

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

ROBERT FROST,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000604

APPENDIX

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Testimony of Timothy Richey - Direct Examination

1 Q. Okay. And where did you respond
2 precisely?

3 A. [REDACTED] East Front Street in the Iva
4 city limits in the county of Anderson.

5 Q. Okay. And what was the nature of
6 the call to which you were responding that
7 day?

8 A. It was threatening phone calls.

9 Q. Do you recall who you met once you
10 arrived at the property?

11 A. When I arrived at the property, I
12 went to the door. I knocked on the door.
13 And I was asked to come in by Mr. and Mrs.
14 Davenport.

15 Q. Okay. And did you meet with them?

16 A. I did.

17 Q. Okay. Where did you meet with them?

18 A. Kind of a sitting area. I presume
19 that would be their living room. It was as
20 you walk in the door.

21 Q. Okay. And did you have a discussion
22 with them about the threatening phone calls?

23 A. I did.

24 Q. Okay. And what did you do as a
25 result of what they told you?

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1 A. I listened to some recordings that
2 they had had on their phone. There was some
3 threats on the voicemail. And then I also
4 took a number that they had and called the
5 number of a male subject who answered the
6 phone. He identified himself as Jacky.

7 Mrs. Davenport was sitting beside me,
8 could hear the voice. She said 'no, that's
9 my son, Robert.' She said , 'Jacky's my
10 deceased son.'

11 I talked with him briefly. I told him
12 "Do not call anymore. Do not make any kind
13 of threats. Do not come to the residence.
14 No contact in any kind of way." And that was
15 kind of the end of the conversation there.

16 After hanging up the phone with Mr.
17 Frost, I spoke with them. I asked them was
18 they satisfied with what I'd done and they
19 said yes.

20 And Mrs. Davenport asked me, said, 'if he
21 calls or comes, what do we need to do?' I
22 said, 'Well, if he calls, call 9-1-1 again.'
23 I said if he comes by, 'Again immediately
24 call 9-1-1. Don't go to the door. Don't
25 answer the door.' She said what if he comes

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1 and he has tried to get in. I said 'try to
2 hide back as well as you can and call 9-1-1
3 immediately and we'll be here.'

4 Q. Okay. And did you tell them
5 anything about locking their doors or ---

6 A. Yes, ma'am. I told them to try to
7 secure everything and stay secure and don't
8 answer the door if he comes.

9 Q. Did you tell anyone else about this
10 interaction with the Davenports?

11 A. Yes, ma'am. At the end of my tour
12 of duty that day, we always do what we call
13 pass-on. The officer that was coming on, I
14 passed them on to that call that I had that
15 day and asked him would he please keep a
16 check on the area.

17 Q. And who is that officer?

18 A. Officer Chris Vaughn, which is
19 Lieutenant Vaughn now.

20 Q. Okay. And what did you do after you
21 told him to keep an eye out on that area?

22 A. I ended my tour of duty and went
23 home.

24 Q. Okay. Did you get a call later that
25 same night concerning that same property?

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1 A. I did.

2 Q. Okay. Where did you respond at that
3 time?

4 A. I responded back to [REDACTED] East Front
5 Street.

6 Q. Okay. What did you observe when you
7 arrived?

8 A. I came in kind of beside the house,
9 which I came in on East Lake Street, which
10 their residence sits on the corner of East
11 Lake and East Front. As I come by the side
12 entrance, I could see that an officer had a
13 subject on the ground. I exited my patrol
14 car and went to the subject.

15 Q. Okay. What did you do next?

16 A. The officer asked me could I stay
17 with the subject until the EMS could check
18 him. He had some wounds that he had
19 sustained around his head area, looked like
20 he was bleeding. And I told him I would. I
21 stayed with the officer (sic). EMS came. He
22 was transported to AnMed Health.

23 Q. Did you identify that individual who
24 had been transported?

25 A. Yes, ma'am.

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Testimony of Timothy Richey - Direct Examination

1 Q. Okay. Who was that individual?

2 A. Mr. Robert Frost.

3 Q. Okay. Did he make any statements to
4 you while he was still on the property?

5 A. On the property, no, ma'am. We
6 didn't talk.

7 Q. Do you know what he was treated for
8 that evening at AnMed?

9 A. He was took to the emergency room.
10 And if I recall it was he had some wounds to
11 his head area.

12 Q. Okay. Did he make any statements
13 while you in ---

14 A. He did, ma'am. He made some -- he
15 blurted out some statements voluntarily. He
16 was asking where my father is. He said,
17 "Where's my father? I know my father should
18 be here somewhere because I know I got him
19 good. I know I got him good. He should be
20 here somewhere. He's probably in the morgue
21 down there on a slab. That's where he needs
22 to be." He said, "because I know I got him
23 good." "I know he's here somewhere."

24 Q. Okay. And did anyone else hear him
25 say that?

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1 A. There was a nurse in there that was
2 in and out. She was in when he was doing
3 most of that blurting out, talking.

4 Q. Did you ask him any questions?

5 A. No, ma'am.

6 Q. Did he just say this spontaneously?

7 A. Yes, ma'am. He would just
8 spontaneously, verbally blurting this out.

9 Q. Okay. What was the room like that
10 you were in?

11 A. It was just a normal emergency room
12 setting with a draw-like curtain that
13 separated everything.

14 Q. Was he in handcuffs?

15 A. Yes, ma'am.

16 Q. Okay. Were you in uniform?

17 A. I was.

18 Q. Were you carrying a weapon?

19 A. I was.

20 Q. Was it holstered at that time?

21 A. Yes, ma'am.

22 Q. Okay. What else, if anything did
23 you do that evening?

24 A. Once they had finished treating Mr.
25 Frost, I collected all of his belongings, his

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1 clothes and everything he had, and placed
2 them in an evidence bag. And once I was
3 through collecting the evidence bag, I walked
4 outside the room and turned over the evidence
5 to an Anderson County deputy.

6 Q. Okay. One moment.

7 SOLICITOR PRICE: Mr. Clerk.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR PRICE:

10 Q. I'm going to have our clerk show you
11 what's been marked as State's Exhibit 56.

12 CLERK: (Tenders Exhibit 56 to
13 witness)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR PRICE:

16 Q. Do you recognize that?

17 A. I do.

18 Q. Okay. And what is that?

19 A. This is a form that I actually made
20 out by hand. I didn't have an evidence form
21 on me at the time in the emergency room and I
22 didn't want to leave Mr. Frost without his
23 security at the time where he had been
24 detained. So I had this in my possession and
25 I made out a evidence form of what I took and

1 who I turned it over to. And I signed it and
2 a Lieutenant Chris Scott signed it.

3 Q. Okay. Is Lieutenant Chris Scott the
4 person to whom you turned over those items?

5 A. Yes, ma'am.

6 Q. And they were collected from Mr.
7 Frost?

8 A. Yes, ma'am. Personally.

9 Q. Okay.

10 SOLICITOR PRICE: Your Honor, at
11 this time, the State would seek to move in
12 Exhibit 56.

13 THE COURT: Any objection?

14 DEFENDANT FROST: No, sir.

15 THE COURT: All right. With no
16 objection.

17 (SO ENTERED AS STATE'S EXHIBIT 56)

18 SOLICITOR PRICE: Your Honor,
19 actually if Mr. Shirley can hand that back to
20 the witness.

21 CLERK: (Tenders Exhibit 56 to
22 witness).

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR PRICE:

25 Q. Captain Richey, can you tell me what

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1 you collected based on that sheet?

2 A. Yes, ma'am.

3 Q. From Mr. Frost?

4 A. One pair of black boots;

5 one pair of blue jeans;

6 one pair of sports shorts;

7 one pair of underwear;

8 Four hundred dollars (\$400) in cash;

9 a lighter;

10 one knife; and a pack of cigarettes.

11 Q. Thank you very much?

12 A. Yes, ma'am.

13 Q. After you handed these items over to
14 Lieutenant Scott, what did you do next? Or
15 later that evening?

16 A. Mr. Frost was placed in a type of --
17 if I remember right, some kind of suit that
18 they gave him at the emergency room, because
19 I took his clothes. I transported him to the
20 Anderson County Detention Center to be booked
21 in.

22 Q. He was booked in at that time?

23 A. Yes, ma'am.

24 Q. And when they book somebody in, do
25 they take a photograph?

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1 A. They do.

2 Q. Okay. Were you present when he was
3 booked in?

4 A. I was present when they was booking
5 him, but I was not present for the photo-
6 graph.

7 Q. Do you remember what he looked like
8 that evening?

9 A. I do.

10 Q. Okay. The clerk is going to show
11 you what's been marked as State's Exhibit 57.

12 CLERK: (Tenders Exhibit 57 to
13 witness)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR PRICE:

16 Q. Are you familiar with that exhibit?

17 A. Yes, ma'am.

18 Q. And what is that, sir?

19 A. This is a picture of Mr. Frost. It
20 appears to be a booking photo.

21 Q. Is it as he appeared that evening?

22 A. Yes, ma'am.

23 Q. After he had been treated at AnMed?

24 A. Yes, ma'am.

25 Q. Is it a true and accurate

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1 representation of the way you remember him?

2 A. Yes, ma'am. It is.

3 Q. Okay.

4 SOLICITOR PRICE: Your Honor, at
5 this time the State would seek to admit
6 Exhibit 57 into evidence.

7 THE COURT: Any objection?

8 DEFENDANT FROST: No, sir.

9 THE COURT: All right. Without
10 objection.

11 (SO ENTERED AS STATE'S EXHIBIT 57)

12 SOLICITOR PRICE: Your Honor, I
13 request permission to publish to the jury.

14 THE COURT: Sure.

15 (STATE'S EXHIBIT 57 PUBLISHED)

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR PRICE:

18 Q. Captain Richey, do you see the man
19 that you transported to AnMed ER who said his
20 father had to be there, that he was probably
21 in the morgue, that he "got him good", in the
22 courtroom today?

23 A. Yes, ma'am.

24 Q. Okay. Can you please point him out
25 and describe what he's wearing to the jury?

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1 A. Mr. Robert Frost, who's sitting
2 right there at the defendants table, wearing
3 a black, could be, or dark blue Polo shirt
4 with some tan pants.

5 Q. Aside from testifying in court today
6 and the events that we've already discussed,
7 did you have any further involvement in this
8 case?

9 A. No, ma'am.

10 Q. Okay. Thank you so much. Please
11 answer any questions that Mr. Frost has for
12 you.

13 THE COURT: Okay. Yes, sir.

14 CROSS-EXAMINATION

15 BY DEFENDANT FROST:

16 Q. How long has that been there?

17 A. Sir?

18 Q. How long has that been?

19 A. In 2012.

20 Q. In 2012. You got a pretty good
21 memory to be four years old, didn't you?

22 A. I recall pretty well.

23 Q. You recall pretty well. All right.

24 DEFENDANT FROST: No further
25 questions.

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1 THE COURT: Anything on redirect?

2 SOLICITOR PRICE: No, sir. May this
3 witness be excused?

4 THE COURT: Any objection to him
5 being excused?

6 DEFENDANT FROST: Yes, sir.

7 THE COURT: It's all right if he's
8 excused? You don't have any ---

9 DEFENDANT FROST: Yeah.

10 THE COURT: Okay. You're excused.
11 Thank you.

12 WITNESS: Thank you.

13 (WITNESS STEPS DOWN)

14 SOLICITOR PRICE: Your Honor, at
15 this time the State would call Dwayne
16 McElrath to the stand.

17 THE COURT: Okay.

18 (PREMARKED STATE'S EXHIBIT 58)

19 (PREMARKED STATE'S EXHIBIT 59)

20 (WITNESS TAKES STAND)

21 DWAYNE MCEL RATH, having been duly sworn
22 to tell the truth, and nothing but the truth,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR PRICE:

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1 Q. And Corporal, who do you work for
2 and in what capacity?

3 A. I work for the Anderson County
4 Sheriff's Office and I'm a crime scene
5 investigator.

6 Q. Okay. Is that part of the forensic
7 division?

8 A. Yes, ma'am.

9 Q. What sort of duties and response-
10 bilities are associated with your position?

11 A. As a crime scene investigator, it's
12 my responsibility to work crime scenes, that
13 being document, photograph, collect, process
14 any evidence that is collect in any crime
15 scene.

16 Q. Do you train new hires?

17 A. Yes, ma'am, I do.

18 Q. How long have you been in law
19 enforcement?

20 A. Roughly seventeen years.

21 Q. And how long have you been in
22 forensics?

23 A. Nine and a half years.

24 Q. Were you in your current position in
25 July of 2012?

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1 A. Yes, ma'am.

2 Q. Did you respond to a call on July
3 15th of 2012 that's led you to be in Court
4 today?

5 A. Yes, ma'am.

6 Q. What was the nature of that call?

7 A. A reported burglary that had an
8 assault with a death occurred.

9 Q. Okay. Did you respond with the ACSO
10 to assist a municipality?

11 A. Yes, I did.

12 Q. Do you recall which municipality it
13 was?

14 A. Iva City.

15 Q. And where did you respond?

16 A. [REDACTED] East Front Street in Iva.

17 Q. Is that in Anderson County?

18 A. Yes, ma'am.

19 Q. What time did you respond?

20 A. I came on duty around 7:00, so
21 roughly, probably around 9:00.

22 Q. Okay. In the evening?

23 A. Yes, ma'am.

24 Q. And you said you had just signed on
25 for duty?

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1 A. Yes, ma'am.

2 Q. Was this your first call of the
3 evening?

4 A. I think so.

5 Q. What did you do when you arrived at
6 the scene?

7 A. I met a Chief Tommy Miller on the
8 scene and he advised what they knew as of
9 right then. Said they was going to get a
10 search warrant for the property, for me to
11 just stand by until the search warrant
12 arrived.

13 Q. And did you?

14 A. Yes, ma'am.

15 Q. Did you meet with anybody from the
16 coroner's office?

17 A. Yes, ma'am, Deputy Coroner Boseman
18 arrived and we go photograph the deceased,
19 Mr. Davenport, in the back of the ambulance.

20 Q. Okay. So he was deceased on scene?

21 A. Yes, ma'am.

22 Q. Do you remember -- you said Mr.
23 Davenport. Was it a male victim?

24 A. Yes.

25 Q. Okay. So had the body been moved at

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1 the time you photographed it?

2 A. Yes, ma'am.

3 Q. By whom?

4 A. EMS.

5 Q. Okay. And where was the body when
6 you photographed it?

7 A. It was in the back of the ambulance.

8 Q Did the search warrant arrive later?

9 A. Yes, ma'am.

10 Q. And when it arrived, what did you
11 do?

12 A. I photographed the search warrant
13 and then I photographed the exterior of the
14 residence.

15 Q. Does the search warrant give you
16 permission to enter the property to conduct
17 your forensics exams?

18 A. Yes, ma'am, it does.

19 Q. Okay. And that's why you would be
20 waiting on it?

21 A. Yes, ma'am.

22 Q. How did you begin your forensic
23 investigation?

24 A. First of all I can take overall
25 photographs of the exterior and the interior

1 of the residence. And then I place placards
2 as it's being collected. Those placards are
3 little yellow triangle type placards,
4 probably about four inches tall. They're
5 marked with either letters or numbers. Mine
6 are currently marked with numbers, starting
7 with number one and continuing on.

8 Q. Did you move any of the evidence
9 prior to photographing it?

10 A. No, ma'am.

11 Q. Did someone with the Iva Police
12 Department give you a general sense of the
13 areas you needed to focus on?

14 A. Yes, ma'am.

15 Q. Do you also go through a crime scene
16 yourself to see if there's anything
17 additional needing to be collected or
18 photographed?

19 A. Yes, ma'am.

20 Q. So you took sets of photographs; is
21 that correct?

22 A. Yes, ma'am.

23 Q. And what do you do after photo-
24 graphing a scene with your markers?

25 A. I photograph with the markers in

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1 place. And then I go back and I collect the
2 evidence. I collect the evidence that's
3 marked. I package them individually and
4 either bag or box it, whatever it calls for.
5 And then I mark them with the number and the
6 location it came from.

7 Q. How do you collect them?

8 A. With gloves. Like I said, place
9 them in bags and or boxes.

10 Q. Do you do anything to the bags or
11 boxes as you collect?

12 A. Yes. I write the location of the
13 item and the marker number that corresponds
14 with the photographs that I've taken prior,
15 and seal it.

16 Q. So you keep a detailed record of the
17 location and what the item is?

18 A. Yes, ma'am.

19 Q. In addition to the photographs?

20 A. Yes, ma'am.

21 Q. Do you recall what you collected
22 from this crime scene?

23 A. From this particular crime scene I
24 collected, starting from the outside, I
25 collected a shirt from the outside on the

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1 ground.

2 I collected a knife from the kitchen
3 floor.

4 I collected several blood swabs. I think
5 I got one from the kitchen floor, bedroom
6 wall, a sliding glass door, the bedroom door.
7 I think I might have collected one more. I'm
8 not exactly sure.

9 Q. Okay. But a variety of blood swabs
10 from areas where you believe there was blood?

11 A. Yes, ma'am.

12 Q. Okay. What else?

13 A. I also collected the door plate that
14 was just inside the door at the point of
15 entry.

16 Q. Okay. Did you collect any
17 additional objects that you remember from the
18 bedroom area?

19 A. I collected a bat from the corner of
20 the -- one of the corners in the bedroom.

21 Q. After you collected those items, did
22 you do anything else to process the scene?

23 A. I processed it with LCV. There was
24 some blood on the walls so we processed it
25 with LCV, which is leucocrystal violet.

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1 Q. And what is that?

2 A. Leucocrystal violet is an agent that
3 reacts with the heme-group in blood. It's
4 used to -- its application is used to
5 identify blood stain patterns that is not
6 visible to the eye and also to enhance blood
7 stain patterns, further enhance blood stain
8 patterns that's already there.

9 Q. Did you do anything else at the
10 scene?

11 A. We photographed those bloodstain
12 patterns and that was it.

13 Q. When you collect items at the scene,
14 when you collect swabs or take samples of
15 things, is that a guarantee that they're
16 going to go to another test afterwards?

17 A. No, ma'am. No.

18 Q. Okay. Are you trying to collect
19 everything you can at the time out of an
20 abundance of caution?

21 A. Yes, ma'am.

22 Q. Okay. So simply because something
23 was processed with LCV doesn't mean that it's
24 going to be dealt with by a laboratory later?

25 A. No, ma'am.

1 Q. Did anyone else in forensics give
2 you any additional items to secure that
3 night?

4 A. Yes, ma'am. I contacted my
5 Lieutenant, Lieutenant Scott, and he
6 responded to the emergency room. I think he
7 met with Captain Richey from the Iva Police
8 Department and ---

9 Q. One moment.

10 A. And he met with Captain Richey of
11 the Iva Police Department and Captain Richey
12 gave him a bag of the Defendant's clothes.

13 Q. Okay. And what did Lieutenant Scott
14 do with those clothes?

15 A. He brought them back to the scene
16 and gave them to me, still in the bag.

17 Q. Do you remember what he gave you?

18 A. Yes, ma'am. It as a pair of boots,
19 a pair of blue jeans. There was a partial
20 pack of Pall Mall cigarettes, a black handle
21 knife, a red lighter and I think it was four
22 hundred dollars (\$400) in cash. I think it
23 was four one hundred dollar bills to be
24 exact.

25 Q. Okay. Do you remember if there was

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1 any underwear?

