competent evidence?

At the close of the State's case, the Defendant Moved for a Directed Verdict, based upon the fact that there was "a failure to - - to show any evidence supporting either charge" based upon SCRCF 19(a). Transcript p. 187, l. 14-16. Appellant argued that there was "no evidence to support that he counseled, hired or otherwise procured any felony, which is what's required for the accessory, nor any evidence that he worked in combination with two or more individuals for the purpose accomplishing an unlawful object or unlawful means." Transcript p. 187, l. 21 through p. 188, l. 1. Taking the evidence in the light most favorable to the State, a directed verdict should have been granted in Mr. Wright's favor, as the State failed to provide any evidence of criminal activity by the Mr. Wright. Even if the jury took all the State's evidence as true, the only facts the State could establish is that Mr. Wright may have said the victim's home contained \$8,000 in cash and at least 4 ounces of crack cocaine, which was in fact inaccurate. The mere statement that the house contained these items does not rise to the level required by SC General Statute Section 16-1-40, which states as follows:

A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed is guilty of a felony and, upon conviction, must be punished in the manner prescribed for the punishment of the principal felon.

Taking the case in the light most favorable to the State, the only evidence was that Appellant said they could find drugs and money in the house. There was absolutely no evidence that the defendant “advised, agreed, urged, counseled, hired, or in some way aided or abetted” Jones or Coleman to commit these charges. At best, the State’s case showed that Appellant told them they would find something in the home.

In essence, this statement is no different than any individual stating his neighbor had drugs or money in their home. If the listener decides to commit a robbery, where the crime for the speaker? If an individual makes a passing mention that his or her neighbor bought a nice, new television or a cool stereo, and the listener steals the electronic, has the speaker committed an accessory? To follow the State’s position to its logical conclusion, no one could ever comment on anyone else’s property for fear of prosecution should some listener take said property.

In the present case, there is no evidence of actual guilt by the Appellant. In fact, the Solicitor mentioned several times on the record that “the [Appellant] could not explain the phone records,” but of course, Mr. Wright has no obligation to explain anything. The State hoped the jury would fill the gaps in its case with the Appellant’s exercise of his Fifth Amendment right to remain silent, which is exactly what the jury did.

These records, which might look suspicious, are not sufficient to establish his guilty. See *State v. Walker*, 349 SC 49, 562 SE2d 313 (2002) (“Construing the evidence in the light most favorable to the State, we find it merely raises a suspicion of Petitioner’s guilt.” See *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (lower court

should grant motion for directed verdict where evidence merely raises the suspicion accused is guilty). We therefore REVERSE the decision of the Court of Appeals.”), *State v. Buckmon*, 347 SC 316, 555 SE 2d 402 (2001) (“The trial court erred by not granting appellant’s motion for a directed verdict on the charges of murder and attempted armed robbery because the State’s evidence against appellant merely raised a suspicion appellant is guilty”), and *State v. Martin*, 340 SC 597, 533 SE 2d 572 (2000) (“The trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.” *Citing State v. Irvin*, 270 S.C. 539, 243 S.E.2d 195 (1978).), which all held that a directed verdict should be granted when the evidence merely raises a suspicion that the accused is guilty.

For the same reasons, the Defendant would argue that a New Trial is appropriate.

3. Whether the Circuit Court erred in denying Appellants Motion for a New Trial based upon Solicitor’s Comments during closing: Violation of Defendant’s Fundamental Right to Remain Silent as Provided by the Constitution and Inappropriate Burden Shifting?

During his closing argument, the Solicitor, while reviewing the evidence stated, “And we know about these phone records. And aren’t those difficult for Mr. Wright to explain, those phone records.” Transcript p. 202, l. 25 through p. 203, l. 2. This is an obviously inappropriate comment, as it implies that the Appellant has some obligation to explain the records, which he obviously does not have. The Solicitor is arguing that the Appellant’s lack of an explanation is evidence of his guilty. The Solicitor goes on to

explained to the jury:

And, again, the one thing that - - that is so pesky for Mr. Wright are these phone records. Don't you kind of wonder what was talked about for two minutes and six seconds at 10:52 PM? Don't you kind of wonder what was talked about for three minutes and fifty-five seconds at 11:08 PM? Its keeps going on. Is there any question what Robert Wright meant when he texted Lorenzo Jones the very next day at 11:51 to say, "Too many police was out there last night. They watching boy. I believe that too much talking going on about it. They found the phone." Why does that concern him if he doesn't have anything to do with it? Why does he care there's too many policy? I don't think there'd be enough if somebody robbed my next door neighbor. Any why would he care about the phone? How would he know about it?

Transcript p. 206, l. 12 through p. 207, l. 1.

His argument leaves the jury puzzling why they did not hear from the Appellant to give an explanation for why he spoke to Lorenzo Jones so much during the incident and explained the text messages between them. These comments were improper to the point of warranting a mistrial on two separate grounds. First, it is inappropriate for the Solicitor to comment on the Defendant's right to remain silent, which is a fundamental constitutional right. Second, it is inappropriate for the Solicitor to argue that the burden should shift to the Defendant to explain his actions, which the State has the sole burden of proving guilt.

a. Right to Remain Silent:

“The Fifth Amendment to the United States Constitution provides in part that ‘No person ... shall be compelled in any criminal case to be a witness against himself.’ U.S. Const. amend. V.1 As a corollary of the right to remain silent, a prosecutorial comment upon a defendant’s failure to testify at trial is constitutionally impermissible. *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); *State v. Hawkins*, 292 S.C. 418, 357 S.E.2d 10 (1987), overruled on other grounds, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Because neither party is entitled to draw any inference from a witness’s invocation of privilege, it is desirable the jury not know that a witness has invoked the privilege against self-incrimination. *State v. Hughes*, 328 S.C. 146, 150, 493 S.E.2d 821, 823 (1997).”

State v. Graddick, 345 S.C. 383, 387, 548 S.E.2d 210, 211–12 (2001)

“It is impermissible for the prosecution to comment directly or indirectly upon the defendant’s failure to testify at trial. *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). However, even improper comments on a defendant’s failure to testify do not automatically require reversal if they are not prejudicial to the defendant. *Id.* The defendant bears the burden of demonstrating that improper comments on his refusal to testify deprived him of a fair trial. *Id.* Furthermore, even if the solicitor makes an improper comment on the defendant’s failure to testify, a curative instruction emphasizing the jury cannot consider defendant’s failure to testify against him will cure any potential error.” *Id.*

Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001).

In the present case, the Trial Court pointed to *Gill* for the proposition that a

curative instruction is sufficient to cure the Solicitor's error. *Gill* gave no such universal rule. In fact, *Gill* merely states that under the specific facts of that specific case, a curative instruction was sufficient. *Gill* also explains that the question is prejudice. In the present case, no curative instruction was requested because there was no evidence prejudice until long after the charge was given. The evidence of the prejudice was in the jury's questions during deliberation. In addition, the judge did give a charge on the right to remain silent, which was clear and concise, yet the jury was still affected by the statement, as evidence by its question during deliberation.

In the present case, the Judge gave the following instruction on this Defendant's failure to testify during the course of his entire charge to the jury:

Mr. Foreman and ladies and gentlemen of the jury, I further instruct you and emphasize that the fact the defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of guilt or the innocence of the defendant. It must not be considered by you in any manner whatsoever. The defendant has the constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under the oath that you took as jurors yesterday, you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify.

The fact that this defendant did not testify should not even be discussed by you in the jury room. The burden of proof, as I have stated to you, several times during this charge, is on the State. The defendant is not required to prove his innocence. The burden of proof remains on the State to prove

guilt beyond a reasonable doubt.

Transcript p. 230, l. 7-24.

Ordinarily, this might be sufficient to cure the harm done by the Solicitor; however, in the present case, there is specific evidence from the jury that this did not correct the wrong. During the course of their deliberations, the jury sent out one question, which specifically asked:

“Can we get official phone records/phone numbers and phone providers?”

In response, the Judge explained that they could only consider the records that were already in evidence. They had the records from the co-defendant, but the State did not obtain Mr. Wright’s records.

Based upon the fact that the only question asked by jury was specific to the inappropriate comments of the Solicitor, it is evident that the Judge’s instructions was not sufficient to cure the wrong done. Since the Defendant’s phone records were not put into evidence, the Judge advised the jury that they could not be provided. Shortly after, the jury found the Defendant guilty of the Accessory Before the Fact. The logical inference here is that the comment affected the jury, thus “depriv[ing] him of a fair trial.” The *Gill* Court makes it clear that a mistrial is not automatic, but when the inappropriate comment is made, the instruction given, and the Defendant is still deprived of the right to a fair trial, reversal is the only option remaining. Although “improper comments on a defendant’s failure to testify do not automatically require reversal,” if they are “prejudicial” then that should be the result. *Id.* (See *Vaughn v. State*, 362 S.C. 163, 607 S.E.2d 72 – “While the trial judge correctly instructed the jury to consider only the evidence received during the trial, the jurors were obviously concerned with the

witnesses who did not testify and the arguments about them probably only added to their concern.”)

In his order, the Trial Judge distinguishes *Vaughn* from the present case, but the distinction made there does not line up with the facts, because in the present case, this Solicitor made the same type inappropriate arguments of “his personal observations about the veracity of a State’s witness.” The Solicitor, when discussing Mr. Coleman and Mr. Jones, the two key witnesses for the state, said, “I submit to you they were completely and totally credible.” Transcript p. 205, l. 10-11. This is exactly the type comment that offended the Court in *Vaughn*. He went on to state:

Did it occur to any of you that they put themselves right in the middle of these very serious crimes? They stood up there under oath and they’re gonna be subject to the fallout of that testimony and those admissions. But, yeah, we broke into the house; yeah, we had a gun; yeah, we robbed those people. Why would they do that if they weren’t telling the truth? Transcript p. 205, l. 12-18.

The Solicitor even acknowledges that these two individuals had previously given inconsistent stories, but he explains that they have admitted they are criminals. He goes on to say, “I submit to you that they came clean in the end, put themselves right in the middle of it.” This is merely one more reassurance to the jury that, in his personal opinion, these witnesses are telling the truth.

The Solicitor’s comments here also mischaracterize the evidence, because he argues that both witnesses identify the Appellant, which is simply not true. During pretrial motions, the Solicitor agreed that Mr. Coleman could not identify the Appellant,

and during the trial, he did not do so. Transcript p. 32, l. 16 through p. 33, l. 10 (suppression) and Transcript pgs 92-123.

In addition to commenting on the veracity of the State's witnesses, the Solicitor also explained comments to the jury, which were made by the witnesses, giving his opinion of what the witness meant. Not only is this inappropriate, but the interpretation also gave the jury the idea that the Appellant had a history of selling drugs, which was a fact previously suppressed, with the Solicitor's consent. Transcript p. 32, l. 10-15.

During his closing, the Solicitor stated:

And that was the agreement when he had all these conversations with Lorenzo Jones and then when he got on the speakerphone with Tarakus Coleman that the agreement was 'I need this dude out the way.' The understanding was y'all go over here, y'all get them out of the way, here's what's in it for y'all, some crack and some money. That's the conspiracy. I've got my idea of why this happened. I think it's very shallowly -- or a very shallow burial, just under layers, of the intent of Mr. Wright, why he needed him out of the way, why he needed his neighbor out of the way.....I think the inference if there, but we won't talk about it, but I think we understand why he needed them out of the way.

Transcript p. 212, l. 7-22.

This was an inappropriate comment on suppressed evidence. More importantly, it served to heighten the burden already shifted by the Solicitor to the Appellant. These comments serve as an explanation as to *why* the Appellant did not explain the phone records.

“The State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence.” *Vaughn v. State*, 362 S.C. 163, 607 S.E.2d 72, citing *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). In the present case, it was not so confined.

“[T]he relevant question in determining if a defendant’s rights were violated is whether the solicitor’s comments ‘so infected the trial with unfairness as to make the resulting conviction a denial of due process.’ *Donnelly v. DeChristoforo*, 416 U.S. 637, 642, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974). In *Darden v. Wainwright*, 477 U.S. 168, 182, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986), the United States Supreme Court held that comments by a solicitor failed to meet the test set out in *Donnelly*, because 1) the comment was an ‘invited response’ to defense counsel’s argument, 2) the evidence against the defendant was overwhelming, and 3) the trial court instructed the jury several times that its decision was to be made on the basis of evidence alone and the arguments of counsel were not evidence. See also *State v. Hawkins*, 292 S.C. 418, 357 S.E.2d 10 (1987).

Vaughn v. State, 362 S.C. 163, 607 S.E.2d 72.

In the present case, if we apply the *Darden* test, we would likewise find the appropriate relief to be for the Court to set aside the conviction. First, the comment by the Solicitor was not an “invited response,” as the Solicitor closed first, and there had been no prior comments by the Defense in regards to the Defendant’s failure to testify. Second, the evidence here was far from overwhelming. In fact, at best, the phone records might be considered suspicious. (See paragraph no. 2 hereinabove). Finally, the trial court instructed the jury that comments by the attorneys were not evidence and that the

defendant had the right to remain silent. Nevertheless, the jury was obviously affected by the Solicitor's "constitutionally impermissible" comments. *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); *State v. Hawkins*, 292 S.C. 418, 357 S.E.2d 10 (1987), overruled on other grounds, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). As in *Vaugh*, here "the solicitor's response was unfair and prejudiced the petitioner," thus reversal is warranted.

b. Burden Shifting:

"Prosecutorial comment, whether direct or indirect, on the defendant's failure to testify is impermissible." *State v. Sweet*, 342 S.C. 342, 536 S.E.2d. 91 (2000), citing *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); *348 *State v. Cooper*, 334 S.C. 540, 514 S.E.2d 584 (1999).

In the *Sweet* case, "the assistant solicitor stated only Sweet could rebut Verba and Holliday's testimony. Specifically, he told the jury 'nobody else knows what happened that night except Tony Sweet and those two girls,' and then stated '[t]here isn't any testimony that conflicts with [the statements of the two girls].'" Clearly, the comment referenced Sweet's failure to testify and was not merely a comment on the evidence. *State v. Rouse*, 262 S.C. 581, 584–85, 206 S.E.2d 873, 874 (1974) (holding solicitor's closing argument statement, 'As I stated earlier it is uncontradicted what happened in that store that day,' did not constitute a comment on defendant's failure to testify, given appellant's defense was alibi and the comment did not state that it was uncontradicted as to appellant's participation in the events in question, but rather, simply referred to what actually took place); *Robinson*, 238 S.C. at 158–59, 119 S.E.2d at 680 (where solicitor's

closing remarks could have applied to evidence other than that which might have been introduced on the defendant's behalf, trial judge did not err in refusing to grant defendant a new trial).

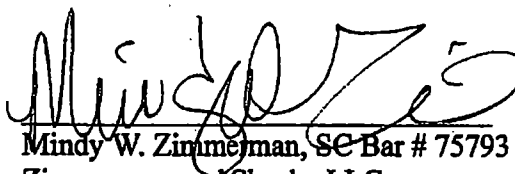
State v. Sweet, 342 S.C. 342, 536 S.E.2d. 91 (2000).

The *Sweet* Court “determined the solicitor’s closing argument constituted an impermissible comment on Sweet’s failure to testify.” *Id.* Further, the Court determined that “the assistant solicitor’s comments deprived him of a fair trial.” *Id.* Much like the present case, “the only evidence of Sweet’s involvement was the contradictory testimony of the confessed burglars.” *Id.* Sweet’s conviction was reversed and remanded for a new trial based upon the fact that the State’s evidence was weak and given the “impermissible” comments by the Assistant Solicitor, the State shifted the burden to Sweet to prove his innocence, which is a violation of the constitutional protections guaranteed to Mr. Sweet. Those same protections should be given to Mr. Wright. The State had the burden of proving his guilt, and it was improper for the State to make a comment about his failure to testify, which certainly operated to shift the burden over to him. As such, his conviction should be reversed and a new trial should be granted.

CONCLUSION

For the foregoing reasons, the Appellant's convictions should be set aside. This case should be remanded for entry of a directed verdict in favor of the Appellant, as one should have been granted at the close of the State's case. Alternatively, the case should be set for a new trial based upon the lack of subject matter jurisdiction and inappropriate comments by the solicitor during his closing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Mindy W. Zimmerman', with a large, stylized flourish at the end.

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March 3, 2014

APPEAL IN A GENERAL SESSIONS CASE

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

**APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge**

Appellate Case No. 2016-001013

General Sessions Case No. 2014-GS-36-528

Robert Wright,

Appellant,

v.

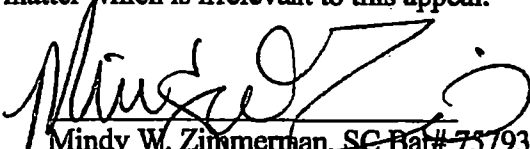
State of South Carolina,

Respondent.

**DESIGNATION OF MATTERS
TO BE INCLUDED IN THE RECORD ON APPEAL**

1. Complete/Transcript of Trial
2. Defendant's Post Trial Motion
3. Order Denying Post Trial Relief
4. Sentencing Sheet
5. Court's Exhibit: Jury Question
6. State's Exhibit: Phone Records

I certify that this designation contains no matter which is irrelevant to this appeal.


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May 31, 2016

NOTICE OF APPEAL IN A GENERAL SESSIONS CASE

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

**APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge**

Case No. 2014-GS-36-528

Robert Wright,

Appellant,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned, Mindy W. Zimmerman, hereby certifies that on the **31st day of May, 2016**, has served the Initial Brief of the Appellate and the Designation of Matters by mailing and depositing the same with the United States Postal Service to the address below:

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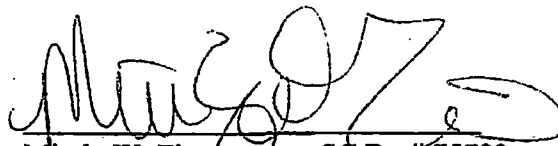
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A handwritten signature in black ink, appearing to read 'Mindy W. Zimmerman', written over a horizontal line.