2 A. Yes, ma'am. There was a pair of
3 blue plaid underwear and a pair of blue and
4 gold like shorts.

5 Q. Okay. How was the items that you
6 took from Lieutenant Scott packaged?

7 A. They was all in one single bag.

8 Q. Okay. Did you repackage those
9 items?

10 A. Yes, ma'am, to place them into
11 evidence. After I got them back to the
12 office I did repackage those items in
13 individual bags separately.

14 Q. Okay. What did you do with all the
15 items that you collected?

16 A. All the items was then placed in the
17 evidence, in our evidence computer. It gives
18 it a certain number that can be tracked all
19 throughout the subject case.

20 Q. Is there a particular place that
21 evidence is stored? You say you took it
22 back. Is it stored in a particular location?

23 A. Yes, ma'am. It's stored in what we
24 call "intake." Intake is a place where,
25 after we put all the evidence in the

1 computer, we take and -- all of it's got
2 barcodes and then we place it in the intake
3 room and wait for -- and waits until the
4 evidence techs to place it in its forever
5 home.

6 Q. Okay. And is intake a secure
7 location?

8 A. Yes, ma'am.

9 Q. It's got limited access?

10 A. Yes, ma'am. The only people that
11 can go into intake is forensic officers and
12 evidence intake people.

13 Q. Is that done to guard against
14 tampering?

15 A. Yes, ma'am.

16 Q. What did you do with the photographs
17 that you took?

18 A. They was placed in a digital storage
19 base that we have.

20 Q. All right.

21 SOLICITOR PRICE: Mr. Shirley.

22 CLERK: (Tenders Exhibit 44 to
23 witness)

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR PRICE:

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1 Q. Mr. Shirley is showing you what's
2 been previously marked as State's Exhibit
3 Number 44. And it's previously been
4 introduced into evidence. Are you familiar
5 with that item?

6 A. Yes, ma'am.

7 Q. And what is that?

8 A. It's the ball bat in the bedroom,
9 corner of the bedroom wall.

10 Q. Okay. Thank you.

11 CLERK: (Tenders Exhibit Number 43
12 to witness)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR PRICE:

15 Q. Mr. Shirley is now showing you
16 what's been previously entered into evidence
17 as State's Exhibit 43. Are you familiar with
18 that item?

19 A. Yes, ma'am. It's the metal plate
20 from the doorframe that was collected just
21 inside the kitchen at the point of entry.

22 Q. And you collected that item?

23 A. Yes, ma'am.

24 Q. Okay.

25 CLERK: (Tenders Exhibit Number 41

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1 to witness)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR PRICE:

4 Q. And Mr. Shirley is now showing you
5 what's been previously admitted as State's
6 Exhibit 41. Are you familiar with that item?

7 A. Yes, ma'am.

8 Q. And what is that?

9 A. It's the knife that I collected from
10 the kitchen floor?

11 Q. Okay.

12 CLERK: (Tenders Exhibit State's
13 Exhibit 58 to witness.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR PRICE:

16 Q. Corporal, this has not been admitted
17 yet. Could you please open those items, take
18 a look and tell me if you recognize what you
19 see?

20 A. I got it.

21 Q. Do you recognize that?

22 A. Yes, ma'am. It's four one hundred
23 dollars that I placed into evidence on that
24 night.

25 Q. Are you certain?

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1 A. Yes, ma'am.

2 Q. Okay. And how can you be sure?

3 A. It was sealed by me and placed into
4 evidence with my name.

5 Q. The markings indicate to you that
6 that is the same -- the same money that you
7 collected that night?

8 A. Yes, ma'am.

9 Q. Okay.

10 SOLICITOR PRICE: And, Your Honor,
11 at this time the State would seek to admit
12 Exhibit 58 into evidence.

13 THE COURT: Any objection?

14 DEFENDANT FROST: No, sir.

15 THE COURT: All right. Without
16 objection.

17 (SO ENTERED AS STATE'S EXHIBIT 58)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR PRICE:

20 Q. Detective, actually, can you remove
21 Exhibit 58 from that envelope, please?

22 A. (Complies).

23 Q. And can you hold that up for the
24 jury?

25 A. (Complies).

1 Q. What are we looking at?

2 A. Four one hundred dollar bills.

3 Q. Okay. It's in one-hundred dollar
4 denominations?

5 A. Yes, ma'am.

6 Q. Okay. Thank you very much. And,
7 again, that was -- you collected that from
8 who?

9 A. This was in the bag of clothing that
10 was brought to me by Lieutenant Scott from
11 the hospital.

12 Q. That had been collected from Mr.
13 Frost?

14 A. Yes, ma'am.

15 Q. All right.

16 CLERK: (Tenders State's exhibit 59
17 to witness)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR PRICE:

20 Q. Our clerk is now going to show you
21 what's been marked as State's Exhibit 59.
22 Would you open that please and look inside
23 and tell me if you're familiar with that
24 item?

25 A. Yes, ma'am. This is the black-

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1 handle knife that was collected, that was in
2 the clothing, bag of clothing that came from
3 the hospital that came from Lieutenant Scott.

4 Q. Okay.

5 SOLICITOR PRICE: Your Honor, at
6 this time the State would seek to admit
7 Exhibit 59 into evidence.

8 THE COURT: Any objection.

9 DEFENDANT FROST: No.

10 THE COURT: All right. Without
11 objection it is entered.

12 (SO ENTERED AS STATE'S EXHIBIT 59)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR PRICE:

15 Q. And that exhibit also has your
16 initials markings on the packaging as well?

17 A. Yes, ma'am.

18 Q. Okay. Thank you.

19 SOLICITOR PRICE: Your Honor, at
20 this time I'd like to ask if the corporal can
21 step down and go through some photographs.

22 THE COURT: Sure. If you would,
23 just step down there.

24 WITNESS: Yes, sir, (complies).

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR PRICE:

2 Q. Stand right over here. First, if
3 you can, just flip through these exhibits and
4 tell me if you recognize these photographs?

5 A. (Witness complies) -- yes, ma'am.

6 Q. Okay. Are you familiar with those?

7 A. Yes, ma'am.

8 Q. Did you take those?

9 A. Yes, ma'am.

10 Q. Okay. Let's very briefly go over
11 what you were to these photographs, okay?

12 A. Okay.

13 Q. I'm showing you State's Exhibit 18.
14 What are we seeing?

15 A. All right. This is from the inside
16 of the bedroom where the, I think the whole
17 incident location occurred, back towards the
18 door that leads to the hallway.

19 Q. Okay. And did you take any swabs
20 from this area?

21 A. Yes, ma'am. I took some from the
22 bedroom door there and one from the floor of
23 the bedroom.

24 Q. Why?

25 A. It's just common practice. I mean,

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1 if blood is in a different location, so we
2 swab the blood just to make sure.

3 Q. Okay. You don't know if identity is
4 an issue when you're processing the scene at
5 that stage; do you?

6 A. No, ma'am.

7 Q. Okay. I'm showing you what's been
8 marked as State's Exhibit 19.

9 A. Okay. This again is the bedroom.
10 It's just inside the doorway, leading to the
11 bedroom and the left side, which would be the
12 front of the house.

13 Q. Okay. State's Exhibit 20?

14 A. There again, it's basically the same
15 picture, just inside the doorway. It would
16 be the left side of -- it would be the front
17 of the house, the left side of the bedroom.

18 Q. Okay. 21?

19 A. Again, this is another picture from
20 around the door area of the bedroom, looking
21 back toward the bed in the left side, the
22 front side of the house.

23 Q. Okay. Tell me if you notice
24 anything about the items in this area right
25 here?

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1 A. There's a lot of blood. There's a
2 lot of blood spatter. There's a lot of blood
3 on several different items in this
4 photograph.

5 Q. Do you remember the condition of
6 this room?

7 A. It was a disaster. It was ransacked
8 pretty good.

9 Q. Okay. This is State's Exhibit 22.

10 A. This is a picture of -- in the
11 kitchen, if you're coming from the bedroom,
12 back towards the kitchen, there's an island
13 in the kitchen. So this would be the right
14 side of -- actually it's the back side of the
15 kitchen area. And there was some type of --
16 I don't know if it was sugar or -- some type
17 of white powder that was spread across the
18 floor.

19 Q. Does that indicate signs of a
20 struggle?

21 A. Yes, ma'am.

22 Q. This is State's Exhibit 23.

23 A. That is the bat that I collected
24 from -- that we've previously seen. It was
25 collected from ---

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1 DEFENDANT FROST: Objection ---

2 THE COURT: I'm sorry.

3 DEFENDANT FROST: I object. That's
4 been moved and tampered with.

5 THE COURT: I'm sorry?

6 DEFENDANT FROST: That bat has been
7 moved and tampered with. And it had been by
8 Deputy O.R. (phonetic) -- and was placed in
9 that corner and tampered with.

10 THE COURT: Well, ask the question
11 if he knows where it was previously. I mean,
12 all he's doing now is describing what this
13 is. But on cross you can ask him if he knows
14 if it was there? If it was moved to some
15 other place. So overruled. He's just
16 identifying the object in the photograph.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR PRICE:

19 Q. Are you aware if this bat was moved
20 at any point in time?

21 A. Not that I know of. This is the
22 location I found the bat in.

23 Q. Is it possible that it could have
24 been moved by EMS at one point?

25 A. Yes, it could be.

1 Q. Okay. Are items often moved in
2 homicide scenes by people who are attending
3 to a potential victim?

4 A. Yes, ma'am.

5 Q. That's not unusual?

6 A. No, ma'am.

7 Q. Is this one of the placards that you
8 were just mentioning earlier?

9 A. Yes, ma'am.

10 Q. Okay. State's Exhibit 24?

11 A. Okay. This is at the end of the
12 hallway, which would be right at the front
13 door. And there's a little passageway that
14 leads to the bedroom. This would be the
15 bedroom door and the bedroom behind it.

16 Q. Okay. Do you notice anything about
17 the door?

18 DEFENDANT FROST: Objection, Your
19 Honor. She's leading the witness in
20 everything that she's doing. She sitting
21 there leading the witness ---

22 THE COURT: Well, she can -- no,
23 it's not a leading question to say 'do you
24 notice anything about the door?' That's not
25 leading so overruled. I mean, you keep

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1 making them. I'll listen. Go ahead.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR PRICE:

4 Q. Go ahead.

5 A. Okay. This is the hallway, the
6 little portion of a hallway that leads to the
7 bedroom. And that would be the bedroom door
8 you see and then the bedroom farther beyond.

9 Q. And did notice anything about the
10 door?

11 A. It does have blood on it.

12 Q. And, again, State's Exhibit 25?

13 A. This is another picture from just
14 outside the doorway of the bedroom that shows
15 basically a fuller area of the bedroom with
16 blood on the door and blood on the floor.

17 Q. Okay. State's Exhibit 26?

18 A. This is going to be the left side.
19 If you're looking at the front of the house,
20 it's the left side of the house, which would
21 have been the point of entry during this
22 incident.

23 Q. State's Exhibit 27?

24 A. It's just a closer-up photograph of
25 the point of entry.

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1 Q. State's Exhibit 28?

2 A. This is a red motorcycle that was
3 parked in the yard, just outside that point
4 of entry beside the house.

5 Q. State's Exhibit 29?

6 A. This is that same motorcycle. And
7 there's a shirt that had blood on it, just
8 laying on the ground right beside the
9 motorcycle.

10 Q. Okay. Did you mark that with a
11 placard?

12 A. Yes, ma'am.

13 Q. Can you see that in this photograph?

14 A. It's marked number one.

15 Q. This is State's Exhibit 30?

16 A. This is the knife that was located
17 in the floor of the kitchen.

18 Q. State's Exhibit 31?

19 A. This, again, is some blood and stuff
20 on the floor from inside the bedroom.

21 Q. State's Exhibit 32?

22 A. Again, it's inside the bedroom.
23 This is some blood and stuff on the floor and
24 different items.

25 Q. State's Exhibit 33?

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1 A. Okay. This is the actual doorframe,
2 the actual door itself taken from inside the
3 bedroom, looking out, just showing the blood
4 on the doorway.

5 Q. Okay. State's Exhibits 34 through
6 36, what do these depict? Just flip through
7 those, if you will?

8 A. Okay. This is going to be the
9 outside of the residence.

10 Q. As it appeared that evening?

11 A. Yes, ma'am.

12 Q. Okay. And you took these that
13 evening?

14 A. Yes, ma'am.

15 Q. Okay. State's Exhibit 37?

16 A. This is the doorplate that was
17 located right at the point of entry.

18 Q. Okay. That being where?

19 A. It would be on the left side of the
20 house, next to the yard where the motorcycle
21 and everything was.

22 Q. Okay. State's Exhibit 38?

23 A. All right. This is a picture of the
24 doorframe, which is where the actual door
25 plate would have went.

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1 Q. State's Exhibit 39, same?

2 A. Same picture, yes ma'am; just a
3 little closer up.

4 Q. Okay. And State's Exhibit 40?

5 A. This is a picture of the door
6 itself.

7 Q. Okay. And where was the plate found
8 in relation to this door?

9 A. Just right at the bottom of the
10 door.

11 Q. Okay. Detective or Corporal,
12 rather, can you flip through State's Exhibits
13 45 through 53 and tell me if you're familiar
14 with those photographs?

15 A. Yes, ma'am.

16 Q. Okay. And how are you familiar with
17 them?

18 A. Those are photographs that I took.

19 Q. You did. Okay. Let's briefly go
20 through these as well. State's Exhibit 45.

21 A. This was some type of purse or
22 wallet that was open, laying on the counter
23 in the kitchen.

24 Q. Okay. And were some items removed
25 from it?

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1 A. There was some items removed from
2 the wallet, just laying around the purse or
3 wallet.

4 Q. Okay. State's Exhibit 46?

5 A. This is a picture of the island
6 that's in the, inside the kitchen.

7 Q. Do you recall where the knife was
8 found in relation to the island?

9 A. I'm thinking the knife was right on
10 the other side of the island there.

11 Q. Okay. State's Exhibit 49?

12 A. That's a photograph of the knife.

13 Q. Okay.

14 A. That's marked number two. Number
15 three is an area that I actually took a blood
16 swab from.

17 Q. Okay. So there would have been
18 blood in that area as well, in the kitchen?

19 A. Yes, ma'am.

20 Q. Okay. State's Exhibit 49?

21 A. That's the wallet/purse, with some
22 items removed from it.

23 Q. Okay. We're going backwards a
24 little bit. Exhibit 48?

25 A. That's a picture of the door that

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1 leads into the kitchen from the outside.

2 Q. Okay. Exhibit 50?

3 A. I'm sorry. That's a picture of the
4 front door.

5 Q. Okay. Sorry, some of these are
6 flipped over? Exhibit 51?

7 A. That's a picture of the floor way
8 right at the front door with some blood.

9 Q. State's Exhibit 52?

10 A. Basically the same pictures. It's a
11 picture of the doorway with some blood and
12 there's a picture frame there.

13 Q. Okay. And State's Exhibit 53?

14 A. There again, that's a farther out
15 shot of the front door of the house.

16 Q. Okay. Thank you. Will you please
17 take the stand again?

18 A. (Complies).

19 Q. Corporal, when we were looking at
20 pictures with the blood, you are walking
21 through this scene?

22 A. Yes, ma'am.

23 Q. Do you take any precautions in terms
24 of protective wear that will keep you from
25 contaminating the scene?

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1 A. Yes, ma'am. I do put booties on,
2 booties and gloves on to wear through the
3 house so I won't get no blood on me.

4 Q. And, again, before you move any-
5 thing, you take a picture of the item?

6 A. Yes, ma'am.

7 Q. Then you put a placard down and take
8 an additional picture?

9 A. Yes, ma'am.

10 Q. And only then do you remove the item
11 and collect; is that correct?

12 A. Yes, ma'am.

13 Q. Okay. All right. Is that to ensure
14 that scenes are not tampered with?

15 A. Yes, ma'am.

16 Q. All right.

17 SOLICITOR PRICE: One moment.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR PRICE:

20 Q. Aside from testifying in court
21 today, did you have any further involvement
22 in this case, other than what we've already
23 discussed?

24 A. No, ma'am.

25 Q. Okay.

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1

2

SOLICITOR PRICE: One moment.

3

DIRECT EXAMINATION CONTINUED

4

BY SOLICITOR PRICE:

5

Q. Thank you so much. Please answer

6

any questions that Mr. Frost has for you at

7

this time.

8

A. Okay.

9

CROSS-EXAMINATION

10

BY DEFENDANT FROST:

11

Q. You testified that before anything

12

is moved that you take a picture of it before

13

it's moved?

14

A. Yes, sir. When I get there ---

15

Q. And you put a marker there before

16

it's moved?

17

A. Yes, sir. When I ---

18

Q. You take a picture of it before ---

19

THE COURT: Wait a minute. Let

20

him answer.

21

DEFENDANT FROST: Okay.

22

CROSS-EXAMINATION CONTINUED

23

BY DEFENDANT FROST:

24

Q. Go ahead.

25

A. Yes, sir. When I get there and

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1 after I take a picture of the search warrant
2 and take the exterior photos of the exterior
3 of the house, I go in the house and
4 photograph everything as it is found then.

5 Q. Yeah. Did you notice that the ball
6 bat had been moved prior to you coming in and
7 taking the picture of it?

8 A. No, sir. I had no way of knowing
9 that.

10 Q. You have no way of knowing?

11 A. (No verbal response).

12 Q. So you don't have no way of knowing
13 that the crime scene could have been tampered
14 with before you arrived?

15 A. No, sir. I have no way of knowing
16 if the crime scene had been -- if it had
17 been.

18 Q. Could it have been tampered with?

19 A. I mean, I guess it's a possibility
20 but the search warrant hadn't been gotten yet
21 so nobody had been in the house.

22 Q. Who was the investigator in charge
23 of that scene?

24 A. The Iva Police. I guess it would be
25 Chief Miller.

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Testimony of Robert McElrath - Cross Examination

1 Q. Chief Miller. Is that who you was
2 working for, Chief Thomas Miller?

3 A. No, sir. I work for the Anderson
4 County Sheriff's Office.

5 Q. You work for the Anderson ---

6 A. I was called in a -- because they
7 don't have the means so they call and use our
8 techs to assist them in the investigation.

9 Q. But he was the one that was in
10 charge ---

11 A. Yes, sir.

12 Q. --- of that investigation?

13 A. Yes, sir.

14 Q. He was in charge of all -- the whole
15 investigation basically?

16 A. Yes, sir.

17 Q. Except you coming over to collecting
18 items?

19 A. Correct.

20 Q. And before you take the picture of
21 the item, it's supposed to be in place where
22 it's at before it's ever moved.

23 A. When I go in and take a picture,
24 it's what I found when I walked in the house.

25 Q. Okay. All right. All right. Thank

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1 you, sir.

2 THE COURT: Is that it?

3 DEFENDANT FROST: Yes, sir.

4 THE COURT: Anything on redirect?

5 SOLICITOR PRICE: Nothing from the
6 State, Your Honor. May this witness be
7 excused?

8 DEFENDANT FROST: Do you mind if
9 he's excused from his subpoena, Mr. Frost?

10 DEFENDANT FROST: No, sir.

11 THE COURT: All right. You're
12 excused.

13 WITNESS: Thank you.

14 (WITNESS STEPS DOWN)

15 THE COURT: Call your next
16 witness.

17 SOLICITOR PRICE: Your Honor, at
18 this time, the State would call Thomas
19 Miller.

20 SOLICITOR PRICE: Your Honor ---

21 (OFF RECORD DISCUSSION BETWEEN SOLICITOR
22 PRICE AND MR. COLE)

23 MR. COLE: Your Honor, Mr. Frost
24 has a matter of law.

25 THE COURT: All right. Ladies and

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1 gentlemen, I need to send you out. Please
2 don't discuss the case.