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-001013

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SC Court of Appeals

THE STATE, ...RESPONDENT,

v.

ROBERT ANTWON WRIGHT, ...APPELLANT.

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

I.

Because an issue cannot be raised for the first time in post-trial motions, Appellant failed to preserve his argument that his prosecution for accessory before the fact could not proceed where the principals had not been convicted and they were not on trial with Appellant.

II.

The trial court did not err in denying Appellant's motion for a directed verdict because evidence was adduced at trial from which a jury could determine he was guilty of accessory before the fact of armed robbery.

III.

Appellant never objected to the content of the solicitor's closing statement and his argument is therefore unpreserved. Further, nothing in the statement would warrant reversal.

STATEMENT OF THE CASE

Appellant was indicted at the August term of the grand jury for Newberry County for accessory before the fact of burglary or armed robbery and conspiracy. Appellant proceeded to trial by jury and was convicted of the accessory charge. He was sentenced by the Honorable Donald B. Hocker to sixteen years' imprisonment. Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Precious and Cedric Mayers were at their home in Little Mountain when two men burst through their front door and held them at gun point. (Tr.68.) The men began demanding to know "Where the shit at?" and when the Mayerses responded they did not have anything, the men began rummaging through the house. (Tr.68-69.) The two men eventually absconded with some marijuana, less than a hundred dollars, and both of their phones. (Tr.70.) The Mayerses then ran to a neighbor's house to call 911. (Tr.74.)

The initial responders turned the investigation over to Investigator Garrett Lominack. (Tr.160.) The morning following the burglary, Cedric informed Investigator Lominack that his FindMyiPhone app was indicating his cell phone was at an address in Newberry. (Tr.162.) Investigator Lominack tracked the phone and found it in the trash outside the home of Precious Bates. (Tr.163.) Bates informed the officers that Lorenzo Jones had been at her home the evening prior and had discarded some items in her trash. (Tr.165.)

After returning the phones to the victims, Investigator Lominack located Jones, who had returned to Bates' home. (Tr.166.) Jones voluntarily accompanied the officers to the police station and eventually implicated Appellant and Tarakus Coleman as his accomplices to the crimes. Appellant was arrested and indicted for accessory before the fact of robbery/burglary. (Indictment.) Prior to trial, Appellant stipulated that the phone records the State planned to offer would show he contacted Jones during the time surrounding the crime. (Tr.33.) At trial, Jones testified Appellant called him and said he "had somebody for [Jones] to rob[b]ecause he was getting in [Appellant's] way." (Tr.134.) Jones explained he called Coleman to assist him in the robbery, and the two went to Little Mountain together. (Tr.136.) Jones stated they arrived at the specified location and waited for about an hour, eventually asking Appellant if they should go ahead with the robbery. (Tr.137.) Once Appellant had told him to "go ahead and kick in the

door,” Jones and Coleman proceeded. (R.139.) Jones explained that all they took was a little bit of crack, a bag of marijuana, thirty or forty dollars, and two cell phones. (Tr.140–41.)

Coleman testified that Jones called him about robbing a trailer for \$8,000 and some crack. (Tr.93.) Coleman explained Jones had received the information from his partner, Appellant, who Coleman did not know at the time. (Tr.95–96.) However, Coleman stated Jones called Appellant on speakerphone prior to the crime to discuss the details of who would be in the home and how they should proceed. (Tr.101.) Although Appellant did not specify the location of the money and drugs purported to be inside, Coleman testified Appellant said to just go in the house and it should be there. (Tr.101.)

The State rested and Appellant moved for directed verdict, which the trial court denied. (Tr.186–87.) In his closing argument, the solicitor discussed the evidence presented, including the stipulation to the authenticity of phone records showing Appellant and Coleman had been in contact on the day of the crime:

We know for a fact the victims and Robert Wright lived about fifty feet apart. We know that. That’s uncontested. We know that only Robert Wright knew these victims. We know Tarakus Coleman didn’t know them. We know Lorenzo Jones didn’t know them. We know Jones and Coleman were the ones who went and did the job. And we know about those phone records. And aren’t those difficult for Mr. Wright to explain, those phone records? Do you understand that that’s not been contested? Do you understand that is the evidence; that those phone records are the communications between Lorenzo Jones and Robert Wright the day of the crime and the day after?

(Tr.202–03.) Similarly, Appellant reiterated in his closing statement that he did not contest the veracity of the phone records: “We didn’t dispute the phone records. No doubt my client talked on the phone with Lorenzo Jones. You guys saw the phone records for that day and we don’t dispute that that happened.” (Tr.215.)

Ultimately, the jury found Appellant guilty of accessory before the fact of armed robbery and accessory before the fact of first-degree burglary. (Tr.242.) Appellant was acquitted of conspiracy. (Tr.242.) Appellant moved for judgment notwithstanding the verdict, arguing there was no evidence presented indicating he aided in the commission of the crimes and that the verdict was inconsistent. (Tr.246-48.) The trial court denied the motions. (Tr.250.) The court ultimately sentenced Appellant to sixteen years' imprisonment. (Tr.279.)

Subsequently, Appellant made several post-trial motions arguing the trial court lacked subject-matter jurisdiction, the court erred in failing to direct a verdict of acquittal, and the court should grant a new trial based on the impropriety of solicitor's closing argument. (Appellant's Post-Trial Mot.) The court held a hearing and heard arguments on the jurisdictional and closing argument issues. (Tr.Post-Trial Mot.) Ultimately, the judge denied all the motions in a written order. (Trial Ct, Order dated May, 6, 2016.) This appeal followed.

ARGUMENTS

I.

Because an issue cannot be raised for the first time in post-trial motions, Appellant failed to preserve his argument that his prosecution for accessory before the fact could not proceed where the principals had not been convicted and they were not on trial with Appellant.

Appellant argues that the trial court lacked subject-matter jurisdiction to hear his case pursuant to Section 16-1-50 of the South Carolina Code (2015), which states:

A person who counsels, hires, or otherwise procures a felony to be committed may be indicted and convicted:

- (1) as an accessory before the fact either with the principal felon or after his conviction; or
- (2) of a substantive felony, whether the principal felon has or has not been convicted or is or is not amenable to justice, and may be punished as if convicted of being an accessory before the fact.

Specifically, he claims he should not have been convicted because the principals who perpetrated the crime had not been convicted nor were they on trial with him. However, he never asserted this argument prior to trial, or objected to the indictment before the jury was sworn.¹ Accordingly, he has failed to preserve this argument. "It is well settled that an issue may not be raised for the first time in a post-trial motion." *State v. Geer*, 391 S.C. 179, 193, 705 S.E.2d 441, 448 (Ct. App. 2010).

Nevertheless, Appellant seeks an exception to the well-settled rules of issue preservation by arguing this issue implicates subject-matter jurisdiction and can therefore be raised at any time. Appellant misconstrues the nature of his claim.²

¹ Appellant admitted as much at the hearing on the post-trial motions. (Tr. Post-Trial Mot.3.)

² Perhaps similarly unconvinced that the trial court lacked the power to hear his case, Appellant requests a new trial in his prayer for relief. If indeed the trial court does not have subject-matter jurisdiction, such a defect would not be cured by the court hearing the case a second time.

Subject-matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong and can therefore be raised at any time in the proceeding. *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). The concepts of subject-matter jurisdiction and the sufficiency of the indictment are distinct and should not be conflated. *Id.* at 101, 610 S.E.2d at 499. Accordingly, “if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards.” *Id.*

Here, Appellant is not alleging the circuit court does not have the power to hear cases involving the charge of accessory before the fact—he admits it is “the proper Court to preside over the charge of Accessory Before the Fact.” (Appellant’s Br.8.) Instead, he argues section 16-1-50 creates a “procedural hurdle” that is a prerequisite to the court obtaining jurisdiction. This is inconsistent with our jurisprudence on subject-matter jurisdiction, which is as uncomplicated as determining whether the court can hear a general class of cases; Appellant freely admits it can. Appellant was indicted pursuant to Section 16-1-40 of the South Carolina Code (2015), which states:

A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed is guilty of a felony and, upon conviction, must be punished in the manner prescribed for the punishment of the principal felon.

The flaw alleged by Appellant appears to be that he believes the State should have proceeded under section 16-1-50(2) because the principals had not been convicted and were not on trial with him. Even assuming *arguendo* this claim has merit, it is merely an allegation that the indictment was defective and therefore does not implicate subject-matter jurisdiction.