3 (JURY OUT @ 4:26 P.M.)

4 THE COURT: Yes, sir. Hold on,
5 please.

6 BALIFF: Jury is secure, Your Honor.

7 THE COURT: Yes, sir?

8 DEFENDANT FROST: Yes, sir. I don't
9 want Officer Simpson to testify because he's
10 been into the courtroom listening to every-
11 body's testimony. He's been in the courtroom
12 listening to everybody testify.

13 SOLICITOR PRICE: Wait a minute,
14 Your Honor -- I'm going to ask you (Officer
15 Simpson) to step outside, please.

16 (OFFICER SIMPSON EXITS COURTROOM)

17 SOLICITOR PRICE: Your Honor, I
18 think the issue is I noticed when I turned
19 around and sat down just now, that Brent
20 Simpson, who testified earlier, had actually
21 been brought in here by courthouse security
22 and was working the room. He was on our
23 witness list. He's already testified. He's
24 been excused.

25 THE COURT: He's been released.

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Testimony of Robert McElrath - Cross Examination

1 SOLICITOR PRICE: He's been
2 released, but out of an abundance of caution,
3 even when somebody's released, it's typical
4 to keep them sequestered, I know, until the
5 end of the trial, until the close, in case
6 they have to be recalled.

7 I know that Mr. Frost -- I don't
8 believe that he intends to recall Mr.
9 Simpson, but I'm bringing it to the Court's
10 attention.

11 As soon as I noticed it, I asked him
12 to leave the courtroom and instructed him not
13 to come out until we do closings.

14 THE COURT: That's probably a good
15 idea. He shouldn't come back in. But I
16 understand he's not going to testify?

17 SOLICITOR PRICE: Not for the State,
18 Your Honor. But, again, I can't guess as to
19 what ---

20 THE COURT: Okay. We'll keep him
21 out. Is that all right with you? I don't
22 think that was -- I think that was just an
23 accident.

24 SOLICITOR PRICE: Yes, sir. I
25 believe so.

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1 THE COURT: All right. If y'all
2 give me just a few minutes.

3 Who's your next witness?

4 SOLICITOR PRICE: Your Honor, Thomas
5 Miller.

6 THE COURT: Okay.

7 SOLICITOR PRICE: And he's the
8 State's last witness.

9 (BRIEF RECESS)

10 (DEFENDANT PRESENT)

11 (PREMARKED STATE'S EXHIBIT 60.

12 THE COURT: This is y'all's last
13 witness?

14 SOLICITOR PRICE: Yes, sir.

15 THE COURT: Okay.

16 (OFF RECORD DISCUSSION)

17 THE COURT: Okay. You can bring
18 them in.

19 (JURY IN @ 4:35 P.M.)

20 THE COURT: You may call your next
21 witness.

22 SOLICITOR PRICE: Thank you, Your
23 Honor. The State calls Thomas Miller.

24 (WITNESS TAKES STAND)

25 THOMAS MILLER, having been duly sworn to

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1 tell the truth, and nothing but the truth,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR PRICE:

5 Q. Mr. Miller, who do you work for and
6 in what capacity?

7 A. I work for the Iva Rescue Squad.
8 I'm the assistant chief.

9 Q. Assistant chief for the Iva Rescue
10 Squad?

11 A. Yes, ma'am.

12 Q. And what sort of duties and
13 responsibilities are associated with that
14 position?

15 A. I'm over twelve employees. I do
16 their scheduling, non-emergency transports
17 and payroll.

18 Q. Were you in that position in July of
19 2012?

20 A. Yes, ma'am.

21 Q. Okay. Were you in another position
22 at that time as well?

23 A. Yes, ma'am, I was.

24 Q. Okay. And what was that additional
25 position?

1 A. I was the police chief for the Town
2 of Iva.

3 Q. Okay. Did you respond to a call on
4 July 15th, 2012 that's led to you being in
5 court today?

6 A. Yes, ma'am.

7 Q. What was the nature of that call?

8 A. I was called by dispatch, central
9 dispatch, and Jason Hawkins said there was an
10 assault that had occurred at [REDACTED] East Front
11 Street in Iva.

12 Q. Okay. And did you respond to that
13 location?

14 A. Yes, ma'am, I did.

15 Q. Okay. Once you got there, what did
16 you do?

17 A. I directed a couple of officers to
18 go ahead and set up the crime scene area, to
19 block off everything, make sure we had enough
20 personnel responding to handle the situation.
21 I went to the front door of the residence,
22 went inside. I observed EMS -- Bill Cross,
23 the paramedic, and EMS working on Mr.
24 Davenport.

25 Q. Where were they working on Mr.

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1 Davenport?

2 A. There was a little bedroom and a
3 little hallway when you first go into the
4 front door that's back to the left.

5 Q. And you were actively working on
6 him?

7 A. Yes, ma'am.

8 Q. And did you see Mrs. Davenport?

9 A. Yes, ma'am. She was on the front
10 porch.

11 Q. How did she appear?

12 A. She was upset.

13 Q. What did you do then?

14 A. I had gloves on. I had gloves so I
15 went ahead and helped EMS, because I do work
16 EMS part-time. I helped them load the
17 patient onto the backboard, strap him with
18 straps and then put him on the stretcher and
19 then we carried him to the ambulance which
20 was sitting thirty feet from the front door.

21 Q. What, if anything, did you notice
22 about the room where Mr. Davenport was being
23 worked on by EMS?

24 A. There was a lot of blood in the
25 hallway there.

1 Q. But they were still actively working
2 on him when you arrived?

3 A. Yes, ma'am.

4 Q. Okay. Did you contact another
5 agency to assist in this investigation?

6 A. Yes, ma'am, I did. I contacted the
7 Anderson County Sheriff's Office and I
8 contacted the Investigator with them

9 Q. Okay. Why?

10 A. Due to the nature of the call, I
11 wanted to make sure that we done everything
12 that needed -- you know, that we didn't miss
13 anything. Being a small police department,
14 you know, you don't work a lot of homicides.
15 You don't work a lot of assaults to that
16 nature. So I contacted him because he was
17 more knowledgeable.

18 Q. And did you also use Anderson County
19 Forensics?

20 A. Yes, ma'am, I did.

21 Q. Is that unusual?

22 A. No, ma'am.

23 Q. Okay. What did you do after you
24 assisted in getting Mr. Davenport into the
25 EMS?

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1 A. I went back to the porch and I spoke
2 with Mrs. Davenport. She kind of briefed me
3 on what had happened prior to EMS and 9-1-1
4 being called. I asked her several times to
5 go to the emergency room due to the traumatic
6 events she had seen, but she didn't want to
7 go. She wanted to stay and so we had asked
8 her to move across the street, still in the
9 crime scene but away from the initial crime
10 scene so there was no contamination.

11 Q. To keep the crime scene secure?

12 A. Yes, ma'am.

13 Q. At that point in time, did you
14 realize she had been stabbed?

15 A. No, ma'am, I did not.

16 Q. Okay. Later, was her injury
17 discovered?

18 A. Yes, ma'am. I was advised by Colin
19 Martin, he was a police officer for the Town
20 of Iva. He was with her, stayed by her side
21 and came up and told us that she had been
22 stabbed and needed to go to the hospital.

23 Q. Okay. She was transported to the
24 hospital?

25 A. Yes, ma'am.

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1 Q. Okay. Was anyone else transported
2 to the hospital?

3 A. Mr. Frost was transported to the
4 hospital but I wasn't with him when he was
5 transported.

6 Q. Okay. Did you learn anything else
7 about Mr. Davenport's status after you had
8 met with Mrs. Davenport?

9 A. I did. The EMS crew came and told
10 me that -- well, they wanted to speak to me.
11 I went back and talked to them instead of
12 letting them come into the crime scene. They
13 told me that Mr. Davenport was deceased and
14 that they had contacted the coroner's office
15 and also they had contacted the on-call
16 doctor at the ER to stop life-saving efforts
17 for Mr. Davenport.

18 Q. What did you do next in your
19 investigation?

20 A. Right at that time I directed Jason
21 Hawkins, who is the lieutenant now, to go to
22 the office and meet with Investigator Simpson
23 to obtain a search warrant and to start
24 typing a search warrant for that residence.

25 Q. Did he get a search warrant?

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1 DEFENDANT FROST: Objection.

2 THE COURT: I'm sorry. Yes, sir?

3 DEFENDANT FROST: He's testifying as
4 an investigator and he's not an investigator.
5 He was the investigator on that scene but
6 he's done lost his job as an investigator.

7 SOLICITOR PRICE: Objection, Your
8 Honor.

9 DEFENDANT FROST: That's impersonat-
10 ing an officer right there.

11 THE COURT: Hold on. Hold on.
12 Whoa. Whoa.

13 DEFENDANT FROST: He's impersonating
14 an officer.

15 THE COURT: Hold on. Stop. His
16 objection is -- was he the investigator at
17 the time of this incident?

18 SOLICITOR PRICE: He was, sir.

19 THE COURT: Was he the
20 investigator on this case?

21 SOLICITOR PRICE: He was, sir.

22 THE COURT: Okay. Overruled.

23 SOLICITOR PRICE: Thank you, Judge.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR PRICE:

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1 Q. Was a search warrant obtained?

2 A. Yes, ma'am, it was.

3 Q. And were you present when it was
4 executed?

5 A. Yes, ma'am, I was.

6 Q. Okay. I'm showing you -- well, I'm
7 actually going to have the clerk show you
8 what's been marked as State's Exhibit 60.

9 CLERK: (Tenders Exhibit 60 to
10 witness)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR PRICE:

13 Q. Can you look at that item and then
14 tell me if you recognize that?

15 A. Yes, ma'am, I do.

16 Q. How do you recognize it?

17 A. This is the search warrant obtained
18 by Brett Simpson and Jason Hawkins, which was
19 given to me and I presented to Judge Dennis
20 Bannister.

21 Q. Okay. And is it your signature on
22 it?

23 A. Yes, ma'am, it is.

24 Q. Okay. And is that a true and
25 accurate representation of the search warrant

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1 that was executed that evening?

2 A. Yes, ma'am, it is.

3 Q. Okay.

4 SOLICITOR PRICE: Your Honor, at
5 this time, the State would seek to admit
6 Exhibit 60 into evidence.

7 THE COURT: Any objection?

8 DEFENDANT FROST: Yes, sir. I
9 object because it had been tampered with.
10 Because he, at the time -- yeah, I do.

11 THE COURT: Well, I'll let you
12 cross him on it.

13 DEFENDANT FROST: Yeah. I object.
14 He's not an investigator.

15 THE COURT: I'll let you cross him
16 on it. Overruled.

17 (SO ENTERED AS STATE'S EXHIBIT 60)

18 SOLICITOR PRICE: Thank you.
19 If you don't mind leaving it up there
20 actually for the moment, Mr. Shirley.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR PRICE:

23 Q. Can you tell me what items were
24 collected pursuant to that search warrant?

25 A. One silver-in-color knife;

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1 one black baseball bat;
2 five blood swabs;
3 one brown-and-camo tee shirt
4 containing blood;
5 one door plate;
6 photographs;
7 Kawasaki Vulcan motorcycle, and then
8 it has a VIN number.

9 Q. Okay. After the search warrant was
10 executed, ---

11 SOLICITOR PRICE: Mr. Shirley, you
12 can take it down.

13 CLERK: (Complies)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR PRICE:

16 Q. -- what did you do next?

17 A. Well, before the search warrant,
18 before -- so I had them typing the search.
19 Let me go back to the first. When they were
20 typing the search warrant before I presented
21 it to Judge Bannister, I went to Ms. Rebecca
22 Keith who was the 9-1-1 caller who lived
23 across the street.

24 Q. Okay.

25 A. I went and obtained a statement from

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1 her as to what she had saw.

2 Q. Okay. Did she tell you what she had
3 observed?

4 A. Yes, ma'am. She had seen a white
5 male, baldheaded with a dark colored shirt.

6 Q. Did you present her with a photo
7 lineup?

8 A. Not that day. I obtained the photo
9 lineup a couple of days afterwards.

10 Q. Okay. Was she able to identify
11 anyone in the photo lineup?

12 A. No, ma'am. She wasn't.

13 Q. Okay. And did you take a statement
14 from her?

15 A. Yes, ma'am, I did.

16 Q. Did you speak to Captain Richey at
17 all that evening?

18 A. Yes, ma'am. Judge Bannister --
19 Judge Dennis Bannister was the captain over
20 security at the hospital. When I was there,
21 I briefly walked through the hall where
22 Captain Richey -- well, at that time it was,
23 Tim Richey and a nurse, Julie Roberts, and
24 spoke to both of those in the hall.

25 Q. Okay. And did you make contact with

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1 this defendant?

2 A. No, ma'am, I did not.

3 Q. Okay. Did you make contact with
4 this defendant at any time that night?

5 A. Not that I know.

6 Q. Okay. Where did you go after you
7 had the search warrant signed at the
8 hospital?

9 A. I was going back to the scene and
10 execute the search warrant that I had.

11 Q. Okay. All right. Do you remember
12 who was present when the search warrant was
13 executed?

14 A. Brent Simpson, myself, Jason
15 Hawkins, Investigator Scott and Investigator
16 McElrath from the sheriff's office.

17 Q. What did you do to secure the scene
18 or what did you direct people to do to secure
19 the scene of this crime?

20 A. Making sure that the crime scene
21 tape was up and make sure nobody entered the
22 scene. We actually had more than we normally
23 would have had. Due to the circumstances we
24 didn't want the crime scene contaminated.

25 Q. Okay. Did you keep people out of

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1 the scene?

2 A. Yes, ma'am, we did.

3 Q. Okay. Lay people were kept out of
4 the scene?

5 A. I'm sorry?

6 Q. Civilians were kept out of the
7 scene?

8 A. Yes, ma'am.

9 Q. And did you do anything the day
10 following this incident?

11 A. The day following the incident we
12 obtained -- we went to the autopsy.

13 Q. Okay. And what did you do after
14 that?

15 A. After that, we -- myself and
16 Investigator Simpson with the sheriff's
17 office had Mr. Frost brought to the sheriff's
18 office for questioning.

19 Q. Okay. And did you advise him of his
20 rights?

21 A. Yes, ma'am. I advised him of his
22 rights and he did sign the top of the
23 advisory of rights. When we asked him to
24 sign the waiver of his rights, he said he
25 needed an attorney so we stopped questioning

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1 him at that time.

2 Q. Okay. Did you charge Mr. Frost with
3 anything?

4 A. I did.

5 Q. What did you charge him with?

6 A. We charged him with murder first
7 degree; burglary first degree; assault and
8 battery -- no, I'm sorry -- attempted murder;
9 possession of a weapon during a violent
10 crime; and, armed robbery.

11 Q. Was that based on what you learned
12 from witnesses?

13 A. Yes, ma'am.

14 Q. As well as what had been collected
15 at the scene?

16 A. Yes, ma'am.

17 Q. Okay. Did you take statements from
18 any witnesses aside from Rebecca Keith?

19 A. Yes, ma'am, I did.

20 Q. And who did you take statements
21 from?

22 A. Samantha Tillman, took a statement
23 from her. She was Mr. Frost's neighbor who
24 lived across the street.

25 From Kayla Howington, who was Mr. Frost's

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1 ex-girlfriend.

2 And then I also took one from a Ms.
3 Smith, we went and obtained some recordings.

4 Q. Okay. Who is Ms. Smith?

5 A. That would be Mrs. Davenport's
6 sister.

7 Q. And did you take a statement from
8 Terry Frost?

9 A. I did take a -- I'm sorry. I did
10 take Terry Frost's.

11 Q. Okay. Did you meet at any time with
12 the nurse that was with Captain Richey the
13 night of the incident?

14 A. Yes. I met with Julie Roberts who
15 was a Registered Nurse who took care of Mr.
16 Frost.

17 Q. Did she give you a similar account
18 of the statements that Captain Richey heard?

19 A. Yes, ma'am.

20 Q. Did you have any of the prints that
21 were taken at the scene tested or any of the
22 clothes or other evidence tested for
23 additional trace evidence in this case?

24 A. No, ma'am. We did not.

25 Q. Okay. Why not?

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1 A. When we talked to the Solicitor's
2 office and the investigators, we found out
3 that there was three people involved, which
4 was Mr. Frost, Mr. Davenport and Mrs.
5 Davenport and there was no sense in sending
6 any other tests -- I mean sending stuff to be
7 tested when we knew it was an isolated
8 incident with those three.

9 Q. Okay.

10 A. We didn't want to I guess incur any
11 more costs than we needed to.

12 Q. Okay. And did you at any point in
13 time get any indication that there was an
14 additional party involved in this?

15 A. No, ma'am.

16 Q. Were all of the parties injured?

17 A. Yes, ma'am.

18 Q. Would it have been surprising to
19 find Mr. Frost's, Mrs. Davenport's or Mr.
20 Davenport's blood at the crime scene?

21 A. Yes, ma'am.

22 Q. It would have been surprising?

23 A. Oh, no, no, no. It wouldn't be a
24 surprise, no.

25 Q. No, it would not have been a

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1 surprise?

2 A. No. It would not have been a
3 surprise.

4 Q. Okay. All right. In your
5 investigation of this incident, did you
6 determine if there had been any prior
7 altercations between Mr. Frost and Mr.
8 Davenport?

9 A. Yes. Leading up to -- I mean, after
10 the days, after this happened, I did an
11 investigation and looked into some other
12 incidents that happened at the home. I
13 found, I believe that it was three instances
14 where Mr. Davenport [sic] had threatened to
15 kill his mother or stepfather -- I mean, I'm
16 sorry -- Mr. Frost had threatened to kill
17 Mrs. Davenport or Mr. Davenport.

18 Q. That was in the Town of Iva itself?

19 A. Yes, ma'am. That was years earlier.

20 Q. Prior to that incident date?

21 A. Yes, ma'am.

22 Q. And did you at any point determine
23 if Mr. Frost had actually been convicted of
24 an assault charge against Mr. Davenport?

25 A. Yes, ma'am. I had learned also --

1 I had contact with an investigator in Biloxi,
2 Mississippi where there was an incident in
3 2001 between Mr. Davenport and Mr. Frost.
4 And Mr. Frost was actually charged with
5 aggravated assault for cutting Mr. Davenport
6 in the chest area, the arm, and in the leg.

7 Q. Do you see the man you charged with
8 murder, attempted murder, armed robbery,
9 first degree burglary and possession of a
10 weapon during the commission of a violent
11 crime in the courtroom today?

12 A. Yes, ma'am. I do.

13 Q. Okay. Could you please point out to
14 the jury and describe what he's wearing?

15 A. Mr. Robert Frost. He's wearing a
16 blue shirt.

17 Q. Okay.

18 SOLICITOR PRICE: One moment.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR PRICE:

21 Q. All right. Thank you, Mr. Miller.
22 Please answer any questions that Mr. Frost
23 has for you at this time?

24 A. Yes, ma'am.

25 THE COURT: Yes, sir.

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1 CROSS-EXAMINATION

2 BY DEFENDANT FROST:

3 Q. You say you working at EMS at the
4 time in 2012, Iva EMS?

5 A. Yes, sir.

6 Q. Where else was you working at the
7 time?

8 A. The Town of Iva.

9 Q. The Town of Iva?

10 A. Yes, sir.

11 Q. What happened with your job there at
12 the Town of Iva?

13 SOLICITOR PRICE: Objection, Your
14 Honor.

15 THE COURT: Yeah. Hold on a
16 minute.

17 Ladies and gentlemen, let me send
18 you out for just a minute.

19 You can just stay right there, Mr.
20 Frost, because we're going to put it on the
21 record

22 (JURY OUT @ 4:52 P.M.)