Further, on a substantive level Appellant misapprehends the interaction of these two statutes. Section 16-1-40 illustrates the elements of the crime of accessory before the fact and

removes the distinction between the accessory and the principal for purposes of presentment. *See State v. Blakely*, 402 S.C. 650, 656, 742 S.E.2d 29, 32 (Ct. App. 2013) (discussing section 16-1-40 by explaining “the accessory’s culpability no longer shadows that of the principal. Accordingly, an accessory may be convicted even if the principal is not charged, is acquitted, or is not yet prosecuted.”). Section 16-1-50 then clarifies that the defendant may be prosecuted for accessory before the fact *or* a substantive felony—however, it does not allow the State to proceed under both theories. Again, to the extent the Appellant argues he should have been indicted for the substantive crime instead of as an accessory, he had the opportunity to allege that defect prior to the jury being sworn and the State would have simply reindicted him for the substantive crimes. *See* S.C. Code Ann. § 17-19-90 (2014) (“Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.”). Appellant did not avail himself of that opportunity and is precluded from arguing it now.

More importantly, Appellant suffered no prejudice because the criminal acts implicated by both prongs of the statute are identical. As made plain in section 16-1-50, the illegal actions undertaken by a defendant guilty of accessory before the fact of a felony are sufficient to prove guilt under the substantive crime. Thus, in convicting Appellant, the jury found beyond a reasonable doubt that Appellant had counseled, hired, or otherwise procured a felony to be committed. Had he been indicted as a principal under subsection (2), the jury would have convicted him based on the exact same proof. Thus, he cannot even allege he was not sufficiently apprised of the elements of the crime because they are indistinguishable. Accordingly, regardless of the fact that Appellant failed to preserve his argument, it fails on the merits.

II.

The trial court did not err in denying Appellant's motion for a directed verdict because evidence was adduced at trial from which a jury could determine he was guilty of accessory before the fact of armed robbery.

When reviewing the denial of a directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the State. *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). "The Court's review is limited to considering the existence or nonexistence of evidence, not its weight." *Id.* "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004).

Appellant's argument that the State failed to put forth any competent evidence focuses almost exclusively on the phone records, which he argues raise only a mere suspicion of guilt. However, both principals testified that Jones spoke with Appellant just prior to the incident to discuss what was going to occur, who was in the home, and what they could expect to steal. (R.100, 101.) This was not a passing reference that his neighbors may be in possession of money and drugs. Jones' specific testimony was that Appellant informed him that he "had somebody for [Jones] to rob." (R.134.) When Jones called Appellant just prior to entering the Mayers' home, he asked if he should kick the door down and did not proceed until Appellant had told him to "go ahead and kick in the door." (R.139.) From this testimony alone, the jury could have found Appellant counseled or otherwise procured through encouragement the crime of accessory before the fact of first-degree burglary.

III.

Appellant never objected to the content of the solicitor's closing statement and his argument is therefore unpreserved. Further, nothing in the statement would warrant reversal.

Initially, Appellant is procedurally barred from challenging the propriety of the solicitor's closing statement because he failed to present the issue until his post-trial motion.³ "It is well settled that an issue may not be raised for the first time in a post-trial motion." *Geer*, 391 S.C. at 193, 705 S.E.2d at 448. "To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court." *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005); see *State v. Robinson*, 238 S.C. 140, 153-54, 119 S.E.2d 671, 678 (1961) *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (finding issue unpreserved because "the argument of the Solicitor was not objected to when made and no ruling thereon was requested from the Trial Judge"). Accordingly, the issue is unpreserved for appellate review. Further, even the substance of his argument fails because of this procedural defect. Despite his failure to lodge any objection during trial, Appellant devotes much of his allegation of error to the trial court's failure to provide an adequate curative instruction. The failure of a court to *sua sponte* supply an unrequested curative instruction can hardly be characterized as an abuse of discretion. Moreover, it is understandable no objection was lodged as there was nothing improper about the solicitor's closing argument.

"The appropriateness of a solicitor's closing argument is a matter left to the trial court's sound discretion [and the] appellate court will not disturb a trial court's ruling regarding closing argument unless there is an abuse of that discretion." *State v. Rudd*, 355 S.C. 543, 548, 586 S.E.2d 153, 156 (Ct. App. 2003) (citation omitted). The prosecution may not comment, directly

³ Again, Appellant conceded as much at the hearing. (Tr. Post-Trial Mot.9.)

or indirectly, on the defendant's decision not to testify or present a defense; however, any improper comments do not require reversal unless they prejudice the defendant. *State v. Cooper*, 334 S.C. 540, 554, 514 S.E.2d 584, 591 (1999). Appellate review "of the closing argument is based upon whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *State v. McClure*, 342 S.C. 403, 409, 537 S.E.2d 273, 275 (2000).

Appellant complains the solicitor's closing argument violated his right to remain silent and constituted impermissible burden shifting. Specifically, he directs the Court to the solicitor's reference to the phone records in evidence as being "difficult for Mr. Wright to explain." The solicitor's brief mention that the phone records were unexplained is neither a comment on Appellant's decision not to testify nor does it shift the burden of proof. There was no intimation Appellant was required to present a defense. The solicitor states: "And aren't those difficult for Mr. Wright to explain, those phone records? Do you understand that that's not been contested? Do you understand that is the evidence; that those phone records are the communications between Lorenzo Jones and Robert Wright the day of the crime and the day after?" In the context of the solicitor's entire statement on that point, he was merely illustrating the inferences that could be derived from the existence of the records. It is undisputed Appellant and Jones communicated around the time of the crime—Appellant stipulated to that. Therefore the emphasis was not that Appellant should explain the records, but merely recapped the evidence presented—that Appellant was in contact with Jones throughout the day. Accordingly, even if Appellant had properly preserved this issue, it fails on the merits.

CONCLUSION

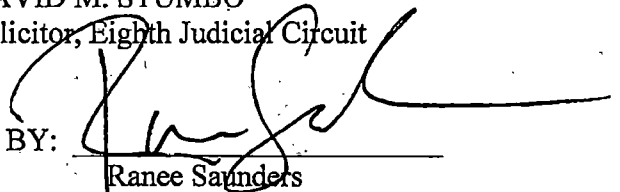
For the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN M. WILSON
Attorney General

RANEE SAUNDERS
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 

Ranee Saunders
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
September 30, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-001013

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SEP 30 2016

SC Court of Appeals

THE STATE, ...RESPONDENT

v.

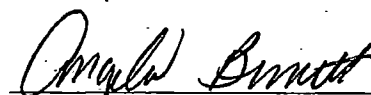
ROBERT ANTWON WRIGHT, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter*, both dated September 30, 2016, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Mindy W. Zimmerman, Esquire
P.O. Box 1207
Newberry, South Carolina 29108

I further certified that all parties required by Rule to be served have been served. This 30th, day of September, 2016.



Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-001013

Robert Wright,

Appellant,

v.

State of South Carolina,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

Mindy W. Zimmerman, SC Bar# 75793
Post Office Box 1207
Newberry, South Carolina 29108
Attorney for Appellant
Telephone: (803) 321-0000

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TABLE OF AUTHORITIES

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ARGUMENT

1. Whether SC General Statute § 16-1-50 protects subject matter jurisdiction or indictment defects?

While Appellant agrees that indictment defects must be raised before the jury is sworn, Appellant contends that this rule is not implicated here because there were no defects in the indictment. “The jurisdiction of a court over the subject matter of a proceeding is fundamental. Instead, SC General Statute §16-1-50 raises a procedural hurdle to subject matter jurisdiction, and “[i]ssues relating to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by Court of Appeals on its own motion.” *Bunkum v. Manor Properties*, 467 S.E.2d 758 (S.C.App. 1996). SC General Statute Section 16-1-50 states (emphasis added), “A person who counsels, hires, or otherwise procures a felony to be committed may be indicted and convicted...as an accessory before the fact either with the principal felon or after his conviction.”

Based upon the plain language of SC General Statute Section 16-1-50, there is an additional procedural hurdle when the charge is Accessory Before the Fact. It does not require special language in the indictment, thus the Appellant’s argument does not implicate an indictment challenge.

The State points out that Appellant requested a new trial in an attempt by the State to argue that the Appellant believes the Court has subject matter jurisdiction but that the indictment is flawed. This argument is contrary to logic, as the Appellant does not

request a change to the indictment, but instead, requests a new trial in compliance with §16-1-50. The Appellant is asking for a trial under the same indictment, but either tried with the principal or after their conviction.

The Appellant agrees with the State that §16-1-50 indicates that an individual can be tried for accessory or the substantive offense, but not both. The problem is that the State's read on the statute is too limited, because the State chooses to ignore pertinent parts of the statute. If subsection (1) merely stated that a person could be convicted "as an accessory before the fact," then the States limited read would be accurate, but the State ignores the remainder of the sentence, which explains that a defendant can be convicted "either with the principal felon or after his conviction." The General Assemble did not add this language by mistake, and it is not proper for us to ignore it, as the State seeks for the Court to do.

2. Whether the Circuit Court erred in denying Appellant's Motion for a Directed Verdict and subsequent Motion for a New Trial, based upon the complete lack of competent evidence?

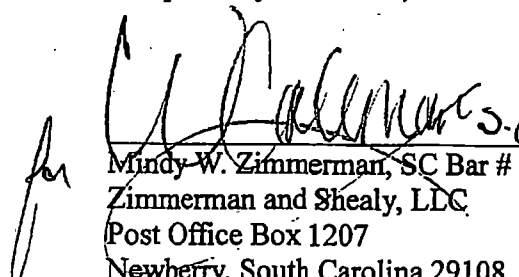
Taking the evidence in the light most favorable to the State, a directed verdict should have been granted in Mr. Wright's favor, as the State failed to provide any evidence of criminal activity by the Mr. Wright. Even if the jury took all the State's evidence as true, the only facts the State could establish is that Mr. Wright may have said the victim's home contained \$8,000 in cash and at least 4 ounces of crack cocaine, which was in fact inaccurate. The mere statement that the house contained these items does not rise to the level of a criminal offense.

Taking the case in the light most favorable to the State, the only evidence was that Appellant said they could find drugs and money in the house. There was absolutely no evidence that the defendant "advised, agreed, urged, counseled, hired, or in some way aided or abetted" Jones or Coleman to commit these charges. At best, the State's case showed that Appellant told them they would find something in the home.

3. Whether the Circuit Court erred in denying Appellants Motion for a New Trial based upon Solicitor's Comments during closing: Violation of Defendant's Fundamental Right to Remain Silent as Provided by the Constitution and Inappropriate Burden Shifting?

Appellant concedes that this argument was not properly preserved for appeal; however, Appellant would argue that these comments in the closing did shift the burden to the defendant, which further supports to the Appellant's second issue on Appeal. The Solicitor's comments in his closing argument only point to the lack of evidence presented by the State and the need to distract the jury in an inappropriate shift of the burden, which served to confusion the jury into a conviction.

Respectfully Submitted,

 *Mindy W. Zimmerman* S.C. Bar # 100663
Mindy W. Zimmerman, SC Bar # 75793
Zimmerman and Shealy, LLC
Post Office Box 1207
Newberry, South Carolina 29108
(803) 321-0000
Attorney for Appellant

October 13, 2016

NOTICE OF APPEAL IN A GENERAL SESSIONS CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge

Case No. 2016-001013

Robert Wright,

Appellant,

v.

State of South Carolina,

Respondent.

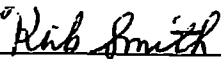
CERTIFICATE OF SERVICE

The undersigned, Mindy W. Zimmerman, hereby certifies that on the 13th day of October, 2016, has served the Initial Reply Brief of the Appellate by mailing and depositing the same with the United States Postal Service to the address below:

Solicitor David Stumbo
Eighth Circuit Solicitor's Office
Post Office Box 516
Greenwood, SC 29648
(864) 942-8800

The Honorable Alan Wilson
Assistant Attorney General Ranee Saunders
Post Office Box 11549
Columbia, S.C. 29211

October 13, 2016


Kirk Smith, Paralegal
Post Office Box 1207
Newberry, South Carolina 29108

NOTICE OF APPEAL IN A GENERAL SESSIONS CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-001013

Robert Wright,

Appellant,

v.

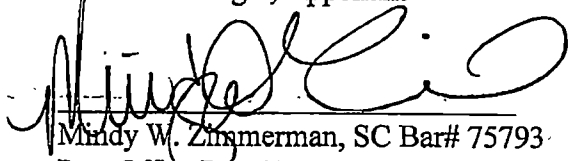
State of South Carolina,

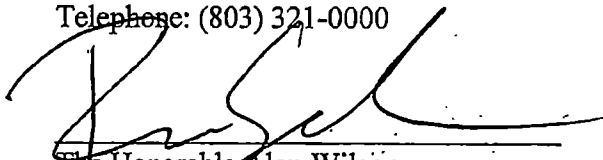
Respondent.

AGREED DISMISSAL

The undersigned Appellant, Counsel for the Appellant and Counsel for the Respondent, hereby stipulate that pursuant to Rule 260 of the South Carolina Rules of Appellant Procedure the Appeal of Robert Wright is hereby dismissed with prejudice.


Robert A. Wright, Appellant


Mindy W. Zimmerman, SC Bar# 75793
Post Office Box 1207
Newberry, South Carolina 29108
Attorney for Appellant
Telephone: (803) 321-0000


The Honorable Alan Wilson
Assistant Attorney General Rane Saunders
Post Office Box 11549
Columbia, S.C. 29211

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NOV 07 2016
SC Court of Appeals

The South Carolina Court of Appeals

The State, Respondent,

RECEIVED

v.

NOV 10 2016

Robert Antwon Wright, Appellant.

**ATTORNEY GENERALS
OFFICE**

Appellate Case No. 2016-001013

The Honorable Donald B. Hocker
Newberry County
Trial Court Case No. 2014GS3600528

ORDER

It appears that Appellant, with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Robert Antwon Wright, 334552

Alan McCrory Wilson, Esquire

Mindy Westbrook Zimmerman, Esquire

Susan Raneé Saunders, Esquire

FILED

November 9, 2016



RECEIVED

NOV 30 2016

ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 29, 2016

The Honorable Jackie S. Bowers
PO Drawer 10
Newberry SC 29108-0010

REMITTITUR

Re: The State v. Robert A. Wright
Lower Court Case No. 2014GS3600528
Appellate Case No. 2016-001013

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Robert Antwon Wright, 334552
Alan McCrory Wilson, Esquire
Mindy Westbrook Zimmerman, Esquire
Susan Rancee Saunders, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

Robert Antwon Wright, (00334552)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017CP3600509

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Newberry County General Sessions
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) 2014 GS 36 0528 Accessory before the fact to a felony (Burglary 1st)
 - (b) 2014 GS 36 0528 Accessory before the fact to a felony (Armed Robbery)
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 7, 2016 16 years
 - (b) January 7, 2016 16 years

FILED
NEWBERRY COUNTY
2017 SEP 22 AM 11:04
ELIZABETH P. FOLK
CLERK OF COURT

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.

SEP 22 2017

Clerk of Court

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty x
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Order of Dismissal
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. 11/09/2016
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. South Carolina Court of Appeals ORDER case no.: 2016-001013 dated 11/09/16
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel.

- (b) Ineffective assistance of appellate counsel.
- (c) Failure of the State to adequately comply with the rules of discovery.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel failed to properly investigate the case and prepare an adequate defense based on the evidence in the case; Trial counsel failed to request a continuance in order to allow her to properly investigate the case and prepare an adequate defense; Trial counsel failed to move for the suppression of statements and evidence; Trial counsel failed to make necessary objections during the trial or otherwise properly raise and/or preserve issues for appeal; Trial counsel failed to effectively cross-examine the State's witnesses during the trial; Trial counsel failed to introduce relevant evidence in the defense case in chief, or proffer evidence when necessary; Trial counsel failed to state and/or argue relevant facts and law to the jury in his statements and arguments to the jury. Trial attorney failed to properly explain, convey, and advise client on plea offer; Failed to properly convey, review and advise as to the charges, potential sentences and the evidence; (See also: Attachment and Memorandum)
- (b) Appellate counsel failed to properly raise and argue viable issues on appeal.
- (c) The State failed to provide discovery materials that were in its possession or which were known or should have been known to the State or its agents.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (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:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

- i. n/a
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Issues raised herein are proper for PCR.
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
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. Mindy W. Zimmerman
PO Box 755
Newberry, SC 29108
 - ii. Mindy W. Zimmerman
 - iii. J. Falkner Wilkes, 114 Whitsett St., Greenville, SC 29601
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Appeal
 - iii. PCR
19. State clearly the relief you seek in filing this application:
Reversal of the conviction and a new trial.

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

No.

STATE OF SOUTH CAROLINA

County of Newberry

VERIFICATION

I, Robert Antwon Wright, 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.

Robert Wright 9/14/17

SWORN to and subscribed before me this 14th day of September, 2017

Janelle T. Spearman (L.S.)
Notary Public

My Commission Expires:



FILED
NEWBERRY COUNTY
2017 SEP 22 AM 11:04
ELIZABETH P. FOLK
CLERK OF COURT

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

I, Robert Antwon Wright, 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.

Robert Wright
Applicant

9/14/17

SWORN or affirmed to and subscribed before me this
day of September, 2017

Janelle T. Spearman
Notary Public

My Commission Expires



FILED
NEWBERRY COUNTY
2017 SEP 22 AM 11:04
ELIZABETH P. FOLK
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

Robert Wright,
Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

Case No:

AMENDMENT and MEMORANDUM
OF LAW IN SUPPORT OF
APPLICATION

2017CP3600509

FILED
NEWBERRY COUNTY
2017 SEP 22 AM 11:05
CLERK OF COURT
ELIZABETH P. FORKES

COMES NOW the Applicant, Robert Wright, respectfully filing Amendments and this Memorandum of Law in Support of P.C. Application. The Applicant motions this honorable court to make specific finding of facts and conclusions of law to each and every issue raised in the application, the amendments and exhibits pursuant to S.C. Code of Law 17-27-80.