23 THE COURT: What's the objection?

24 SOLICITOR PRICE: Your Honor, we had
25 had a motion *in limine* to exclude any

1 questions or testimony concerning what
2 happened with Mr. Miller's incident in ---

3 THE COURT: Oh, is this the stick
4 thing?

5 SOLICITOR PRICE: Yes, sir.

6 DEFENDANT FROST: All I was going to
7 do was just ask him why he resigned from
8 office. He resigned from office in -- I've
9 got a right and the jury's got a right to
10 know why he resigned from office.

11 THE COURT: Well, if I think they
12 do. Ask the question and let's see what the
13 answer is and then we'll go from there.

14 PROFFER CROSS-EXAMINATION

15 BY DEFENDANT FROST:

16 Q. Why did you resign from office?

17 A. Personal reasons.

18 Q. Personal reasons?

19 A. Yes, sir.

20 Q. Could it have been for arrest
21 charges?

22 A. No, sir.

23 Q. You didn't resign from arrest
24 charges?

25 A. No, sir.

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1 Q. Did you tamper with anything at the
2 scene?

3 (END PROFFER TESTIMONY)

4 DEFENDANT FROST: Never mind. We
5 got to bring the jury back.

6 THE COURT: Okay. Okay. You can
7 bring them back in.

8 You can ask him that first question
9 but don't go into the other stuff.

10 DEFENDANT FROST: Okay. I can ask
11 him about resigning from ---

12 THE COURT: Yeah. And if his
13 answer's going to be personal reasons, just
14 leave it at that.

15 DEFENDANT FROST: Personal reasons.

16 (JURY IN @ 4:53 P.M.)

17 THE COURT: Okay. You can ask the
18 question.

19 DEFENDANT FROST: All right.

20 CROSS-EXAMINATION CONTINUED

21 BY DEFENDANT FROST:

22 Q. What other job did you have besides
23 being with the EMS?

24 A. I worked for the Town of Iva.

25 Q. You worked for the Town of Iva.

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1 A. Yes, sir.

2 Q. What was your position for the Town
3 of Iva?

4 A. I was the police chief for the Town
5 of Iva.

6 Q. You was the police chief for the
7 Town of Iva?

8 A. Yes, sir.

9 Q. Are you the one that issued my
10 warrants?

11 A. Yes, sir.

12 Q. Was you the investigator on that
13 crime scene?

14 A. Yes, sir.

15 Q. If you'd a did the tests on them
16 DNA, could it have showed that somebody else
17 could have been there on that crime scene and
18 tampered with anything, if you'd a did the
19 test?

20 A. We had no knowledge of anybody else
21 being there, other than the three people that
22 was in the house.

23 Q. Could one of your officers tampered
24 with anything at the crime scene?

25 A. No, sir.

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1 Q. No, sir. Did you realize that the
2 bat had been moved and put in the evidence
3 lineup at the crime scene?

4 A. No, sir.

5 Q. Did you know that there was splatter
6 put on the wall at the crime scene, a picture
7 before and after the fact?

8 A. No, sir.

9 Q. You didn't know that neither?

10 A. No, sir.

11 Q. Did you know that there was an
12 impression in the side glass door to the
13 outside of the dayroom that indicated that
14 there was another weapon at the crime scene?

15 A. No, sir. It wasn't aware of that.

16 Q. You wasn't aware of that?

17 A. No, sir.

18 Q. I'm going to ask you again, do you
19 think that one of your deputies could have
20 tampered with anything at the crime scene?

21 A. No, sir.

22 Q. Since I've asked you them questions
23 do you feel like you should have gotten a DNA
24 test done just in case that there was
25 somebody that tampered with that crime scene?

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1 A. No, sir.

2 Q. That it would have showed up who it
3 was?

4 A. No, sir.

5 Q. You still don't feel like that?

6 A. No, sir.

7 Q. And why did you lose your job as the
8 chief of police?

9 A. I resigned for personal reasons.

10 Q. You resigned for personal reasons?

11 A. Yes, sir.

12 Q. What's your name again?

13 A. Thomas Miller.

14 Q. Thomas Miller. I'm going to ask you
15 the last time, if you tampered with anything
16 at the crime scene?

17 A. No, sir. I did not.

18 Q. I want to ask you another question,
19 did you kill my daddy?

20 A. No, sir.

21 Q. All right. Thank you, sir.

22 THE COURT: Anything on redirect.

23 SOLICITOR PRICE: One little
24 question.

25 REDIRECT EXAMINATION

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1 BY SOLICITOR PRICE:

2 Q. Mr. Miller, do you work for EMS?

3 A. Yes, ma'am.

4 Q. In fact, you oversee EMS; right?

5 A. I'm sorry?

6 Q. You oversee Iva EMS?

7 A. I am the assistant chief, yes,
8 ma'am.

9 Q. Is it uncommon when you're
10 responding to a trauma situation to clear an
11 area around a victim or a person that has
12 some wounds?

13 A. We teach our personnel not to move
14 anything but there is times, yes, ma'am, you
15 need to move stuff to be able to treat the
16 victim. But we try limit what we do move and
17 to preserve the evidence. And we do learn
18 that from law enforcement. So as a law
19 enforcement -- our EMS people don't go to
20 school for that, but they are taught by law
21 enforcement not to move evidence, yes, ma'am.

22 Q. If something is directly adjacent to
23 a person's body, would that potentially
24 necessitate moving that object?

25 A. It could.

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1 Q. And would that be uncommon?

2 A. No, ma'am.

3 Q. Thank you. No further questions.

4 SOLICITOR PRICE: May this witness
5 be excused.

6 THE COURT: Any objection to him
7 being excused?

8 DEFENDANT FROST: No, sir.

9 THE COURT: You're excused from
10 your subpoena.

11 WITNESS: Thank you.

12 (WITNESS STEPS DOWN)

13 SOLICITOR PRICE: Your Honor, at
14 this time, the State once again moves
15 Exhibits 1 through 61, minus Exhibit 42 and
16 61, which were for identification purposes
17 only into evidence. And the State rests.

18 THE COURT: All right. And I
19 think all of y'all agreed on those already;
20 is that correct.

21 DEFENDANT FROST: Yeah. I think
22 they was holding a witness for me to cross-
23 examine.

24 THE COURT: Yeah. She just
25 rested. Okay. So the State's rested?

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1 SOLICITOR PRICE: Yes, sir. The
2 State rests.

3 THE COURT: All right. Ladies and
4 gentlemen, at this point I'm going to have to
5 send you back. We may stay. I don't know
6 how many more witnesses. You've heard all of
7 the testimony that you're going to hear from
8 the State. It's now time for us to hear from
9 the Defense. Depending on the length of
10 that, we may just start tomorrow.

11 I told you the first of the week
12 that we'd have to stop early tomorrow. We
13 don't. I moved my appointment to Friday.
14 And -- I haven't told my wife yet. So
15 anyway, I've done that.

16 Give us five minutes to let me get a
17 feel for the time here. Don't talk about the
18 case.

19 (JURY OUT @ 4:59 P.M.)

20 THE COURT: Okay. Mr. Frost, at
21 this point they, the State has rested. Do
22 you have any motions that you want to make at
23 this time? You can speak with Mr. Cole about
24 the proper motions to make.

25 (DEFENDANT CONFERS WITH MR. COLE)

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1 THE COURT: Okay. Yes, sir. And
2 you can help him along. It's sort of a
3 procedural ---

4 DEFENDANT FROST: You can tell him.

5 MR. COLE: Your Honor, Mr. Frost
6 has asked me to articulate to the Court a
7 Motion that he's told me he wants to make.

8 DEFENDANT FROST: Okay.

9 MR. COLE: He said he wants to
10 make a Motion for a directed verdict at this
11 time as to all the charges because the State
12 has failed to present evidence necessary to
13 prove his guilt beyond a reasonable doubt.

14 He also wants to specifically note
15 that the charges of -- the burglary charge be
16 dismissed because the State has failed to
17 prove that the address where the incident
18 took place is not his residence.

19 And then, also, Your Honor, he wants
20 to move for a directed verdict specifically
21 as to the armed robbery because he had
22 received the receipts that were -- because of
23 the testimony that the State showed is that
24 the money went to -- his money went to that
25 house and also because the testimony showed

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1 that his mother sent money to him at the jail
2 so that any money that he may have gotten
3 from her, even if the State's testimony was
4 true, was his money.

5 THE COURT: Was his money and she
6 got it from Social Security and held it?

7 MR. COLE: Yes, Your Honor. I
8 believe those are his Motions at this time.

9 THE COURT: Okay. Anything else?
10 I mean, that pretty much.

11 DEFENDANT FROST: That's fine.

12 THE COURT: All right. I under-
13 stand your Motions. You're protected on the
14 record.

15 Let me just say this. I'm denying
16 the Motion for directed verdict on all
17 charges because I think the State has met its
18 burden so far.

19 And, of course, Mr. Frost, there'll
20 be a different Motion made after you've done
21 all of yours and there'll be a different
22 burden. I actually wondered about the
23 burglary charge early-on. But his mother's
24 testimony was that she was his -- she used a
25 different word. She was a co-receiver of the

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1 check and that he wasn't living there. He
2 was living in that house and I forgot the
3 address she said. So I'm going to deny that
4 Motion on the burglary. I actually expected
5 at this point to maybe grant that because I
6 assumed you were living there. But your
7 mother's testimony was different.

8 And on the armed robbery for the
9 same reason. That's a fact issue. That's
10 something you can argue to the jury that that
11 money was yours, but that's a fact issue for
12 them to determine. So I'm denying all your
13 Motions, but you're protected for the record.

14 Now, let me ask you this. How many
15 witnesses do you have?

16 DEFENDANT FROST: Just my mother.

17 THE COURT: Okay. How long do you
18 think it'll take?

19 DEFENDANT FROST: Yeah, my mother.
20 That's it.

21 THE COURT: Okay. How long do you
22 think it'll take, just generally?

23 DEFENDANT FROST: I don't know --
24 thirty minutes, I guess.

25 THE COURT: Okay. Let's take a

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1 little break. Do y'all mind if I stick my
2 head in there and make sure that they're --
3 and I'll do it myself. I hate doing that
4 because I don't want to have any contact with
5 the jury. But I just want to make sure
6 because I told them yesterday if we went past
7 I would tell them the day before. I'm
8 inclined to go ahead and go through and then
9 start a little later tomorrow morning,
10 because we've got to work on the charge and
11 go through all that. And have them come in
12 later. But I'm won't to talk to them unless
13 ---

14 SOLICITOR PRICE: I don't have any
15 objection, Your Honor.

16 THE COURT: Do you have any
17 objections? Mr. Cole, will you --

18 Actually, I'm going to ask that Mr.
19 Shirley do it. So just find out if they mind
20 staying until 5:45?

21 CLERK: Okay.

22 SOLICITOR PRICE: Your Honor, also
23 is Mr. Frost intending to ---

24 THE COURT: Well, that would be
25 something I figured we'd have to do once he's

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1 called his mother.

2 SOLICITOR PRICE: Okay. Thank you.

3 THE COURT: Are you intending to
4 testify, Mr. Frost?

5 DEFENDANT FROST: No, sir.

6 THE COURT: All right. Well, at
7 the end of the day then before you rest, I
8 will go through your Fifth Amendment Rights.
9 I'll be right back.

10 (BRIEF RECESS)

11 (DEFENDANT PRESENT)

12 THE COURT: Okay. We'll bring
13 them back in. They're willing to stay. And
14 what my intention is we'll call the two
15 witnesses and any Motions -- let them go and
16 then we can discuss any other Motions. And
17 then we'll start a little later tomorrow
18 because quite frankly this is her first jury
19 charge, it'll take us a little while and I
20 don't want to rush on that. Okay.

21 Mr. Frost, are you ready to call
22 your first witness?

23 DEFENDANT FROST: Yeah.

24 THE COURT: Yeah. Go ahead and
25 bring them in.

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1 Are you going to call your mother
2 first?

3 DEFENDANT FROST: Yeah. I can call
4 her first.

5 (JURY IN @ 5:11 P.M.)

6 THE COURT: Okay. For the record,
7 the clerk of court, Mr. Shirley spoke to the
8 jury. I told you yesterday or the day before
9 that we wouldn't work late unless I gave you
10 a day's notice. My understanding is that he
11 stuck his head in and simply asked if you
12 were willing to stay for another half hour or
13 so, to move us substantially along in this
14 case. And my understanding is that you don't
15 mind; is that correct, Mr. Foreman?

16 MR. FOREMAN: Correct.

17 THE COURT: Okay. Thank you.

18 All right. You can call your first
19 witness, Mr. Frost.

20 DEFENDANT FROST: Yeah. I call Faye
21 Davenport.

22 THE COURT: Mr. Cole, what I'm
23 going to do is do the Fifth Amendment at the
24 end, after I've let them go, okay?

25 MR. COLE: Yes, Your Honor.

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1 CLERK: Just right here, Mrs.
2 Davenport.

3 WITNESS: Yes, sir.

4 CLERK: I'm just going to remind
5 you that you are still under oath.

6 WITNESS: Okay.

7 CLERK: There's no need to swear
8 you in again.

9 (WITNESS TAKES STAND)

10 FAYETTA DAVENPORT, having been previously
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY DEFENDANT FROST:

14 Q. I just want to ask you a few
15 questions, Mama. Did you -- now, it's been
16 four years and I know it's been a while. Did
17 you see me cut Dad?

18 A. I didn't understand you, Robert.

19 Q. Okay.

20 A. Did I what?

21 Q. Did you see me cutting, cut dad?

22 A. In Mississippi?

23 Q. No. Up here at [REDACTED] East Front
24 Street, did you see me cut him?

25 A. Yes. I seen you stabbing him.

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1 Q. Stabbing, okay. All right.

2 A. Now, as far as when the knife went
3 in, I was -- I don't know whether it went out
4 or whether it was going in, but I seen you
5 stabbing him.

6 Q. How many times do you think ---

7 A. It was going just as quick as you
8 could go, one after the other.

9 Q. All right. But did you see me cut
10 him?

11 A. I -- at the time, I knew I had to
12 get out of there. You brought the knife down
13 and was going to his throat and I knew what
14 you were going to do, so I had to get out of
15 there or I felt like I was going to be the
16 next one. And then you did tell me, going up
17 towards the kitchen, you said "I'm going to
18 kill you now."

19 Q. And you said you seen me stab him;
20 right?

21 A. It was stabbing and then that last
22 time that I actually looked at you, you were
23 going to his throat, on this side looked
24 like. Because he was laying on the floor and
25 he was begging me to help him.

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1 Q. It didn't look like I could have
2 been cutting him anywheres in his body area,
3 arms or ---

4 A. Oh, you was stabbing him all in his
5 stomach, ---

6 Q. I said cut, slice, cut?

7 A. No, not just slicing him, but you
8 was putting it him and moving it -- but as
9 far as you know, just cutting, I don't -- I
10 can't -- I know the knife was going in him,
11 in and out, just as quick as you could pull
12 it in and out. And you could have been
13 slicing as you were pulling out.

14 Q. All right. Thank you, Mama.

15 DEFENDANT FROST: No further
16 questions.

17 THE COURT: All right. Anything
18 from the State?

19 SOLICITOR PRICE: Just one.

20 THE COURT: Okay.

21 CROSS-EXAMINATION

22 BY SOLICITOR PRICE:

23 Q. Mrs. Davenport, isn't it true that
24 Robert, at one point in time said to you he
25 was jealous of James because he had taken you

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1 away from him?

2 A. Yes.

3 Q. Okay.

4 SOLICITOR PRICE: No further
5 questions, Your Honor.

6 THE COURT: All right. Anything
7 on redirect?

8 DEFENDANT FROST: Yeah.

9 REDIRECT EXAMINATION

10 BY DEFENDANT FROST:

11 Q. When did I make that statement?

12 A. You were five years old.

13 Q. I made that statement when I was
14 five?

15 A. No, you made that statement when you
16 was about fifteen or twenty. You felt like
17 that, I guess, that I might have put more
18 time in with my husband because you were
19 getting grown. Because, you know, for two
20 years there me, you and Danny were all
21 together everywhere we went, everything we
22 done. There was no difference whatsoever.

23 Q. Did you see daddy hit me with the
24 ball bat?

25 A. Yes, he did.

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1 Q. He did hit me first?

2 A. He hit you as you were doing that
3 towards him. You were -- you already had the
4 knife in your hand and you were going towards
5 him and he beat you with the ball bat.

6 Q. Last question, did you see me cut
7 Dad?

8 A. Like I said, Robert, the knife went
9 in and -- it was just one time right after
10 the other. So I don't know whether there
11 were cut places or just stab places, but
12 there were seventeen of them, I know.

13 Q. Okay. All right. Thank you, Mama.

14 THE COURT: Okay. You can be
15 excused. Thank you.

16 SOLICITOR PRICE: Your Honor, may
17 this witness now be released?

18 THE COURT: Any objection to that?

19 DEFENDANT FROST: No, sir.

20 THE COURT: Okay. She's relieved
21 from her subpoena.

22 (WITNESS STEPS DOWN)

23 (OFF RECORD DISCUSSION)

24 THE COURT: Okay. You can call
25 your next witness.

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1 DEFENDANT FROST: Yes, sir. Scott.

2 (WITNESS TAKES STAND)

3 SCOTT HAWKINS, having been duly sworn to
4 tell the truth, and nothing but the truth,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY DEFENDANT FROST:

8 Q. Who do you work for Mr. Hawkins?

9 A. Upstate Private Investigators.

10 Q. Upstate Private Investigators. When
11 we talked earlier, I showed you some
12 pictures. Let' me see if I can find them.

13 (DEFENDANT REVIEWING EXHIBITS)

14 DIRECT EXAMINATION CONTINUED

15 BY DEFENDANT FROST:

16 Q. This one?

17 A. This is Defendant's Exhibit 4.

18 THE COURT: He can't see that from
19 there. I mean, I tell you this one won't
20 reach over there. If you want to, you can go
21 on the other side of that. Stand by Officer
22 Carroll, yeah.

23 I really want to make sure that the
24 court reporter can hear you so speak to her
25 anyway. That may help. Okay.

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1 (WITNESS STEPS DOWN)

2 MR. COLE: Let's mark this for
3 identification purposes.

4 (PREMARKED AS DEFENDANT'S EXHIBIT 17)

5 COURT REPORTER: Marked for
6 identification as Defendant's Exhibit 17,
7 Your Honor.

8 MR. COLE: Your Honor, I believe
9 the State consents for this to be introduced
10 as an exhibit.

11 SOLICITOR PRICE: No objection, Your
12 Honor.

13 THE COURT: All right. Without
14 objection.

15 (SO ENTERED AS DEFENDANT'S EXHIBIT 17)

16 DIRECT EXAMINATION CONTINUED

17 BY DEFENDANT FROST:

18 Q. Is that right there, is that the
19 sliding glass door we was talking about
20 earlier?

21 COURT REPORTER: Repeat the
22 question, please.

23 DIRECT EXAMINATION CONTINUED

24 BY DEFENDANT FROST:

25 Q. I'm asking Mr. Scott, is that the

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1 sliding glass door that we was talking about
2 earlier that there'd be a knife impression to
3 open up a door from the inside to go out to
4 the outside?