Amendment One: Trial Counsel ineffective for failing to move for pretrial quashing, or post-trial motion for arrest of judgment, of the Conspiracy and Accessory Before the Fact indictments on the grounds the indictments fail to sufficiently allege the critical elements of the offenses in order to constitutionally give proper notice to the Defendant of the allegations charged against him and to protect him against Double Jeopardy.

In South Carolina the sufficiency of an indictment is predicated on it's compliance with S.C. Code of Law §17-19-20 and its compliance with the S.C. Constitution's and U.S. Constitution's mandate of Due Process and right to a fair trial. Fairness and due process require that a criminal defendant receive sufficient notice of the charges against him to enable him to prepare a defense. (See In re Corey B., 352 S.E.2d 470,470 (1987)). A sufficient indictment must do more than merely recite the elements of the offense charged, the indictment must also contain sufficient factual allegations to permit the accused to know whether he may plead an acquittal or conviction thereon and to retain protection against Double Jeopardy. (See State v. Gentry, 610 S.E.2d at 500; State v. Guthrie, 572 S.E.2d 309 (Ct. App. 2002)).

The Conspiracy incident 14-GS-36-0530 upon which the Defendant was tried is insufficient to place him on notice of the critical elements of Armed Robbery, Burglary and/or other lesser offenses.

This indictment wholly excludes the critical elements of Armed Robbery and Burglary, wholly excludes the statutory language of Armed Robbery and Burglary, and wholly excludes the underlying factual allegations of the Armed Robbery and Burglary that is at the core of the indictment. This Conspiracy indictment does not place the Defendant on sufficient notice of the Armed Robbery and Burglary charges against him to enable him to prepare a defense or to protect him against Double Jeopardy for the same allegations.

Specifically, the Defendant was not placed on notice that "asportation" is a critical element of Armed Robbery and if the state prosecution fails to prove this element then a directed judgment of acquittal must be granted. The Defendant was not placed on notice that a "taking and deprivation of property, goods or monies" is a critical element of Armed Robbery and if the state prosecution fails to prove this element then a directed judgment of acquittal must be granted. The Defendant was not placed on notice that "use or representation of a deadly weapon or any object which a person reasonably believed to be a weapon" is a critical element of Armed Robbery and if the state prosecution fails to prove this element then a directed judgment of acquittal must be granted. (See State v. Moore, 649 S.E.2d 84; State v. Partlow, 157 S.E.2d 688 (NC); State v. Parker, 571 S.E.2d 288; Locke v. State, 533 S.E.2d 324; and Dunbar v. U.S., 15 S.Ct. 325 (1895)).

Also, the Conspiracy indictment 14-GS-36-0530 failed to place the Defendant on notice as to which degree of Burglary he was charged to face trial- First degree burglary or second degree burglary or third degree burglary. This indictment wholly excludes which degree of Burglary the Defendant is alleged to have committed, this indictment wholly excludes the statutory language of the critical elements of any of the three different degrees of Burglary, this indictment wholly excludes any notice at all as to which degree of Burglary the co-conspirators committed and to which the Defendant aided the completion. Because the Conspiracy indictment lacks the critical elements it is constitutionally insufficient and violates the Defendant's rights to due process, fairness to a trial and to be protected from Double Jeopardy. (See In re Corey, 352 S.E.2d 470 470, (1987); State v. Gentry, 610 S.E.2d at 500; State v. Guthrie, 572 S.E.2d 309; Jackson v. Virginia, 99 S.Ct. 2781; and S.C. Code of Law§17-19-20).

As to the Accessory indictment 14-GS-36-0528 upon which the Defendant was tried, it is insufficient to place him on notice of the critical element of "absence from the scene of the crime" and the state prosecutor's burden to prove this critical element beyond a reasonable doubt or a directed verdict of acquittal must be granted. Because the Accessory indictment lacks the critical element it is constitutionally insufficient and violates the Defendant's rights to due process, fairness to a trial and to be protected from Double Jeopardy. The Defendant's convictions and sentences must be reversed. (See Hooks v. State, 577 S.E.2d 211 (2003); State v. Claypoole, 639 S.E.2d 466; State v. Bixby, 644 S.E.2d 54 (S.C.2007); and Jackson v. Virginia, 99 S.Ct. 2781).

The Accessory indictment 14-GS-36-0528 wholly excludes the criminal elements of Armed Robbery and Burglary, wholly excludes the statutory language of Armed Robbery and Burglary, and wholly exclude the underlying factual allegations of the Armed Robbery and Burglary that is at the core of the indictment. This Accessory indictment does not place the Defendant on sufficient notice of the Armed Robbery and Burglary charges against him to enable him to prepare a defense or to protect him against Double Jeopardy for the same allegations.

Specifically, the Defendant was not placed on notice that "asportation" is a critical element of Armed Robbery and if the state prosecution fails to prove this element then a directed judgment of acquittal must be granted. The Defendant was not placed on notice that a "taking and deprivation of property, goods or monies" is a critical element of Armed Robbery and if the state prosecution fails to prove this element then a directed judgment of acquittal must be granted. The Defendant was not placed on notice that "use or representation of a deadly weapon or any object which a person reasonably believed to be a weapon" is a critical element of Armed Robbery and if the state prosecution fails to prove this element then a directed judgment of acquittal must be granted. (See State v. Moore, 649 S.E.2d 84; State v. Partlow, 157 S.E.2d 688 (N.C.); State v. Parker, 571 S.E.2d 288; Locke v. State, 533 S.E.2d 324; and Dunbar v. U.S., 15 S.Ct. 325 (1895)).

Also, the Accessory indictment 14-GS-36-0528 failed to place the Defendant an notice as to which degree of Burglary he was

charged to face trial- First degree burglary or Second degree burglary or Third degree burglary. This indictment wholly excludes which degree of Burglary the Defendant is alleged to have committed, this indictment wholly excludes the statutory language of the critical elements of any of the three different degrees of Burglary, this indictment wholly excludes any notice at all as to which degree of Burglary the co-conspirators committed and to which the Defendant aided the completion. Because the Accessory indictment lacks the critical elements it is constitutionally insufficient and violates the Defendant's rights to due process, fairness to a trial and to be protected from Double Jeopardy. (See In re Corey, 352 S.E.2d 470, 470 (1987); State v. Gentry, 610 S.E.2d at 500; State v. Guthrie, 572 S.E.2d 309; Jackson v. Virginia, 99 S.Ct. 2781; and S.C. Code of Law §17-19-20).

Trial Counsel had two different opportunities to challenge constitutionally and statutory sufficiency of the conspiracy indictment and the Accessory Before the Fact indictment by either making a pretrial motion to quash the indictments or a post-trial motion for arrest of judgment. Either motion is an acceptable mechanism wherein trial counsel can lodge a challenge to the sufficiency of the indictment unfortunately trial counsel did not pursue either course of action and the prejudice from this inaction is apparent. (See State v. Taylor, 558 S.E.2d 917, 920-921 (Ct.App.2001) ("A 'motion for arrest of judgment' is a post verdict motion made to prevent the entry of a judgment where the charging document is insufficient or the court lacked jurisdiction to try matter."); also State v. Jeter, 24 S.E. 889 (1896) (Concluding it was error for trial court to deny motion for arrest of judgment where indictment was insufficient)).

Although a defendant may not move for a verdict in arrest of judgment based on the insufficiency of the evidence to support the charges in the indictment, a defendant may make a motion for arrest of judgment alleging an insufficiency of the indictment. (See State v. Taylor, 558 S.E.2d at 921 (Ct.App.2001)). The trial counsel's representation on this issue was deficient and prejudicial to the Defendant such that the two-prong test of Strickland v. Washington has been met and trial counsel is legally and factually ineffective.

Amendment Two: Trial counsel ineffective for failing to move for pretrial quashing, or post-trial motion for arrest of judgment, of the Conspiracy and Accessory Before the Fact indictments on the grounds the indictments are unconstitutionally overbroad and vague such that the Defendant was not given proper notice of the allegations charged against him to prepared a defense and to protect him against Double Jeopardy.

The Conspiracy indictment 14-GS-36-0530 and the Accessory Before the Fact indictment 14-GS-36-0528 both contain allegations of burglary and that the Defendant is criminally liable for burglary in this case. What the both of these two indictment lack, specifically concerning the burglary allegations, is which degree of burglary is the Defendant accused of being criminally liable. An indictment is constitutionally and statutory required to perform two functions: (1) it should inform the accused of the charge against him by listing the elements of the offense charged; and (2) it should be sufficiently specific to protect the accused against double jeopardy. (See State v. Bullard, 560 S.E.2d 436 (Ct.App.2002); S.C. Constitution Article 1, section 11; S.C. Code of Law §17-19-10 and §17-19-20).