5 A. That is the sliding glass door that
6 you were talking about with the investigator
7 earlier.

8 Q. Could that be a knife impression in
9 there, to open up the door?

10 A. It is marked by an investigator
11 number seven, for further testing. Whether
12 it's blood, whether it's a knife impression I
13 can't really say. I wasn't there to actually
14 observe it.

15 DEFENDANT FROST: Can I put this one
16 up there, that picture. Zoom in on it.

17 DIRECT EXAMINATION CONTINUED

18 BY DEFENDANT FROST:

19 Q. You see that one?

20 A. Defendant's Exhibit 4.

21 Q. What does that impression look like
22 to you? That little aluminum piece right
23 there, does that look like a knife or a knife
24 made an impression that would be pushed into
25 the aluminum?

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1 A. Are we talking about the red mark?

2 Q. No, the aluminum door, right there.

3 Right up to the top of the red mark.

4 A. Can you point it out?

5 Q. Right there (indicating).

6 A. I guess that could be anything. It
7 could be wear and tear. I mean, could be a
8 knife mark. I guess it could be a knife mark
9 but I can't really -- I'm not expert on ---

10 Q. But does it look like that that
11 could be imbedded into the aluminum, like
12 it's pressed into the aluminum?

13 A. It appears be chipped.

14 Q. Does the bloodstain look like it's
15 been pressed into the aluminum?

16 A. I can't -- I can't really tell if it
17 was pressed into the aluminum. I can tell
18 there is a bloodstain there or what appeared
19 to be a blood stain. I can't say definitive-
20 ly that's blood.

21 Q. He took it as blood. He took
22 samples from -- he took samples. So that
23 right there is a sample.

24 A. And he's got -- there's a marker
25 there.

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1 Q. Yeah. Yeah. There's a marker
2 there. So that's actually blood. And can
3 you testify that that's blood on the inside,
4 and the impression is on the inside of the
5 door, from the inside?

6 A. Can you zoom the picture back out?

7 Q. (Complies).

8 A. From the looks of the picture when I
9 looked at it earlier, I mean, it does appear
10 to be on the inside of the residence. Maybe
11 from not that picture. Maybe you have
12 another picture.

13 Q. Right here. Put it up.

14 CLERK: This is Defense Exhibit
15 Number 17.

16 DIRECT EXAMINATION CONTINUED

17 BY DEFENDANT FROST:

18 Q. Zoomed in?

19 A. On that picture it does appear to be
20 on the inside.

21 Q. On the inside. If we could zoom in
22 on it, back up -- right there. It's on the
23 inside of the residence?

24 A. Yes, sir.

25 Q. So it would be opening the door from

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1 the inside, basically?

2 A. As far as the bloodstain, the stain
3 is located on the inside of the residence.

4 DEFENDANT FROST: I've got one better
5 than that, on the ball bat. You just can't
6 see it.

7 CLERK: This is Defense Exhibit 6.

8 DEFENDANT FROST: You can't see it from
9 right there. I know there was another one.
10 We got another one. That one.

11 (OFF RECORD DISCUSSION)

12 CLERK: This is State's Exhibit 23.

13 DIRECT EXAMINATION CONTINUED

14 BY DEFENDANT FROST:

15 Q. Is that the bat right there in the
16 bedroom that the deputy talked about moving
17 at the crime scene?

18 A. That appears to be the bat that I
19 think he testified earlier that was
20 originally on the floor.

21 Q. That was originally on the floor,
22 that he moved?

23 A. (No verbal response).

24 Q. Does that look like a smear mark
25 there on the wall, a bloody smear mark?

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1 A. It does appear to be a bloody smear
2 mark. It's red in color. It's -- right
3 there inside the crime scene where the
4 altercation took place. So I would have to
5 assume -- I can't state that is blood, but
6 you can assume that it is.

7 Q. Okay. So -- all right. That bat
8 was on the floor and placed there, as far as
9 ---

10 A. As far of their testimony ---

11 Q. As far as their testimony.

12 A. I can't say because I wasn't there.

13 Q. As far as their testimony, that was
14 the bat?

15 A. Correct.

16 Q. Do you feel like that the deputy
17 moved the bat, that he could have put that
18 smear mark there as well since the bat is
19 being placed?

20 A. I mean, that's always a possibility.

21 Q. It's always a possibility. That's
22 placing evidence?

23 A. Well, it could have been in the rush
24 of trying to help your dad, revive your dad.
25 They had on gloves. They were just moving it

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1 out of the way. But it could have been
2 intentional or not intentional. I can't
3 really say either way.

4 Q. Could be an "O.J. Simpson." If the
5 glove don't fit, then acquit. Placing the
6 bat in evidence.

7 A. (No verbal response).

8 CLERK: This is Defense Exhibit 5.

9 DIRECT EXAMINATION CONTINUED

10 BY DEFENDANT FROST:

11 Q. Does that look like blood stains on
12 Jesus' head right there?

13 COURT REPORTER: On what, please?

14 THE COURT: Repeat that?

15 DIRECT EXAMINATION CONTINUED

16 BY DEFENDANT FROST:

17 Q. Does that look a bloodstain on the
18 statue's head?

19 A. The coloration is consistent with
20 the color of blood. Now, I can't say that --
21 again, I can't really say that is blood.
22 It's not marked but I know a lot of blood in
23 the area in the room is not marked, so -- I
24 mean, it is red-in-color and there is a lot
25 of blood in the room. So -- I can't really

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1 say for sure that is blood.

2 Q. Did you remember what the victim
3 said, that I never touched nothing in the
4 room, nothing like that?

5 COURT REPORTER: Could you speak
6 up, please?

7 DIRECT EXAMINATION CONTINUED

8 BY DEFENDANT FROST:

9 Q. Do you remember what the victim said
10 that I never touched anything in the room, or
11 anything like that?

12 A. The victim being your mom?

13 Q. My mother.

14 A. I do remember her saying that she
15 didn't touch anything in the room, I do
16 believe. But then she said that she did
17 leave the room and she went to the kitchen
18 area. So I ---

19 SOLICITOR PRICE: Your Honor, I'm
20 going to object. He's testifying as to
21 someone else's testimony.

22 THE COURT: Sustained.

23 SOLICITOR PRICE: Thank you.

24 CLERK: This is Defense Exhibit 3.

25 DIRECT EXAMINATION CONTINUED

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1 BY DEFENDANT FROST:

2 Q. You see those stains right there on
3 the wall?

4 A. Yes, sir.

5 Q. All right. Does that appear to be
6 blood?

7 A. It appears to be but it isn't marked
8 by the investigator for testing or further
9 investigation.

10 Q. Do you see it any on this one?
11 That's the same picture, but it's just a
12 different picture. We've got two different
13 pictures.

14 A. Can you put them up side by side?

15 CLERK: This is Defense Exhibit 2.

16 DIRECT EXAMINATION CONTINUED

17 BY DEFENDANT FROST:

18 Q. This one? It's that one.

19 A. This picture is a little blurred but
20 it does appear that there's a stain. It's
21 not as -- it's not the same as this picture.

22 CLERK: Those were Defense Exhibits
23 2 and 3 being shown to the witness.

24 THE COURT: Okay.

25 DEFENDANT FROST: All right. That's

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1 all the pictures. Could I ask him some more
2 questions?

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION CONTINUED

5 BY DEFENDANT FROST:

6 Q. Do you know Tommy Miller?

7 A. I do know Tommy Miller.

8 Q. Was he the chief of police in Iva
9 when this crime was committed?

10 A. He was.

11 Q. Does he have an arrest record?

12 SOLICITOR PRICE: Objection, Your
13 Honor.

14 THE COURT: Sustained. You can't
15 ask that question. We've dealt with that.

16 DIRECT EXAMINATION CONTINUED

17 BY DEFENDANT FROST:

18 Q. Has he recently been divorced?

19 SOLICITOR PRICE: Objection, Your
20 Honor. Relevance.

21 THE COURT: Well, I'll let him ask
22 the question. But you can answer if you
23 know.

24 WITNESS: He has recently
25 divorced.

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1 DIRECT EXAMINATION CONTINUED

2 BY DEFENDANT FROST:

3 Q. Do you feel like Tommy Miller could
4 have tampered with anything at the crime
5 scene?

6 A. Honestly, I don't see why Tommy
7 Miller would have a reason to tamper with any
8 of the evidence.

9 Q. How about Deputy O.R.?

10 A. When you say Deputy O.R., who is
11 Deputy O.R.? Are we talking about -- I think
12 there was a couple of deputies that worked
13 this crime scene. The very first one on the
14 scene was Vaughn.

15 Q. Vaughn. Chris Vaughn. Deputy Chris
16 Vaughn.

17 A. I don't know why any of the officers
18 would have a reason to tamper with the
19 evidence. Of course, I don't -- again, I was
20 just retained on Monday and haven't had
21 really enough time to do a thorough
22 investigation. But I don't know any past --
23 any history between you and Mr. Vaughn and
24 you and the police department.

25 Q. Did Mr. Vaughn admit, though, to

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Jury Trial of August 22-25, 2016
Testimony of Scott Hawkins - Direct Examination

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1 moving the weapon?

2 A. He did admit or I did hear ---

3 SOLICITOR PRICE: Objection, Your
4 Honor. Again, he's asking him to comment on
5 other witnesses' testimony. I've allowed the
6 witness to take the stand.

7 THE COURT: I understand. I think
8 his answer was going to be you heard someone
9 else testify.

10 WITNESS: Yes, sir.

11 THE COURT: Sustained. He can't
12 say what somebody else said. They've heard
13 all the testimony.

14 DEFENDANT FROST: All right. No
15 further questions.

16 THE COURT: Okay. Anything from
17 the State?

18 SOLICITOR PRICE: Nothing from the
19 State, Your Honor.

20 THE COURT: Okay. You can step
21 down.

22 (WITNESS STEPS DOWN)

23 THE COURT: All right. Do you
24 have any other witnesses?

25 DEFENDANT FROST: No, sir.

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Examination of Defendant's Right to Testify

1 THE COURT: All right. So you're
2 resting?

3 DEFENDANT FROST: Yes, sir.

4 THE COURT: All right. Before you
5 rest --

6 Ladies and gentlemen, I need to send
7 you out of the courtroom for five minutes.
8 I'll bring you back in and tell you what
9 we're going to do tomorrow.

10 (JURY OUT @ 5:36 P.M.)

11 THE COURT: Okay. Mr. Frost, if
12 you would just stand and come up around here.
13 I'm going to ask you -- you've decided not to
14 testify; right?

15 DEFENDANT FROST: Yes, sir.

16 THE COURT: All right. I want to
17 just be real careful and make sure that I
18 explain your rights. We've reached a point
19 in time when you could testify if you wanted
20 to or you have, I think, made the decision
21 not to testify. And I want to explain to you
22 what your right is under the Fifth Amendment.
23 And that is no person and this is the United
24 States Constitution, can be compelled to
25 testify against themselves. So I can't make

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Examination of Defendant's Right to Testify

1 you testify. And no one else can make you
2 testify.

3 DEFENDANT FROST: Yes, sir.

4 THE COURT: Your decision not to
5 testify has to be completely your decision?

6 DEFENDANT FROST: Yes, sir.

7 THE COURT: So have you talked
8 with Mr. Cole and any other people about your
9 decision on whether you're going to testify?

10 DEFENDANT FROST: Yes, sir.

11 THE COURT: Has anybody forced you
12 or threatened you in any way to make a
13 decision?

14 DEFENDANT FROST: No, sir.

15 THE COURT: And have you made the
16 decision about whether or not you're going to
17 testify?

18 DEFENDANT FROST: Yes, sir.

19 THE COURT: What's that decision?

20 DEFENDANT FROST: No, sir.

21 THE COURT: All right. And you
22 understand that I will give a charge to the
23 jury that says they can't hold it against you
24 that you didn't testify; you understand that?

25 DEFENDANT FROST: Yes, sir.

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Examination of Defendant's Right to Testify

1 THE COURT: All right. But no
2 one's coerced you in any way or threatened
3 you or in any way forced you to make this
4 decision?

5 DEFENDANT FROST: No, sir.

6 THE COURT: It's your decision,
7 made alone?

8 DEFENDANT FROST: Yes, sir.

9 THE COURT: Okay. Thank you.
10 Okay. Here's the deal -- is there anything
11 in rebuttal?

12 SOLICITOR PRICE: Nothing from the
13 State.

14 THE COURT: Okay. So we've now
15 reached the point where we're doing closing
16 arguments and I going to have to read the
17 charge. The charge is fairly lengthy. I see
18 at this point also he probably needs to renew
19 his Motions.

20 MR. COLE: Your Honor, I believe
21 he wants to do that and he wants to make one
22 other Motion, at this point, Your Honor, if
23 Your Honor will permit him to do that.

24 THE COURT: Yeah. Now's the time.
25 You just want to renew the Motions you made

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Jury Trial of August 22-25, 2016

Defense Motions for Mistrial and Directed Verdict

1 for directed verdicts?

2 MR. COLE: Yes, Your Honor. We'd
3 like to -- he's asked me to renew the
4 directed verdict motions that we made before,
5 Your Honor. And he's also asked me to move
6 for a mistrial based on Your Honor's refusal
7 to grant a continuance for him to get a
8 private investigator. For him to have more
9 time to have a private investigator.

10 THE COURT: Okay. All right. And
11 just for his protection, I'm going to
12 incorporate all the arguments you made in the
13 Motion for directed verdict into this Motion.

14 MR. COLE: Thank you, Your Honor.

15 THE COURT: I think that protects
16 him best. Motions are denied. As far as in
17 this trial, here's the way I saw it going.
18 You had a right to a -- and I don't have --
19 I'm not going back in my notes. But he had a
20 judge give you the right to hire a private
21 investigator. You had somebody from the
22 lower part of the State you wanted, so a
23 couple of months go by there. But at the
24 very least, my recollection is you were
25 notified on July 18. And I think that was

1 the date this trial was coming upon the
2 22nd of August. And my memory from three days
3 ago is that you waited until this week or
4 last week to hire an investigator. So my
5 decision really was whether or not to
6 continue the trial to give you time. I felt
7 like, quite frankly, in the record that you'd
8 been given plenty of time. But again, I'm
9 protecting you on appeal and that's really
10 what I'm trying to do here. I'll deny that
11 Motion, but I will incorporate any arguments
12 for directed verdict Motions previously made
13 into your current Motion.

14 MR. COLE: Your Honor, there was
15 one other one that I forgot about that he'd
16 asked me as well, Your Honor. He would also
17 like to move for mistrial at this time, based
18 on Your Honor's decision to not allow him to
19 bring up Tommy Miller's arrest history.

20 THE COURT: Okay. All right. And
21 I understand that. And that was the arrest
22 history that occurred two years after this
23 incident; right?

24 MR. COLE: Yes, Your Honor.

25 THE COURT: Okay. All right. And

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Charge Conference & Motions

1 I didn't see under 403 how that had anything
2 -- I didn't see how it met the requirements
3 of 403, quite frankly isn't relevant. But
4 the fact that it occurred two years after
5 this gave me greater confidence that I was
6 making the right ruling. So I'll deny it.

7 MR. COLE: I believe that's all
8 the Motions he wanted to make.

9 THE COURT: Okay. All right.
10 Here's the problem. And we're off the record
11 here for this.

12 (OFF RECORD DISCUSSION)

13 MR. COLE: Your Honor, the
14 Defendant did have a request to charge. And
15 I'll get a copy to the state. This deals
16 with -- it looks like he's pulled this from
17 Corpus Juris Appendum about residence. And I
18 think he ---

19 THE COURT: About?

20 MR. COLE: Residence, Your Honor.
21 Residence, as far as the burglary charge. So
22 he wanted me to submit that for the Court's
23 consideration.

24 THE COURT: Okay. I'll make this
25 Court's Exhibit 1, but I won't charge that,

1 but I'll make it a part of the record. I
2 mean, that is as I said was a factual issue
3 for them to determine. You can argue that
4 you lived there, but your mom testified
5 differently.

6 Okay. Let me bring them back in.

7 What?

8 COURT REPORTER: That's Court's
9 Exhibit 3.

10 THE COURT: Three.

11 (SO ENTERED AS COURT'S EXHIBIT 3)

12 THE COURT: We'll try to have this
13 on paper for you at 10:00 and then give y'all
14 an hour to tell us where we messed up, okay.
15 I'm going to take it home with me tonight and
16 then have to meet with her in the morning.

17 SOLICITOR PRICE: Your Honor, since
18 Mr. Frost doesn't have access to email, I
19 would like to ask this evening if the State
20 has a request to charge, that they see that
21 need to be incorporated, would it be
22 appropriate for me to copy your clerk as well
23 as Mr. Cole on behalf of Mr. Frost, so that
24 there's advance notice to the clerk.

25 THE COURT: I can't imagine -- if

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1 y'all come up with something, save it for
2 tomorrow and we'll insert it.

3 SOLICITOR PRICE: Yes, sir.

4 THE COURT: That way he, Mr.
5 Cole's not getting emails about changes in
6 the charges ---

7 SOLICITOR PRICE: Yes, sir. Okay.

8 THE COURT: All right. Let's
9 bring them back in.

10 (JURY IN @ 5:44 P.M.)

11 THE COURT: All right. Ladies and
12 gentlemen, you've now heard all the testimony
13 that you're going to hear in this case. We
14 have reached the point in the trial where the
15 next thing you will hear will be the closing
16 arguments from the parties and then finally
17 my very long charge to you that I have to
18 read to you. We've got a little bit of
19 disconnect here on this charge and it has
20 nothing to do with this trial. It's going to
21 delay us a little bit in the morning. So
22 rather than you be here at 10:00, I'm going
23 to ask that you be here -- now, Mr. Shirley
24 and I have had had an argument about this. I
25 think that it will be 11:00 before we get you

1 in here, maybe even 11:30. But he says he'll
2 bring doughnuts if y'all come at 10:45. So
3 between 10:45 and 11:00 be in the jury box.
4 Be ready basically to listen to the closing
5 arguments and my closing charge. And then
6 you'll get this case for deliberation. I
7 suspect that whatever time we begin, if we
8 begin at 11:30, I suspect by 1:00 you'll be
9 back there deliberating. But we do have a
10 little bit of glitch that prevents us from
11 starting at 10:00. We just can't start until
12 10:45 or 11:00. And don't be mad if it's
13 11:30. It'll be your last day that you have
14 to report.

15 For the last time I'll tell you,
16 don't read anything. I will tell you there
17 is publicity on this case. I'm just telling
18 you. And you can read it all you want
19 tomorrow night. But don't read anything,
20 listen to any radio broadcast or watch any
21 television about this case. Don't do any
22 internet researches or talk to anyone in your
23 family or any of your friends.

24 And if anybody contacts you, let me
25 know immediately and I'll take care of it.

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1 Otherwise, I'll see you at between
2 10:45 and 11:00 tomorrow. Thanks. Thanks
3 for your patience.

4 (JURY OUT @ 5:48 P.M.)

5 THE COURT: I want to tell y'all
6 one thing before we go but after the jury is
7 out. I can't imagine anything -- I mean, the
8 charge is pretty much the charge. But
9 because I really don't want you to get
10 inundated, let's just wait until tomorrow.
11 I'm going to take this home. In fact, if you
12 want me to, I will give you the pleasure of
13 the rough, rough, draft. I may cut from it.
14 But if you want to look at it tonight, that's
15 fine with me.

16 SOLICITOR PRICE: Sure.

17 MR. COLE: That'd be fine, Your
18 Honor.

19 THE COURT: I mean, I can tell you
20 right now that I will cut stuff out and add
21 some, but you won't have much more. You may
22 have less than this.

23 So give us just a minute, okay?

24 SOLICITOR PRICE: Your Honor, what
25 time do you want to see us back tomorrow?

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1 THE COURT: I'd say 10:00.

2 SOLICITOR PRICE: Okay.

3 THE COURT: I mean, now y'all will
4 have time to read this.

5 SOLICITOR PRICE: Yes, sir.

6 (OFF RECORD CHARGE CONFERENCE)

7 (COURT IN RECESS)

8 (TRANSCRIPT CONTINUED NEXT PAGE)

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Charge Conference & Motions

1

2

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11:10 A.M.

3

4

(DEFENDANT PRESENT)

5

THE COURT: Okay, we're off the

6

record.

7

(OFF RECORD CHARGE CONFERENCE)

8

THE COURT: Okay. Anything we need

9

to take up before we do closing arguments?

10

SOLICITOR PRICE: Nothing from the

11

State, Your Honor.

12

THE COURT: Mr. Frost?

13

DEFENDANT FROST: No, sir.

14

THE COURT: Okay. All right. Y'all

15

will go first.

16

SOLICITOR PRICE: Well, Your Honor,

17

he moved evidence in, so I believe he's waived

18

the right to first argument. I mean -- yes.

19

THE COURT: So you want him to go

20

first?

21

SOLICITOR PRICE: Yes, sir. He gave

22

up his right to last argument.

23

DEFENDANT FROST: I object to that.

24

THE COURT: Well, she's theoretical-

25

ly right. I mean, how bad is that? I mean,

1 theoretically you put in evidence so that's a
2 waiver of your ---

3 DEFENDANT FROST: Well, she put in
4 evidence too.

5 THE COURT: Well, I know. But she
6 has to because she's got to prove the case.

7 DEFENDANT FROST: Yeah, but she's the
8 prosecutor. She prosecutes me and I defend
9 myself.

10 THE COURT: I understand. But then
11 you put into evidence of self-defense, so I
12 probably am going to have to -- if she's going to
13 push it, you've got to go first and then she goes
14 last. It doesn't matter, I mean ---

15 SOLICITOR PRICE: Well, Your Honor, I
16 don't want push it. I have an issue with it.

17 THE COURT: And I don't mean that's
18 bad. You know me.

19 SOLICITOR PRICE: Yes, sir. I
20 understand.

21 THE COURT: I don't want to throw
22 him off.

23 SOLICITOR PRICE: Sure. Your Honor,
24 I will go first as long as that's what the
25 Defense is amenable to.

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1 THE COURT: Are you okay with her
2 doing that?

3 DEFENDANT FROST: Yes, sir.

4 THE COURT: Because technically,
5 it's a right you have that she only gets to go up
6 once instead of twice.

7 DEFENDANT FROST: Okay.

8 SOLICITOR PRICE: Well, Your Honor,
9 if I go first, I don't intend to open and -- open
10 on the law and then close. I'd like to combine
11 mine.

12 THE COURT: So you're just going to
13 do it all.

14 SOLICITOR PRICE: Yes, sir.

15 THE COURT: That's fine with me.
16 The rules are within my discretion. Y'all tell
17 me what you want.

18 DEFENDANT FROST: That's fine.

19 THE COURT: All right. She'll go
20 first and then you'll go last?

21 DEFENDANT FROST: Yes, sir.

22 THE COURT: And then depending on
23 how long y'all go, I'll either give them a short
24 break or I'll clear the desk here and start
25 reading to them.

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Charge Conference & Motions

1 All right. Let's bring them in.

2 I'm going to use the indictments for
3 verdict forms, like the old ways. And I'll show
4 you that before ---

5 SOLICITOR PRICE: Pardon me?

6 THE COURT: The back of the
7 indictment is the verdict form.

8 SOLICITOR PRICE: Yes, sir.

9 THE COURT: Instead of a separate
10 verdict form. Do you understand what I'm saying?
11 On the outside of the indictment it has Verdict
12 down here and we'll just have them write guilty
13 or not guilty.

14 SOLICITOR PRICE: Yes, sir.

15 (JURY IN AT 11:14 A.M.)

16 THE COURT: (Coughing) -- excuse me.
17 As you can tell, I've gotten progressively worse
18 this week. And as I told you earlier, I have the
19 good fortune and the bad fortune to be married to
20 a doctor. She is, uh, -- takes very good care of
21 me but she's real mad at me right now. She just
22 doesn't understand this. So I apologize my voice
23 is going. But we're at the point where we're
24 going to begin the -- start the process of
25 getting this case to you.

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1 What we'll do is we'll hear the
2 closing arguments from the parties. Then I will
3 have to read to you the law in this case. And
4 just so you understand it's in excess of thirty
5 pages. So, I don't mean it -- I do mean it sort
6 of jokingly, but I do want you to be able to pay
7 attention to me. It is sometimes very technical
8 and will require you to listen. But I will go as
9 fast as I can through it so it's comprehensible.
10 So I won't just read slow to you.

11 You'll have the opportunity and I'll
12 explain this at the end to come back if you don't
13 understand something and ask me to recharge it.

14 What I'll do is, depending on the
15 length of the closing statements, I'll either go
16 right into the jury charge on the law or I'll
17 give you a short break to stretch. And I'll also
18 give you the opportunity -- if you need to go to
19 the restroom after the parties have given their
20 closing statements, I'll give you that right. So
21 you won't have to go during my charge. It's more
22 difficult for us to leave once I start my charge.
23 Well, actually, we do not let anyone leave the
24 courtroom or come in. I'm not saying I wouldn't
25 let you go if you really had to go, but we'll

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Closing Argument by Solicitor Price

1 deal with that right before I start.

2 All right. Yes, ma'am?

3 SOLICITOR PRICE: Thank you, Your

4 Honor. May it please the Court?

5 THE COURT: Yes, ma'am.

6 CLOSING STATEMENT

7 BY SOLICITOR PRICE:

8 Ladies and gentlemen of the jury, thank
9 you for your time and for your attention and
10 patience this week. I said at the beginning of
11 this trial that you all had lives outside this
12 courtroom. And that I appreciated you taking
13 time out of your lives to assist me with this
14 case this week.

15 There's one person that doesn't have a
16 life outside of this courtroom. That person is
17 James Davenport. So if you'll indulge me, I'm
18 going to ask that you continue to give me your
19 time and your attention as I go through some of
20 the evidence that was put before you this week
21 and summarize how it does indeed show that this
22 defendant is guilty beyond any reasonable doubt.

23 Now, after I'm done arguing and after
24 Mr. Frost is done arguing, the Judge is going to
25 instruct you on the law. If anything I say or

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Closing Argument by Solicitor Price

1 that Mr. Frost says is different than what the
2 Judge says, go with what the Judge tells you on
3 the law. We're only arguing, so you have to go
4 with what the Judge instructions you the law is.

5 You've heard a number of times and
6 you'll hear it again that this Defendant comes
7 into this courtroom innocent. And that as the
8 State, I have the burden of proving this case to
9 you beyond a reasonable doubt. That's a
10 fundamental concept of American law. And as the
11 State, I embrace that burden but ladies and
12 gentlemen we've met it.

13 And remember this from seemingly the
14 most insignificant charge of speeding, all the
15 way up to the most serious crimes like those that
16 we have before you today, in criminal trials the
17 burden is the same. So if it was insurmountable
18 burden, the State would never be able to obtain a
19 conviction.

20 The Judge told you earlier and I
21 believe he'll tell you again that beyond a
22 reasonable doubt doesn't mean beyond all doubt.
23 It simply means that you are firmly convinced of
24 this defendant's guilt.

25 Now, there are very few things that we

1 know with utmost certainty. And so the law
2 doesn't expect you to know that this defendant is
3 guilty beyond all certainty, just be firmly
4 convinced.

5 In order to convict this Defendant, as
6 I told you and as the Judge has told you, we have
7 to not only prove each charge, but we have to
8 prove each element of the charges beyond a
9 reasonable doubt. So before you, you have
10 charges of murder; attempted murder; armed
11 robbery; first degree burglary; and, possession
12 of a weapon during the commission of a violent
13 crime. In addition to those, you must also
14 consider self-defense.

15 Now, I'm going to go through each of
16 the charges and each element of those charges.
17 And I'm going to remind you right now that some
18 of the testimony that you heard that supports
19 each of the elements of each of these offenses.
20 There is more support for each of these charges
21 than what I intend to go over with you now. But
22 I trust that you've been paying attention as the
23 case proceeded this week and I simply want to
24 highlight some of the support for each element of
25 each offense. You may find or remember

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Closing Argument by Solicitor Price

1 additional evidence for each element on your own
2 and in the deliberations.

3 First, I want to bring your attention
4 to the charge of possession of a weapon during
5 the commission of a violent crime. This occurs
6 when the defendant or a defendant is in
7 possession of a weapon -- in this case we're
8 alleging it's a knife -- or what visibly appears
9 to be a weapon -- again, in this case a knife --
10 to the victim during the commission of a violent
11 crime. This is fairly straightforward.

12 In South Carolina we have crimes that
13 are considered violent crimes. They're
14 categorized as violent crimes. Murder is
15 considered a violent crime. So if you, as the
16 jury, determine that this defendant committed
17 murder and killed James Davenport and used the
18 knife to do that, then you have also determined
19 that he was in possession of a weapon during the
20 commission of a violent crime. It's that simple.

21 Murder is less simple and you have a
22 charge of murder before you today. Murder is
23 defined as the killing of another person with
24 malice aforethought, either expressed or implied.
25 So the key to the crime of murder in the State of

1 South Carolina is malice.

2 And what do we mean by that? Well,
3 the term "malice aforethought" does not mean that
4 the crime had to be planned ahead of time or
5 plotted. In fact, the crime doesn't even have to
6 be plotted out ahead of time. Malice can be
7 conceived at the very moment that the crime
8 occurs. Malice is a term that has the
9 connotation of ill will or hatred toward another
10 or hostility. It's the intentional doing of a
11 wrongful act without just cause or excuse and
12 with the intent to inflict injury. I believe
13 that is how the Judge will instruct you of that
14 later on.

15 But how as members of this jury do you
16 determine malice? How do you get into someone's
17 mind? It's an emotion. It's a state of mind.
18 So how can you be expected to read someone's
19 mind? Well, as I said, the law specifies that
20 malice can be either expressed or implied. So
21 expressed malice is direct evidence that the
22 defendant had ill will or hatred or hostility
23 towards his victim. A good example of that is
24 words. A statement can be evidence of expressed
25 malice. But the law, again, doesn't require you

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1 to read someone's mind.

2 And so you can have implied malice as
3 well. You can look at the actions of the
4 defendant and you can infer malice for any
5 actions of that individual. You can impute ill
6 will or hatred for the victim from the actions of
7 the defendant. That's what we call implied
8 malice.

9 Now, you as the jury can also find both
10 of those present. It doesn't have to be just
11 expressed malice or just implied malice. You can
12 have both. And in this case, I submit to you
13 that you do have both.

14 Attempted murder, which you also have
15 before you, contains the same elements of murder
16 but with an unsuccessful completion of the act of
17 the killing. So it's an attempt to kill someone
18 with malice aforethought, but the act is not
19 completed.

20 Now, looking at the facts that were
21 presented as to those two charges before you this
22 week, you heard that Mr. Frost planned to kill
23 James Davenport. You heard that he had hostility
24 and hatred towards Mr. Davenport. And you heard
25 that he tried to kill his mother as well.

1 You heard testimony first from Samantha
2 Tillman and from Russell Dennis who both told you
3 that they saw the Defendant the day of this
4 incident and that he was acting abnormally and
5 angry. And they said that Robert told them that
6 the next time that he saw them or that they saw
7 him would be on the 11:00 News. He even told
8 Russell Dennis explicitly that he was going to go
9 kill somebody. Samantha said she saw Mr. Frost
10 put something in the saddlebag of his motorcycle.
11 Russell Dennis said he saw Mr. Frost put knives
12 in the saddlebag of his motorcycle.

13 Samantha, you heard, tried to call Mrs.
14 Davenport but got a busy signal. You now know
15 from testimony from Mrs. Davenport, that's
16 because she was repeatedly taking her phone off
17 the hook during the day. His behavior was enough
18 to put Samantha and Russell on notice that
19 something was happening.

20 You can imply from his behavior that
21 something was afoot. Now, all of these
22 statements of Robert and actions of preparation
23 show that malice aforethought.

24 But you have something even better to
25 consider, and that's the Defendant's own words.

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Closing Argument by Solicitor Price

1 You have many minutes, thirty-eight approximately
2 minutes of voicemails from Mr. Frost to Kayla
3 Howington throughout the week leading up to this
4 event. You heard the Defendant's own words. He
5 said, "Return this call, it's over -- life and
6 death. Kayla, you ain't going to be able to see
7 me no more because I'm fixing to go to jail,
8 Kayla. I'm getting on my motorcycle and I'm
9 going down there to mama's and that's where I'm
10 going to jail at. I'm fixing to go to mama's and
11 that's going to be the end of it. You happy?
12 You happy with what you're doing? I'm sitting
13 here trying to figure out a way to god'damn kill
14 myself, but god-damn I ain't got no gun, so I
15 guess I'm going to have to hang myself. But
16 first I'm going down there to mama's and I'm
17 going to put a god'damn knife to her throat and
18 I'm going to make the police kill my ass."

19 And, again, excuse my language. These
20 are the words of the Defendant. These are not my
21 words, ladies and gentlemen. But these words are
22 so important that I'm directly quoting him.

23 He also said, and, "if you don't
24 believe it just watch the damn News." He said,
25 "I'm going to ride my motorcycle down there."

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1 And he said, "I'm going down there and I'm going
2 to kill my daddy. I'm going to kill my daddy. I
3 almost killed him one time and this time, I'm
4 going down there to kill him. And I'm going to
5 hurt my mama. And I'm going to make 'em kill me
6 on that front porch."

7 You heard all of that. That's express
8 malice. That shows evidence of his intent to
9 kill James and to kill Fayette.

10 You heard for years before this and all
11 that afternoon, he was calling the Davenport
12 residence and telling them he was coming there to
13 commit this very act. These are all examples of
14 expressed malice.

15 You heard from Faye Davenport that
16 Robert said, "I'm going to go back there and kill
17 that son of a bitch." And that he ran to the
18 front bedroom of the residence with a knife. She
19 testified she watched her son stab her husband
20 repeatedly. She tried to intervene and she
21 eventually fled after James fell to the floor and
22 she Robert making a motion at James' throat.
23 Robert caught up with her at that point. And you
24 heard her testimony. She said that Robert said,
25 "I'm going to kill you now." And he held the

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1 knife to her throat.

2 She was stabbed twice during this
3 incident ladies and gentlemen. The only reason,
4 I submit to you that he didn't finish this act is
5 because Lieutenant Vaughn pulled up at the time
6 that he did.

7 And you heard testimony from Mrs.
8 Davenport and from Lieutenant Vaughn that that
9 very night she conveyed to officers that he
10 stopped as he noticed that the police car was
11 outside. I submit to you that he intended to
12 kill her. He had specific intent to kill Mrs.
13 Davenport. He had already killed Mr. Davenport
14 and he was going to finish Mrs. Davenport as
15 well. The act was interrupted but the intent was
16 there.

17 Now, ladies and gentlemen, you heard
18 from Dr. Woodard, the wounds that Mr. Davenport
19 received are consistent with the account of this
20 incident as was told to you by Mrs. Davenport.
21 The actions of Mr. Frost are what killed Mr.
22 Davenport and what resulted in injury to Mrs.
23 Davenport and could have resulted in her death
24 had he been successful.

25 The State through the testimony you

1 heard and the evidence that was presented has
2 proven each of the elements of attempted murder
3 and murder.

4 Now, that's not all that this Defendant
5 is charged with. He's also been charged with
6 first degree burglary. To prove first degree
7 burglary, the State has to prove that the
8 Defendant entered a dwelling, a home, a residence
9 of someone -- not a business, but a home -- with
10 the intent to commit a crime therein and that one
11 of the following things or more than one applies:

12 He was armed with a deadly weapon;

13 He caused physical injury to someone who was
14 not a participant in his crime;

15 He used or threatened to use a dangerous
16 object;

17 He displayed a weapon; and/or that

18 This happened in the nighttime.

19 Ladies and gentlemen, I submit to you
20 that all of these are applicable. You only have
21 to have one.

22 He was armed with a knife, which is a
23 deadly weapon.

24 He caused physical injury to more than
25 one party. He killed Mr. Davenport. He stabbed

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1 Mrs. Davenport. They were not participants in
2 his crime. He had specific intent to do this
3 when he entered, as we've already discussed.

4 He threatened to use and did use, in
5 fact, a dangerous object; again, the knife. He
6 displayed the knife.

7 And you heard testimony that this
8 happened in the evening. It was dark outside.
9 It was in the nighttime. It was approximately
10 7:00 or 8:00.

11 You were offered testimony additionally
12 from Rebecca Keith, Becky Keith, that she
13 witnessed someone kick in the side door to the
14 Davenport residence. She said she witnessed
15 Robert Frost -- well, she said someone. She said
16 she witnessed a person get an object out of a
17 saddlebag to a motorcycle. That's consistent
18 with what Samantha Tillman and Russell Dennis
19 told you. She thought it was a tire iron. What
20 does a tire iron look like? It's long, silver,
21 looks a lot like a knife. But she's across the
22 street. And she sees someone kicking in the door
23 to this residence, making forcible entry.

24 He was not a welcome guest, ladies and
25 gentlemen. She heard yelling and she called 9-1-

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1 1. And that's why, again, Fayette Davenport is
2 alive today. Rebecca Keith is a hero. Rebecca
3 Keith saved Faye Davenport's life. Make no
4 mistake about that.

5 Faye told you that Robert kicked in the
6 door as well. She told you they had locked all
7 of the doors earlier that day.

8 She told you that Robert did not live
9 at their home, that some of his mail came there,
10 that she assisted him with his Social Security.

11 And you heard from Kayla Howington,
12 from Samantha Tillman and you also heard from
13 Russell Dennis that this Defendant resided on
14 Boston Street and had lived there for several
15 years. Some said two, some said three.

16 In any event, the home that was broken
17 into did not belong to this Defendant. Ladies
18 and gentlemen, he did not have permission to
19 enter this home and you heard that he wasn't
20 heading over for a visit. He was coming over to
21 kill her. He was not an invited guest.

22 The State has met all of the elements
23 of first degree burglary in this case.

24 The Defendant is also charged with
25 armed robbery. To convict the Defendant of armed

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1 robbery, the State has to prove that the
2 Defendant took personal property from the person
3 or presence of another person. When I say it's
4 in their presence, it has to be in their
5 observation or their reach or their control.

6 And that the defendant carried the
7 property away and they intended to permanently
8 deprive the owner of that property of the
9 property that they've taken.

10 And taking it has to be done with
11 violence or by putting the person who owns that
12 property in fear of violence.

13 The Defendant also has to be armed; in
14 this case, he was armed with a knife.

15 You heard Robert held a knife to Faye's
16 throat. You heard that he demanded money from
17 her twice, that he took money from the billfold
18 that was on the island in the kitchen, that she
19 was close to, she directed him to the billfold,
20 told him where the money was. She told you on
21 the stand that she had several hundred dollars in
22 one hundred dollar bill currency. When the
23 defendant was searched, deputies found four
24 hundred dollars (\$400) in one hundred bill
25 currencies on his person.

1 You also saw photos of the billfold.
2 You saw the items around it that looked like it
3 had been rifled through. He did it while he was
4 threatening her with violence and he didn't
5 intend to return this money to Mrs. Davenport.
6 He intended to kill her after taking it.