The State of South Carolina has three separate degrees of burglary codified within its penal codes, they are: (1) First degree burglary §16-11-311, (2) Second degree burglary §16-11-312, and Third degree burglary §16-11-313. The allegations listed in the Conspiracy and Accessory Before the Fact indictments' lack specificity certainty, and particularity to the conduct the Defendant is accused of committing in violation of which burglary penal code. It is impossible for the Defendant to prepare a defense against accusations spanning across three separate distinct degrees of burglary. The Conspiracy and Accessory Before the Fact indictments are unconstitutionally overbroad and vague as a matter of law in violation of Defendant's due process rights, rights to a fair trial and right to be protected from Double Jeopardy. (See State v. Baker, 769 S.E.2d 860 (2015);).

The Conspiracy indictment 14-GS-36-0530 and the Accessory Before the Fact indictment 14-GS-36-0528 both contain allegations of armed robbery and that the Defendant is criminally liable for armed robbery in this case. What the both of these two indictments lack, specifically concerning the armed robbery allegations, is the specificity of the underlying conduct the Defendant is charged with committing

in violation of the criminal elements of the armed robbery penal code §16-11-330. An indictment is constitutionally and statutorily required to perform two functions: (1) it should inform the accused of the charge against him by listing the elements of the offense charged; and (2) it should be sufficiently specific to protect the accused against double jeopardy. (See State v. Bullard, 560 S.E.2d 436 (Ct.App.2002); S.C. Constitution Article 1, Section 11; S.C. Code of Law §17-19-10 and §17-19-20).

The Allegations listed in the Conspiracy and Accessory Before the Fact indictments lack specificity, certainty, and particularity to the conduct the Defendant is accused of committing in violation of the armed robbery penal code. It is impossible for the Defendant to prepare a defense against accusations of armed robbery when the actual indictments at trial do not articulate the critical elements of the armed robbery penal code. The Conspiracy and Accessory Before the Fact indictments are unconstitutionally overbroad and vague as a matter of law in violation of Defendant's due process rights, rights to a fair trial, and right to be protected from Double Jeopardy. (See State v. Baker, 769 S.E.2d 860 (2015)).

Trial counsel had two different opportunities to challenge the unconstitutional overbreadness and vagueness of the Conspiracy indictment and the Accessory Before the Fact indictment by either making a pretrial motion to quash the indictments or a post-trial motion for arrest of judgment. Either motion is an acceptable mechanism wherein trial counsel can lodge a challenge to the sufficiency of the indictment, unfortunately trial counsel did not pursue either course of action and the prejudice from this inaction is apparent. (See State v. Taylor, 558 S.E.2d 917, 920-921 (Ct.App.2001) ("A 'motion for arrest of judgment' is a post verdict motion made to prevent the entry of a judgment where the charging document is insufficient or the court lacked jurisdiction to try the matter."); also State v. Jeter, 24 S.E.2d 889 (1896) (concluding it was error for trial court to deny motion for arrest of judgment where indictment was insufficient)).

Although a defendant may not move for a verdict in arrest of judgment based on the insufficiency of the evidence to support the charges in the indictment, a defendant may make a motion for arrest of judgment alleging an insufficiency of the indictment. (See State v. Taylor, 558 S.E.2d at 921 (Ct.App.2001)). The trial counsel's

representation on this issue was deficient and prejudicial to the Defendant such that the two-prong test of Strickland v. Washington, has been met and trial counsel is legally and factually ineffective.

Date:

9/14/17

Robert W. [Signature]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	OF THE EIGHTH JUDICIAL CIRCUIT
	)	
Robert Antwon Wright,	)	2017-CP-36-509
SCDC # 334552	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed September 22, 2017, would respectfully show this Court

I.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Newberry County Clerk of Court. Applicant was indicted at the August 2014 term of the Newberry County Grand Jury for accessory after the fact to a felony (burglar, first degree) (2014-GS-36-0528), accessory after the fact to a felony (armed robbery) (2014-GS-36-0528), and conspiracy (2014-GS-36-0530). Mindy Zimmerman, Esquire, represented him. Assistant Solicitor Taylor Daniel represented the State. On January 4-7, 2016, Applicant proceeded to a jury trial before the Honorable Donald Hocker after which he was found guilty of accessory after the fact to a felony (burglary and armed robbery) but not guilty of conspiracy. He was sentenced to imprisonment for sixteen years on each charge. Both sentences were to run concurrently.

On January 15, 2016, Applicant filed a Motion for a new trial based on several grounds. Applicant moved for a new trial, alleging the trial court lacked subject matter jurisdiction in

violation of S.C. Code § 16-1-50 because Applicant was tried and convicted of accessory after the fact when he was not tried with the principal felon, nor was his trial after the principal's conviction. Applicant moved to renew and reconsider the denial of Applicant's motion for a directed verdict, or in the alternative, for a new trial based upon a lack of competent evidence. Applicant moved for a new trial based on the assistant solicitor's comments during his closing argument on Applicant's right to remain silent.

A hearing was held on March 3, 2016 before Judge Hocker. Applicant was present and represented by his trial counsel. On May 6, 2016, Judge Hocker denied and dismissed Applicant's post-trial motions. Judge Hocker dismissed Applicant's subject matter jurisdiction claim, citing State vs. Blakely, which held "[t]oday, the accessory's culpability no longer shadows that of the principal. Accordingly, an accessory may be convicted even if the principal is not charged, is acquitted, or is not yet prosecuted." State v. Blakely, 402 S.C. 650, 656, 742 S.E.2d 29, 32 (Ct. App. 2013). The court dismissed Applicant's motion for new trial based on lack of evidence and Applicant's renewal of directed verdict motion based on the oral rulings made on the record at trial. The court dismissed Applicant's motion for new trial based on the solicitor's closing argument finding no prejudice resulted when the court gave the jury the standard charge for them not to consider Applicant's failure to testify. The court also found the solicitor's argument was, in part, based upon the evidence in the case. The court further found the solicitor's closing did not shift the burden of proof to the defendant.

Applicant filed a notice of appeal and was represented by his trial counsel, Mindy Zimmerman, Esquire. Applicant asserted grounds similar to his post-trial motion. Applicant and Respondent submitted briefs. On November 7, 2016, Applicant submitted a consent order signed by himself, Ms. Zimmerman, and Respondent that indicated an agreed dismissal of Applicant's

direct appeal. The Court of Appeals dismissed the appeal by an order filed November 9, 2016. The remittitur was sent November 29, 2016.

Factual History

Precious and Cedric Mayers were at their home in Little Mountain when two men burst through their front door and held them at gun point. (Transcript 68.) The men began demanding to know "Where the shit at?" and when the Mayerses responded they did not have anything, the men began rummaging through the house. (Tr.68-69.) The two men eventually absconded with some marijuana, less than a hundred dollars, and both of their phones. (Tr.70.) The Mayerses then ran to a neighbor's house to call 911. (Tr.74.)

The initial responders turned the investigation over to Investigator Garrett Lominack. (Tr.160.) The morning following the burglary, Cedric informed Investigator Lominack that his FindMyiPhone app was indicating his cell phone was at an address in the city of Newberry. (Tr.162.) Investigator Lominack tracked the phone and found it in the trash outside the home of Precious Bates. (Tr.163.) Bates informed the officers that Lorenzo Jones had been at her home the evening prior and had discarded some items in her trash. (Tr.165.)

After returning the phones to the victims, Investigator Lominack located Jones, who had returned to Bates' home. (Tr.166.) Jones voluntarily accompanied the officers to the police station and eventually implicated Applicant and Tarakus Coleman as his accomplices to the crimes. Applicant was arrested and indicted for accessory before the fact of robbery/burglary. Prior to trial, Applicant stipulated that the phone records the State planned to offer would show he contacted Jones during the time surrounding the crime. (Tr.33.) At trial, Jones testified Applicant called him and said he "had somebody for [Jones] to rob [b]ecause he was getting in [Applicant's] way." (Tr.134.) Jones explained he called Coleman to assist him in the robbery,

and the two went to Little Mountain together. (Tr.136.) Jones stated they arrived at the specified location and waited for about an hour, eventually asking Applicant if they should go ahead with the robbery. (Tr.137.) Once Applicant had told him to "go ahead and kick in the door," Jones and Coleman proceeded. (R.139.) Jones explained that all they took was a little bit of crack, a bag of marijuana, thirty or forty dollars, and two cell phones. (Tr. 140-41.)

Coleman testified that Jones called him about robbing a trailer for \$8,000 and some crack. (Tr.93.) Coleman explained Jones had received the information from his partner, Applicant, who Coleman did not know at the time. (Tr.95-96.) However, Coleman stated Jones called Applicant on speakerphone prior to the crime to discuss the details of who would be in the home and how they should proceed. (Tr.101.) Although Applicant did not specify the location of the money and drugs purported to be inside, Coleman testified Applicant said to just go in the house and it should be there. (Tr. 101.)

II.

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

1. Ineffective Assistance of Trial Counsel

- a. "Trial counsel failed to properly investigate the case and prepare an adequate defense based on the evidence in the case;
- b. Trial counsel failed to request a continuance in order to allow her to properly investigate the case and prepare an adequate defense;
- c. Trial counsel failed to move for the suppression of statements and evidence;
- d. Trial counsel failed to make necessary objections during the trial or otherwise properly raise and/or preserve issues for appeal;
- e. Trial counsel failed to effectively cross-examine the State's witnesses during the trial;
- f. Trial counsel failed to introduce relevant evidence in the defense case in chief, or proffer evidence when necessary;

- g. Trial counsel failed to state and/or argue relevant facts and law to the jury in his statements and arguments to the jury;
 - h. Trial attorney failed to properly explain, convey, and advise client on plea offer;
 - i. Failed to properly convey, review and advise as to the charges, potential sentences and the evidence."
 - j. "Trial Counsel ineffective for failing to move for pretrial quashing, or post-trial motion for arrest of judgment, of the Conspiracy and Accessory Before the Fact indictments on the grounds the indictments fail to sufficiently allege the critical elements of the offenses..."
 - k. "Trial counsel ineffective for failing to move for pretrial quashing, or post-trial motion for arrest of judgment, of the Conspiracy and Accessory Before the Fact indictments on the grounds the indictments are unconstitutionally overbroad and vague..."
2. Ineffective Assistance of Appellate Counsel
- a. "Appellate counsel failed to properly raise and argue viable issues on appeal."
3. "Failure of the State to adequately comply with the rules of discovery"
- a. "The State failed to provide discovery materials that were in its possession or which were known or should have been known to the State or its agents."

Attached herewith and incorporated herein by reference are the Newberry County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the post-trial transcript, and Applicant's direct appeal records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. 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, SCRCF. 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), SCRCF.

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 contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at

117, 386 S.E.2d at 625, citing Strickland. 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, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the applicant must show that appellate counsel's performance was (1) deficient; and (2) that there

was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

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

V.

Applicant alleges the State failed to provide discovery materials that were in its possession or which were known or should have been known to the State or its agents. However, Applicant has set forth no factual basis to support the claim. Brady v. Maryland¹ requires the State to disclose evidence in its possession favorable to the accused and material to guilt or

¹ Brady v. Maryland, 373 U.S. 83 (1963).

punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based on the requirement of due process. The accused must show: "(1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)). The Supreme Court of the United States has identified three distinct categories of Brady violations: (1) cases that include nondisclosed evidence of perjured testimony about which the prosecutor knew or should have known, (2) cases in which the defendant specifically requested the nondisclosed evidence, and (3) cases in which the defendant made no request or only a general request for Brady material. Gibson v. State, 334 at 524-25, 514 S.E.2d at 325 (citing United States v. Agurs, 427 U.S. 97 (1976)). Applicant has set forth no facts supporting this allegation, and the State cannot respond. Therefore, Respondent moves for a more definite statement with respect to this allegation.

VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

[signature on following page]

VII.

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

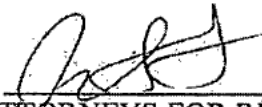
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

_____, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
ROBERT ANTWON WRIGHT, 334552)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
Respondent,)
_____)

IN THE COURT OF COMMON PLEAS

2017-CP-36-0509

AFFIDAVIT OF SERVICE BY MAIL

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

Mr. J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, South Carolina 29601-3139

DATED this the 21st day of March, 2018.


Carlotta L. Weaver, Legal Assistant
For Respondent

11:23:45 Tuesday, October 03, 2017

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 10/03/17
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 334552 LOC: BROAD RIVER
WRIGHT, ROBERT ANTWON SCDC CLASSIFICATION..: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY..: N
SEXUAL PREDATOR..: NOT APP
DNA STATUS.....: COMPLETED
GPS REQUIREMENT..: N
PREA DECISION....:
PREA VICTIM.....: NONE PREA PERP...: NONE
CURRENT SENTENCE: 016-00-000 CONSECUTIVE SENTENCE ...: N
016-00-000 CURRENT SENT START DATE: 01/06/2016
PROJECTED COMPLETION DATES
MAXOUT DATE: 08/08/2029 CURRENT EWC ..: 2 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000224 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 000627 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, October 3, 2017

Classification Summary Reports

Inmate Number **334552**

Submit

Classification Summary Report for WRIGHT, ROBERT ANTWON :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 10/03/2017

SCDC# 00334552

WRIGHT, ROBERT ANTWON

FBI# 357914DC2

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: BROAD RIVER

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 16 YRS 0 MOS 0
SENT: DAYS

VICTIM
WITNESS: SEPREQ:Y

MED
CLASS:

INST
RESTRICT: NO RESTRICTION

MENTAL NMH (NO MENTAL
CLASS: HEALTH TRE

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 32



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: MLT 2111 A

PROJ MAXOUT
DATE: 08/08/2029

PROJ PAROLE
DATE:

EWC
JOB: LAUNDRY HELPER

ASSIGNMENT: COMMISSARY

EWC
LEVEL: 2F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE DYS	COUNTY	START	SENTENCE V/NV CAT INDICT
BURGLARY-1ST DEGREE	16	0	0	NEWBERRY	01/06/2016	V 4 14GS360528

COMPLETED OFFENSES	YRS	MOS	SENTENCE DYS	COUNTY	START	SENTENCE V/NV CAT INDICT
COCAINE DISTRIBUTION	3	0	0	LEXINGTON	04/29/2009	N 2 08GS3201211

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

HARASSMENT 1ST NOTIFY OPEN ARREST NOTIFICATION CATEG:4

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

01/27/2017	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
09/20/2010	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
04/16/2010	STEALING	CONVICTED	ADMINISTRATIVE RESOLUTION
02/27/2010	I/M UNDER INFLUENCE/POSS ALCOHOL OR BUCK	CONVICTED	ADMINISTRATIVE RESOLUTION

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

03/03/2016	BROAD RIVER	INCARCERATED	RETURN FROM COURT
03/03/2016	NEWBERRY CO	AUTH ABSENCE (AWL)	TO COURT
02/18/2016	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
01/12/2016	KIRKLAND	INCARCERATED	NEW ADMISSION
10/01/2010	UNK	RELEASE	EXPIRATION OF SENTENCE
10/20/2009	ALLENDAL	INCARCERATED	ADMINISTRATIVE
10/20/2009	KIRKLAND	INCARCERATED	MEDICAL
07/07/2009	ALLENDAL	INCARCERATED	MEDICAL
07/07/2009	ALLENDAL COUNTY HOSPITAL	AUTH ABSENCE (AWL)	MEDICAL
07/07/2009	ALLENDAL	INCARCERATED	ADMINISTRATIVE
05/05/2009	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
LAUNDRY HELPER	02/23/2016	-		2F5
FOOD SERVICE AIDE	09/09/2009	10/01/2010	RELEASED/PAROLED	2F7
FOOD SERVICE AIDE	08/14/2009	09/08/2009	PROMOTION	2F5
FOOD SERVICE AIDE	08/12/2009	08/13/2009	MI ELIGIBLE FOR LEVEL 2	3F5
HORTICULTURE TRAINEE	07/09/2009	08/11/2009	INMATE REQUEST	2F5
HORTICULTURE TRAINEE	07/08/2009	07/08/2009	CUSTODY REVIEW	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 12-14 HR/WK	08/11/2009	10/01/2010	RELEASED/PAROLED

***** END OF REPORT *****

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Source : SummaryReport.jsp

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 11:25:17 AM]

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Newberry

VS.

Robert Antwon Wright

AKA:

Race: AFRICAN AME Sex: M Age: 30

DOB: -1985 SS#:

Address: Holy Trinity Church Road

City, State, Zip: Little Mountain, SC 29075

DL#: SID#:

*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: Accessory before the fact to a Felony (underlying felony being Burglary in the 1st degree, sentence under cdr: 0079)

in violation of § 16-01-0040 of the S.C. Code of Laws, bearing CDR Code # 0002

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Daniel, Taylor

SC Bar# 100588

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

IN THE COURT GENERAL SESSIONS

INDICTMENT/CASE#: 14GS36-0528

A/W#: 2014A3610100344

Date of Offense: 4/30/2014

S.C. Code § : 16-01-0040

CDR Code #: 0002

SENTENCE SHEET

15 yrs - 1 yr

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2167

Sentence Date: 1/7/16

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2014)

I, Jackie S. Bowers, Clerk of Court, Newberry,
South Carolina, do hereby certify that this is a true
copy of the original on file in this office.

984 - Turn bond quality - 1/6/16

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF NEWBERRY) IN THE COMMON PLEAS COURT
3
4 Robert Antwon Wright,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2017-CP-36-0509
7 The State.) February 26, 2019
8 Greenwood, South Carolina
9
10

11 B E F O R E:

12 HONORABLE BRIAN M. GIBBONS, JUDGE
13
14

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

16 J. FALKNER WILKES, ESQUIRE
17 Attorney for the Applicant

18 JANELL H. GREGORY, ESQUIRE
19 Attorney for the State
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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