7 Ladies and gentlemen, I don't know why
8 the Defendant wanted the money. I have my own
9 theories. But he never intended to bring it
10 back. This wasn't a loan. The State has met all
11 of the elements of armed robbery in this case.

12 Finally, I need to go through self-
13 defense with you. The defendant brought up the
14 fact that the victim hit him with a bat during
15 the struggle that ensued in the front bedroom.
16 The defendant himself admits to stabbing the
17 victim in this case. He admitted that to you in
18 his opening arguments, opening statements. But
19 because the victim in this case also engaged him,
20 even briefly in combat, the State needs to
21 disprove self-defense to you.

22 When self-defense becomes an issue in a
23 case like this, in order for the State to
24 disprove self-defense, we only have to prove that
25 there was one element of self-defense that wasn't

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1 present. Because self-defense has four elements,
2 and for self-defense to apply all four elements
3 have to apply. And ladies and gentlemen of the
4 jury, I submit to you that zero of these elements
5 apply in this case. The elements of self-defense
6 are:

7 First, the defendant must be without fault
8 in bringing on the difficulty;

9 The defendant has to actually be in imminent
10 danger of death or serious bodily injury or
11 believe that he was;

12 The third element is a reasonably prudent
13 person of ordinary firmness and courage would
14 have entertained the same belief and would have
15 struck the fatal blow in order to save himself
16 from serious bodily harm or death; and,

17 Finally, the defendant had no other probable
18 means of avoiding the danger.

19 Ladies and gentlemen, self-defense does
20 not apply in this case. The defendant broke a
21 door down to get to this victim. You can see the
22 damage to the door yourselves in the pictures
23 that the State introduced into evidence. And you
24 can see the doorjamb itself, which was collected
25 by Corporal McElrath at the scene of the crime.

1 This Defendant ran to the front
2 bedroom. He pushed another door in and attacked
3 Mr. and Mrs. Davenport. He was entirely at fault
4 in bringing on the difficulty.

5 Of course, Mr. Davenport hit the
6 Defendant with a bat. This Defendant was
7 wielding a large knife and coming at him and
8 coming at his wife. And, remember, this wasn't
9 the first time that this defendant has come after
10 this victim. Mr. Davenport had been stabbed by
11 Mr. Frost in the past. He had every reason to
12 defend himself in this situation.

13 Mr. Frost didn't believe he was in
14 danger at any point in time. He was the
15 aggressor. He was taking out his anger and his
16 hurt on Mr. Davenport. Mr. Frost could have
17 avoided the danger altogether by not entering the
18 home in the first place. But he entered the home
19 by kicking the door in, by running to the front
20 room, pushing in another door, attacking and
21 killing Mr. Davenport. This man was not acting
22 in self-defense, ladies and gentlemen.

23 The defendant's also alleged, and I
24 hate to even dignify this, but I suspect he'll
25 bring it up in his argument. He's alleged that

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1 the Iva Police Department is engaged in some sort
2 of conspiracy to plant evidence in this case.
3 Please ask yourselves what would they have to
4 gain by framing somebody for murder, by framing
5 Mr. Frost for murder?

6 There is no testimony or evidence that
7 they had any motive to cause harm to Mr. Frost.
8 Why would they put years of law enforcement
9 experience, their livelihoods on the line for
10 what? Fun? To tamper with something 'just
11 because'? Ladies and gentlemen, there was no
12 tampering of evidence by the Iva Police
13 Department. The gentlemen in that department
14 responded that evening and they did their jobs
15 and they did them well.

16 Ladies and gentlemen, this entire act
17 of violence was a cry for attention. You may
18 have heard of children seeking good attention or
19 bad attention from their parents. Good attention
20 happens when a child goes up to their mother,
21 tugs on her skirt and says, 'mom, mom, mom.' And
22 maybe the mother doesn't pay them attention. So
23 what happens? Well, they don't get good
24 attention so they go find their sibling and they
25 kick him in the shin. Well, then what happens?

1 Someone pays them attention. Right? The mom is
2 coming over. The mom is scolding them and that's
3 bad attention. It's negative, but it's
4 attention.

5 Ladies and gentlemen, I submit to you
6 that Robert Frost was looking for attention.

7 The Defendant had broken up with Kayla
8 Howington; he called her over and over and over
9 again. First he tries to get good attention. He
10 promises her a convertible. He says he loves
11 her. He calls her Sweet Pea. He says, 'Oh, I've
12 got a dryer. Does your mom need a dryer?'

13 But his tone changes over the course of
14 the week. When he doesn't get a call back, his
15 tone changes dramatically. He starts making
16 threats. I'm going to read you a couple of
17 selections so you can see the evolution again, of
18 his voicemails. He starts and says, *"Everybody's
19 laughing at me, but I don't care."* I submit to
20 you he did care, ladies and gentlemen. He says,
21 *"This is a matter of life and death on my part.
22 Return this call over life and death. Please do
23 that or call mama and tell mama life and death."*

24 He talks about getting a gun
25 repeatedly. He says, *"I don't have nobody to*

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1 talk to and how long can that last? How long can
2 that last? Think about me. Come to your senses
3 by tomorrow, please. I feel like giving up on
4 everything. I done broke down. Me and mama's
5 into it. I done broke down, Kayla. I can't deal
6 with it no more. I can't deal with life no more.
7 I am losing my mom. I'm losing every god'damn
8 thing I got. When you walked out on me, you took
9 everything. I'm getting on my motorcycle, I'm
10 going down there to mama's and that's where I'm
11 going to jail at. I'm fixing to go to mama's and
12 that's going to be the end of it."

13 Again he said, "You happy? You happy
14 with what you're doing? I'm sitting here trying
15 to figure out a way to kill myself, but I ain't
16 got no gun so I guess I'm going to have to hang
17 myself. But first I'm going down there to mama's
18 and I'm going to put a knife to her throat and
19 I'm going to make the police kill my ass. I'm
20 going to make them kill me, Kayla. I can't take
21 it no more. My blood is on your hands. I'm
22 fixing to show you. I'm fixing to show you. If
23 you don't believe it, just watch the damn News.
24 I'm fixing to go to jail and you won't be able to
25 talk to me when I'm in jail. I've done every-

1 *thing I can to talk to you and you won't talk to*
2 *me. I'm going to ride my motorcycle down there.*
3 *You don't believe it, do you? You pushed me over*
4 *the edge."*

5 He says it's "too late" multiple times.
6 He says he's selling everything for her. He says
7 again, "I'm going down there and I'm going to
8 kill my daddy. I'm going to kill my daddy. I
9 almost killed him one time. This time I'm going
10 down there to kill him and I'm going to hurt my
11 mama and I'm going to make them kill me on that
12 front porch. You could have talked to me. You
13 left me hurting. You could have stopped me. You
14 could have stopped it. You sent me over the edge
15 Kayla."

16 Ladies and gentlemen, he's hurting.
17 I'll acknowledge that. He's hurting and he says
18 he has nothing left. And he doesn't get a
19 response. His cries for attention, his dramatics
20 don't get a response. So he decides to make good
21 on the promises that he's left in these
22 voicemails. And he kills the symbol of the women
23 who he loves being taken away from him. The
24 symbol of his abandonment, James Davenport.

25 Faye told you on the stand -- I asked

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1 her. Faye told you that Robert had been angry at
2 James for taking Faye away from him. Faye and
3 his brother and Robert had been a trio for a long
4 time. And ever since then, he held a grudge.
5 And now here's another woman who's taken away
6 from him.

7 James represents all of that hurt and
8 all of that anger. You can see the anger in the
9 eighteen stab wounds, minimum, eighteen stab
10 wounds to this man. That's the hurt and that's
11 the anger that he was feeling that week. And he
12 took it out on his victim.

13 Robert says he's going to kill himself
14 in these voicemails too; right? But he doesn't.
15 He certainly had every opportunity and I'm not
16 saying he should have, but he says he can't get a
17 gun. So perhaps that's why he needs money before
18 he kills Faye? Or maybe somehow in the back of
19 his mind he believes that he's still going to buy
20 Kayla Howington a convertible and he's going to
21 fix things. Only the Defendant knows for sure.

22 What do you know for sure as the jury?
23 What do you know after everything you've seen and
24 heard this week? You know, this Defendant said
25 in court this week, 'I'm not a burglar.' Oh,

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1 yes, he is. He's a burglar. He's an armed
2 robber. And he's a murderer.

3 He wanted attention. Does he have your
4 attention?

5 Does this have your attention?

6 Does this have your attention? It has
7 mine.

8 Ask yourselves what you know to be
9 true. You've seen all of the evidence. You've
10 heard all of the testimony in this case. What do
11 you as the jury know to be true after what you've
12 seen and heard? You are the deciders of the fact
13 in this case. Focus on what you know as you
14 deliberate. Focus on what you saw and what you
15 heard this week. It's more than what I've talked
16 to you about.

17 Ladies and gentlemen, you have the
18 testimony of many people and you even have the
19 Defendant's own words. I submit to you that, as
20 the State, we've proven this case to you beyond a
21 reasonable doubt and we've proven each charge
22 beyond a reasonable doubt. I'm asking you to go
23 back and deliberate and bring back the verdict
24 that justice demands. That's a verdict of
25 guilty. Thank you for your time and for your

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Closing Argument by Defendant, *Pro Se*

1 attention.

2 THE COURT: All right. Yes, sir.

3 CLOSING STATEMENT

4 BY DEFENDANT FROST:

5 Well, right off the bat, I didn't go to
6 school to come up here and do all that talking.
7 I'm a country boy.

8 That night it was a fight. I had a
9 stepdad who was biker. We got along good a lot
10 of times and a lot times we didn't. Like in any
11 family. And it's kind of emotional right here
12 with this. There's good times and bad times in
13 all families.

14 At this time, there was a argument that
15 got started. It was like a day before the
16 argument and it just kept on and on between me
17 and my dad. It takes two to argue, not one. It
18 takes two to argue.

19 And y'all know the testimony of the
20 officers. When the officer pulled over there, I
21 was on my motorcycle. I wasn't standing up in
22 that house trying to kill my mother. I was
23 outside looking at my head where he done hit me
24 in the head with a ball bat.

25 And I do show reasonable doubt all

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Closing Argument by Defendant, *Pro Se*

1 through this case where there was another knife
2 impression in that screen glass door, where the
3 Solicitor didn't want to talk about that. But
4 somebody went out that screen glass door.

5 And I told you whenever I got hit, I
6 did stab my dad.

7 The officer Chris Vaughn, who was the
8 first one there. He was up in the house. And
9 y'all heard his testimony said he went back out
10 to get the gloves. He had to get gloves. He
11 didn't have no gloves. So I feel like that's
12 when he opened up that screened glass door. He
13 had a gun in one hand, a knife in the other hand.
14 So he used that knife to push that screened glass
15 door open.

16 I did stab my dad. But I didn't put
17 them twenty cuts on my dad. I didn't do it.
18 Didn't have no reason to put all them cuts on my
19 dad.

20 And that screened glass door and y'all
21 ask y'all-self, is that a knife impression in
22 that screen glass door? In that screen glass
23 door? If it is, that shows that there was
24 another knife involved in this situation.

25 He took advantage of a burglary in

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Closing Argument by Defendant, *Pro Se*

1 progress. That's what it was called in by the
2 lady, a burglary in progress. And when he pulled
3 up, I was outside on the motorcycle, after me and
4 my dad just had that conflict. They went through
5 the house touching everything in the house,
6 putting blood everywhere to make it look like a
7 burglary in progress. Taking pictures of where
8 the windows was, like I went through the windows
9 and stuff like that. I didn't go to the window.
10 Why would I? I made it out of that house. My
11 fingerprints are in and out there all the time.

12 You know, I had money going in that
13 house. I got proof of that where my Social
14 Security check was coming into the house. My
15 mama gets money from me and I get money from her.
16 And I didn't get that four hundred dollars from
17 my dad. There was seventy-five dollars. I got
18 seventy-five dollars, not four hundred (\$400).
19 They took that four hundred dollars off my daddy
20 and put it on me -- not put it in my pocket in
21 the time, but later on they placed it in
22 evidence. They took the seventy-five dollars off
23 of me and it never did show up. And that's in my
24 mama's statement, that my mama gave me that
25 seventy-five.

1 I feel like there's all kind of
2 reasonable doubt here where they placed evidence,
3 where the ball bat was, where he moved the ball
4 bat when he come up to take the picture. The
5 ball bat was moved. And you remember the smear
6 mark?

7 Will you put the picture up there with
8 the ball bat and smear mark that they put on the
9 wall. There's a smear mark there where he placed
10 -- he was up in the house for a while. And
11 that's what I was asking him, how long he was up
12 there. That smear mark over there beside that
13 door right there to the left, that's a knife
14 smear mark, where somebody would like wipe
15 something off. That ain't something that a son
16 would do in a conflict with his dad. He ain't
17 going to take his time to wipe something off on
18 the wall.

19 My mother testified when we was in
20 there, we left out of there and went down the
21 hallway. And that's when I went out the back
22 door. Why would I take time to wipe something
23 off on the wall? That right there shows you
24 there's so much reasonable doubt in this case.

25 They was conflict between me and my

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Closing Argument by Defendant, *Pro Se*

1 dad, yes there was. My dad's a biker, like I
2 say. He's got an anger issue. We'd fuss and
3 we've had other incidents. I mean, he's been in
4 motorcycle gangs, The Confederates, he ain't the
5 nine to five like my mother made him out to be.

6 I love my daddy. I do. I love him.
7 We'd been together forty years.

8 But there is so much reasonable doubt
9 in this case with the Iva Police Department.
10 Chris Vaughn, he's had other problems down there
11 in Iva. And I couldn't open up on Thomas
12 Miller's credibility, wanting to know the reason
13 why he lost his job. The one that brung the
14 charges on me. He resigned from office down
15 there. And the Judge would not let me question
16 him on his credibility. And there's just so much
17 reasonable doubt through this.

18 And that screen glass door, I'd like to
19 put that back up there too, that other knife.
20 There's another knife involved. It wasn't just
21 me. Chris went up in there, Chris Vaughn, the
22 officer and put them cuts on my dad and was
23 blaming a burglary in progress and it turned out
24 not to be a burglary in progress because I was
25 the son. That's why they did so much the blood

1 samples.

2 They didn't even turn in the blood
3 samples. Why? Did he get hurt going out that
4 screen glass door. Mr. Miller testified that he
5 didn't even turn in the blood samples. So did
6 they -- did the officer get cut hisself while he
7 was doing that? I don't know. But there's just
8 so much reasonable doubt.

9 I did stab my dad whenever we got in
10 that conflict, and my mama did get stabbed in it,
11 but it was an argument, a family argument that
12 got bad. I love my family. Like she said, I do.
13 I love my family.

14 But they just so much reasonable doubt.
15 That that's impression right there is the knife
16 impression opening it up on the inside. Why
17 would I open up a door on the inside with a knife
18 if they done got me, accusing me of kicking in
19 the back door? Now, why would I take my time
20 being drinking and frustrated take my time to
21 open up the door whenever I ain't got no gloves
22 on. I ain't worried about fingerprints. I ain't
23 had no mask on or nothing. I went up in there to
24 rob nobody. Why would I take up my time to open
25 up that back door with a knife? I wouldn't. I

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Closing Argument by Defendant, *Pro Se*

1 lived there, so why would I? That's what I'm
2 saying. There's just so much reasonable doubt
3 that goes all the way through this.

4 And all the witnesses, Dennis and
5 Samantha and all of them, their credibility --
6 I mean, we lived across the street. We drank
7 together. We had arguments, neighbors do that
8 when you drinking with each other. And like I
9 said, this ain't -- this is -- we were growed up
10 on the mill hill. We ain't highfaluting kind of
11 people. We growed up on the mill hill. That's
12 the way I was brought up as a kid. My daddy
13 brung us up if somebody hits you, hit them back.
14 He hit me with a bat. He got stabbed in the
15 stomach and, uh, -- that's the way it started and
16 then frustration did go on there from being hit
17 in the head and all that right there in the
18 family, from a family fight. But there was no
19 robbery.

20 My money had been going to that
21 residence, my Social Security. I got money
22 receipts. Where's my money receipts? See the
23 address right here on that Social Security? It's
24 been going there for thirteen years. My money
25 had been going to that address for thirteen

1 years. My mother's got access to that money
2 right there. And it's been going to that
3 address, [REDACTED] East Front Street, for thirteen
4 years. You can't rob your own money. You can't
5 break into your own house. And not saying that
6 it was my house but I had permission coming in
7 and out to get my money. She borrowed money from
8 me I borrowed money -- we're a family.

9 And it was a family argument that got
10 bad between me and my dad, but that's the way we
11 was brought up on the mill hill. We was brought
12 up on the mill hill like that. We went to bars.
13 My daddy's running bars. Y'all ought to read
14 that right there. The address. Zoom in. We
15 were at the bars. He run bars. That's the way I
16 was brung up. I mean he run the Trails End out
17 there on 29. He run Porky's out on 28.

18 And my dad he'd dealt drugs. He was
19 caught for trafficking methamphetamines. My
20 mother was caught for trafficking methampheta-
21 mine. We was going to the pill doctor at the
22 time over in Greenville getting Lortabs and
23 Xanax. She was carrying me back and forth to the
24 pill doctor over there. I was giving her
25 medication, pills, Lortabs and Xanax's. But see,

Closing Argument by Defendant, *Pro Se*

25 Well, the law of established residence

1 if you're going to return back to that residence
2 for any other reason like cutting grass or in and
3 out of that residence, that's considered the
4 residence. It don't take but one to two hours to
5 establish a residence. If you put money into the
6 residence, that's established residence.

7 In other words if you and your
8 girlfriend is living together and it don't matter
9 if it's been two hours, she's working to pay or
10 put some groceries into the refrigerator and
11 there's trouble there, the law comes over there,
12 they can't ask her to live because she's done put
13 money into the residence. That's establishing a
14 residence. It don't take but one or two hours.

15 My money had been going there for
16 thirteen years. I'm not just trying to establish
17 residence but my money had been going there for
18 thirteen years. And my mother's got access to my
19 money. My check was in mine and my mother's
20 name. She's got access to my money. Every month
21 she's got access to it. And it wasn't me
22 stealing no money or robbing nobody. She's got
23 access to my money. We leave money laying around
24 just like in everybody's family on coffee tables,
25 end tables, in the bathroom. I went in her

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1 pocketbook. She went in my billfold to get
2 money. Sometimes I didn't even want to wake her
3 up. 'I need to get some money, gas money,
4 where's your billfold at?' But this time when
5 there's conflict, the officer's wanting to charge
6 me with all these charges at this time when
7 there's conflict.

8 And if there hadn't have been conflict,
9 I wouldn't be standing here. But my dad picked
10 up the bat. He hit me first and there was
11 conflict.

12 I know the Solicitor's saying the door
13 was kicked in. The door -- I barged. It wasn't
14 kicked in. It wasn't kicked. It was barged. I
15 barged in because we was already been fussing but
16 I did go in there. I didn't have no knife in my
17 hands or nothing like that. That's all hearsay.
18 That knife come from the kitchen. Whenever I got
19 hit in the head, I went to the kitchen and got
20 the knife and that's whenever the conflict
21 started with me and my dad.

22 And there was nothing in the other
23 room. We didn't go through the other rooms. You
24 heard my mother say that we never went through
25 any other rooms. But the officers when they got

1 there, that Chris Vaughn's all up in there, he
2 put all them cuts on my dad. My mom sat there
3 and testified that I never did cut my dad. I
4 stabbed my dad. I never cut him, but he had
5 twenty cuts on him.

6 And all this reasonable doubt, the
7 moved/placed evidence, the ball bat, that's all
8 kind of reasonable doubt right there.

9 I mean, I'm just being honest with you.
10 The way I grew up with me and my dad. We been
11 together forty years. It ain't like I've been
12 planning to kill him. If I was going to plan to
13 kill him, 'come on, let's go fishing.' I mean,
14 that's the way I think. Or do you want to work
15 on a car or something like that, you know? I
16 didn't just plan this and show -- it just
17 happened. It just happened. It wasn't no plan
18 to go down there and kill him. I was in the
19 house, we was arguing and I come down there and
20 the door was already -- it wasn't locked. It was
21 just -- it's hard to open. There's a scrub place
22 in the floor when you push the door open, it
23 scrubs. But I did come in hard enough that it
24 did knock the old -- there's an old hinge. It's
25 a old house, one of them thumb bolt hinges. But

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1 if there wasn't no conflict nobody wouldn't have
2 said nothing about it. Nothing. But since I got
3 hit in the head and he got stabbed, my mama, we
4 was all three fussing and fighting, so here I am.
5 It wasn't out of just pure malice like she said.
6 I love my family. She told you that too.

7 And a lot of it's just hearsay. Like
8 she said whenever the motorcycle -- I was out
9 there at the motorcycle when they pulled up. I
10 wasn't inside the house going to still kill my
11 mother. I was outside at the motorcycle.

12 You got that picture? And they placed
13 evidence, that's some on the wall where they
14 placed. That's in my daddy's bedroom right
15 there. That smear mark where the bat is, there's
16 other place in there in the living room on that
17 door. We never even went in the living room. We
18 didn't even go in the dayroom. Mama said we left
19 the bedroom and went into the kitchen.

20 Chris Vaughn was up in there with
21 another knife and he must have got hurt because
22 they didn't turn in no blood samples and they
23 shoulda done that. Why didn't he turn in the
24 blood samples? And I'm arguing that's another
25 reason for reasonable doubt.

1 There's a lot of reasonable doubt in
2 this case right here, a lot of reasonable doubt.

3 Number one, that's my family. I love
4 my family. My check's been going there for
5 thirteen years. It's in my mama's name. She's
6 got access to my money. She's been sending me
7 money. You got my money receipts? See, I had
8 money receipts and they said I didn't put them in
9 evidence but I got them over there but I can't
10 show them to you now where my mama's been giving
11 me money, sending me money. And with her name on
12 it. I mean, it's family. This is family. You
13 know, I love my family and it's just -- my
14 family's -- my dad did die on account of it but
15 it ain't like -- they blaming me for a lot of
16 this, the officers after they tampered with
17 everything.

18 They went up in there and tampered
19 because it was called in a burglary in progress.
20 And they went in there and put blood and tampered
21 and stuff, like that statute. That statute's in
22 there. I mean, there's just stuff in here, why
23 would I even -- that, right there. Yeah. Zero
24 in right there. I mean, why would I touch cheap
25 stuff? I mean, I know where all my daddy's gold

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1 is. His truck driving rings, his golden Eagle,
2 road chain. He's got two diamond cluster rings.
3 I know where all that is. In the dining room
4 they still got gold bars like this right here
5 that's worth about a thousand dollars that's made
6 out of gold. I know what stuff is.

7 That right there is got blood on it
8 like they have me picking that up to look at it.
9 Why would I do it? That's something like a
10 twelve dollar figurine that's worth the price in
11 gold but it's still just a twelve dollar
12 figurine. I know where all my mama's stuff is
13 and I know where all my daddy's stuff is. I
14 wasn't up in there just trying to steal and all
15 that right there, like the Solicitor's making it
16 out to be.

17 The officers went up in there and they
18 put all them cuts on my dad. And there's just so
19 much reasonable doubt in here.

20 You know, I don't think like I should
21 be sentenced to a life sentence with all this
22 reasonable doubt. Especially when I know that
23 Chris Vaughn went up in there and that knife
24 impression shows that there is another knife
25 involved. I mean, that's enough of reasonable

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1 doubt that there as another knife involved.
2 Somebody went out that side glass door. And I
3 want to show you that impression one more time.
4 You can make your mind up. I put that officer
5 over there, Scott the investigator looked at it.
6 And he said that it was a knife impression that
7 somebody made. Why would I use a knife to go out
8 that side glass? And my mama said there's
9 nothing -- we went no other place in the house.
10 No other place. So why would I be over there? I
11 wouldn't. That's what I'm saying, I wouldn't but
12 somebody was. And the only body it could have
13 been is Chris Vaughn.

14 Now, you look at that. If that don't
15 look like a knife impression --- that right there
16 indicates that somebody else had another knife up
17 in that house. And my mama said I stabbed my
18 dad, but I did not put no cuts on my dad. I love
19 my family. There's just so much reasonable
20 doubt.

21 The officers admitted to moving and
22 tampering with the ball bat and moving it.
23 There's just so much reasonable doubt in this and
24 -- it's family. And I'll just let y'all handle
25 it. I just appreciate it and I bless you.

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1 THE COURT: Ladies and gentlemen, do
2 any of you need a quick bathroom break before I
3 start. It will not be a problem.

4 JURORS: (Affirmative response)

5 THE COURT: Okay. Take five or six
6 minutes. I mean, this is going to take me
7 thirty-five minutes, so go ahead. Don't discuss
8 the case.

9 (JURY OUT @ 12:06 P.M.)

10 (BRIEF RECESS)

11 (DEFENDANT PRESENT)

12 CLERK: And the jury just said
13 they're ready when you are.

14 THE COURT: Okay. Let me let
15 everybody get in and talk to them for a second.
16 Okay. Once I start, unless it's just an absolute
17 emergency, I need you to stay in the courtroom
18 and the bailiff's will keep people from coming in
19 and out. It's just so I can -- it's hard to
20 listen to me reading this stuff. It's hard to
21 read. But please remain as quiet as you can and
22 don't leave unless you just have an absolute
23 emergency. If it's an emergency, it's okay. I
24 feel too crummy to get mad today so don't worry
25 about it. All right. You can bring them in.

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The Court's Charge On the Law

1 (JURY IN @ 12:16 P.M.)

2 THE COURT: All right. Ladies and
3 gentlemen, let me tell you briefly why Judges
4 read this to you. After doing this for so long,
5 even though this is thirty pages long, I've got
6 it pretty much memorized.

7 But one of the first things you do as a
8 Judge is -- of course, after they've done the
9 process of selecting you, you have to sit with a
10 very good Judge for four to six trials, several
11 weeks. And you just sit in the back. It's the
12 most uncomfortable situation in the world.
13 You're sitting there in a robe kind of as an
14 apprentice. And the best Judge I ever knew was
15 the late Jim Johnson, he was brilliant. I was
16 watching him in a criminal case charge the jury.
17 And in his head, he flip-flopped -- he was doing
18 it without reading -- the State and the Defendant
19 and did the whole charge that way and then
20 realized it and had to bring the jury back in.
21 And right before they came back in, and he had to
22 read the thing or read it to the over, he said
23 "don't ever forget, read it." That's why they
24 tell you why. So I apologize for this but it is
25 -- there's a good reason for it.

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1 Plus, if you read it it's consistent
2 throughout the State. Now, during the course of
3 this trial, my law clerk and I have been putting
4 this together. And I'm going to tell you in just
5 a few minutes exactly what it is. But this is
6 the law that you should apply to the facts as you
7 determine them to be.

8 The first thing I want to tell you is
9 what I told you at the very beginning. The
10 Defendant in this has been charged with murder,
11 attempted murder, first degree robbery -- first
12 degree burglary, armed robbery and possession of
13 a weapon during the commission of a violent
14 crime. I want to remind you that the fact that
15 the Defendant was arrested, charged and indicted
16 in this case is not evidence in this case and
17 cannot be considered by you as evidence of guilt
18 and cannot be even discussed by you nor does it
19 create any presumption or innocence of guilt.

20 These documents that I'll have in the
21 jury room with you, you'll have, are simply the
22 formal written instruments, which contain the
23 charges made against the Defendant. They are the
24 formal documents by which the case is brought
25 into Court. And, as I said, you'll have them in

1 the jury room with you. In fact, you'll use them
2 as the verdict forms and I'll explain that at the
3 very end.

4 Now, ladies and gentlemen, I told you
5 this early on, but I'm going to read it to you
6 again. The Defendant has pled not guilty to
7 those charges and that plea puts the burden on
8 the State to prove the Defendant guilty. A
9 person charged with committing a criminal offense
10 in South Carolina is never required to prove
11 himself innocent. I charge you that's an
12 important rule of the law, that the Defendant in
13 a criminal trial, no matter what the seriousness
14 of the charge may be, will always be presumed to
15 be innocent of the crime for which the indictment
16 was issued unless guilt has been proven by
17 evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 This presumption of innocence does not
20 end when you begin your deliberations, but it
21 accompanies the Defendant throughout the trial
22 until you reach a verdict of guilty, based on the
23 evidence satisfying you of that guilt beyond a
24 reasonable doubt. As I told you and this is the
25 description they use in the written charge. The

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1 presumption of innocence is like a robe of
2 righteousness placed about the shoulders of the
3 Defendant, which remains on the Defendant until
4 he's been stripped, until it has been stripped
5 from the Defendant by evidence satisfying you of
6 the Defendant's guilt beyond a reasonable doubt.

7 The presumption of innocence is not a
8 mere legal theory. It's not just a legal phrase.
9 It's a substantial right to which every Defendant
10 is entitled to unless you, the jury, are
11 satisfied from the evidence of the Defendant's
12 guilt beyond a reasonable doubt.

13 Now, what is reasonable doubt in the
14 law? A reasonable doubt is the kind of doubt
15 that would cause a reasonable person to hesitate
16 to act. You have to determine in your own mind
17 if they've met that burden.

18 Now, ladies and gentlemen, I want to
19 remind you for the second time that you and I
20 have very different roles during the course of
21 this trial. You are to consider only the
22 evidence that was introduced via the witness
23 stand or was marked and admitted into evidence
24 and you'll have all of that with you when you
25 begin your deliberations.

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1 I want to remind you that the opening
2 statement and closing statement are not evidence.
3 You are the only people in this courtroom who can
4 determine what the facts are. If at any time
5 during the course of this case by facial
6 expression or by irritation or anything, if I've
7 given you any impression that I've believed or
8 disbelieved anything said in this courtroom,
9 disregard it, because as I told you exactly four
10 days ago, my opinion about the truth or falsity
11 of any fact is irrelevant. You are the only
12 people that can determine what the facts are.
13 And we will take the facts as you've determined
14 them to be as you give it to us.

15 And likewise, I'm the Judge of the law
16 and I've had to make several different decisions
17 during the course of this trial. You've been out
18 of the courtroom when I made those. And you have
19 to take the law as I'm giving it to you as the
20 law in this case. You can't wish the law was
21 different or hope the law was different. I will
22 tell you what law to apply in this final charge.
23 And you have to take the law as I give it to you,
24 apply it to the facts as you determine them to be
25 and reach your verdict.

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The Court's Charge On the Law

1 Now, ladies and gentlemen, I charge you
2 there are two types of evidence, which are
3 generally presented during trial. There's direct
4 evidence and circumstantial evidence.

5 Direct evidence directly proves the
6 existence of a fact and does not require
7 deduction.

8 Circumstantial evidence is proof of a
9 chain of facts and circumstances indicating the
10 existence of a fact. Crimes may be proven by
11 circumstantial evidence.

12 The law makes no distinction between
13 the weight or value to be given either direct or
14 circumstantial evidence. However, to the extent
15 the State relies on circumstantial evidence, all
16 of the circumstances must be consistent with each
17 other and when taken together point conclusively
18 to the guilt of the accused beyond a reasonable
19 doubt. If these circumstances merely portray the
20 Defendant's behavior as suspicious, the proof has
21 failed.

22 The State has the burden of proving the
23 Defendant guilty beyond a reasonable doubt on
24 each element. The burden rests with the State
25 regardless of whether the State relies on direct

1 evidence, circumstantial evidence or some
2 combination of the two.

3 Circumstantial evidence again is proof
4 of a chain of facts and circumstances indicating
5 the existence of a fact. It is evidence which
6 immediately establishes collateral facts, from
7 which the main fact may be inferred.
8 Circumstantial evidence is based on inference and
9 not on personal knowledge or observation. As I
10 said, the law makes absolutely no distinction
11 between the weight or value to be given either
12 direct or circumstantial evidence, nor is a
13 greater degree of certainty required with
14 circumstantial evidence than of direct evidence.

15 If you find that the State has failed
16 to meet their burden or proving any element
17 beyond reasonable doubt, you must find the
18 Defendant not guilty.

19 Now, I told you in the opening charge
20 that necessarily you have to determine the
21 credibility of witnesses who've testified in this
22 case. Credibility under the law in South
23 Carolina simply means believability. You have to
24 determine what you believe. In determining the
25 believability of witnesses who've testified in

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1 this case, you may believe one witness over
2 several witnesses. You may believe every witness
3 that's testified. You may believe none of the
4 witnesses that have testified. You can take a
5 portion of a Defendant's [sic] testimony and
6 believe it and disregard the remainder of it. It
7 is up to you to determine the credibility of the
8 witnesses.

9 You may consider whether any witness
10 has exhibited to you any interests, bias,
11 prejudice or other motive in this case.

12 You may also consider the appearance
13 and manner of a witness while on the witness
14 stand.

15 Now, ladies and gentlemen, the rules of
16 evidence ordinarily do not permit witnesses to
17 testify to opinions or conclusions. An exception
18 to this rule exists for witnesses that we call
19 expert witnesses. And in this case, there was
20 one expert witness. A witness who, by education
21 or experience has become expert in some art,
22 science, profession or calling may state an
23 opinion as to relevant and material matter in
24 which the witness claims to be an expert and may
25 also state the reasons for the opinion. You

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1 should consider an expert opinion received in
2 evidence in this case and like any other
3 testimony, give it the weight that you think that
4 it deserves. If you decide that an opinion of an
5 expert witness is not based on sufficient
6 education or experience or if you conclude that
7 the reasons given in support of the opinion are
8 not sound or that the opinion is outweighed by
9 other evidence, you may disregard the expert
10 opinion entirely.

11 An expert witness' testimony is to be
12 given no greater weight than that of other
13 witnesses, simply because a witness is an expert.
14 Further, you are not required to accept the
15 expert's opinion, even though it's uncontradict-
16 ed.

17 Now, I charge you that in order to
18 establish criminal liability, criminal intent is
19 required. For example, the mental state required
20 to be proven by the State for a particular crime
21 might be purpose, intent, knowledge, reckless-
22 ness, or criminal negligence. Criminal intent
23 must be proven by the State beyond a reasonable
24 doubt. Criminal intent is always a matter that
25 must be determined by the jury from the

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1 circumstances surrounding the situation.

2 There is no way to prove intent to a
3 mathematical certainty. There is no way to
4 medically open up a person's mind and discover
5 what that person had in his mind. So the law
6 says that criminal intent may be inferred from
7 the circumstances shown to have existed at the
8 time of the act. This is how you make a
9 determination of whether or not the element
10 requiring intent was present.

11 It is not necessary to establish intent
12 by direct and positive evidence, but intent may
13 be established by inference in the same way as
14 other facts, by taking into the consideration the
15 acts of the parties and all the facts and
16 circumstances of the case.

17 Criminal intent is a mental state, a
18 consciousness of wrongdoing. It is up to you to
19 determine what the Defendant intended to do based
20 on the circumstances shown to have existed.

21 Criminal intent can also arise from an
22 action or a failure to act or may arise by an
23 indifference of a duty and to the consequences
24 that would result from that indifference.

25 The Defendant is charged with murder.

1 The State must prove beyond a reasonable doubt
2 that the Defendant killed another person with
3 malice aforethought. Malice is hatred, ill will
4 or hostility towards another person. It's the
5 intentional doing of a wrongful act without just
6 cause or excuse and with an intent to inflict an
7 injury or under circumstances that the law will
8 infer an evil intent.

9 Malice aforethought does not require
10 that the malice exists for any particular amount
11 of time before the act is committed. But malice
12 must exist in the mind of the Defendant just
13 before and at the time the act is committed.

14 Therefore, there must be a combination
15 of the previous evil intent and the action.

16 Malice aforethought may be expressed or
17 inferred. These terms "express" and "inferred"
18 do not mean different kinds of malice but merely
19 the manner in which malice may be shown to exist.
20 This is either by direct evidence or by inference
21 from the facts and circumstances which are
22 proved.

23 Expressed malice is shown when a person
24 speaks words which express hatred or ill will for
25 another or when the person prepared beforehand to

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1 do the act, which he later accomplished. For
2 example, lying in wait for a person or any other
3 acts of preparation going to show that the deed
4 was within the Defendant's mind would express
5 malice.

6 Malice may be inferred from conduct
7 showing a total disregard for human life. I
8 charge you that if one intentionally kills
9 another during the commission of a felony, the
10 inference of malice may arise.

11 If facts are proved beyond a reasonable
12 doubt sufficient to raise an inference of malice
13 to your satisfaction, this inference would simply
14 be an evidentiary to be taken into consideration
15 by you along with all the other evidence in this
16 case and you may give it the weight that you
17 decide it should receive.

18 Now, ladies and gentlemen, I charge you
19 the Defendant is also charged with attempted
20 murder. In order to prove this crime, the State
21 must prove the Defendant attempted to kill
22 another person with malice aforethought, either
23 expressed or implied. As I said, malice is
24 hatred, ill will or hostility toward another
25 person. It's the intentional doing of a wrongful

1 act without just cause or excuse and with the
2 intent to inflict an injury and under
3 circumstances that the law will infer an evil
4 intent.

5 As I said before, the State does not
6 have to prove that malice existed for any
7 particular time but only that it was present just
8 before and at the time of the act. Just as in
9 murder, malice aforethought may be expressed or
10 inferred. And as I told you the terms expressed
11 and inferred do not mean different kinds of
12 malice, but merely the manner in which malice may
13 be shown to exist. Malice for attempted murder
14 may be shown by either direct evidence or by
15 inference from the facts and circumstances, which
16 are proved.

17 Expressed malice is shown when a person
18 speaks words, which express hatred or ill will to
19 another or when the person prepared beforehand to
20 do the act, which was later accomplished. Malice
21 may be inferred just as in murder.

22 In attempted murder, malice may be
23 inferred from conduct showing a total disregard
24 for human life. If the facts are proved beyond a
25 reasonable doubt sufficient to raise an inference

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1 of malice to your satisfaction, this inference
2 would simply be an evidentiary fact to be
3 considered by you, the jury, along with other
4 evidence in this case. And you may give it the
5 weight that you think that it deserves.

6 A specific intent to kill is not an
7 element of attempted murder. But there must be
8 a general intent to commit serious bodily harm.

9 Intent means intending the result,
10 which actually occurred not accidentally or
11 involuntarily creating an act. Intent may be
12 shown by acts and conduct of the Defendant and
13 other circumstances from which you may naturally
14 and reasonably infer intent. Evidence of the
15 character of the act, the character of the
16 instrument used, the manner in which it was used,
17 the purpose to be accomplished and the resulting
18 wounds or injuries may be considered in
19 determining the intent with which the act was
20 committed. Intent may also be inferred when it's
21 demonstrated that the Defendant voluntarily and
22 willfully commits an act, the natural tendency of
23 which is to destroy another person's life.

24 I charge you the Defendant is also
25 charged with first degree burglary. The State

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1 must prove beyond a reasonable doubt that the
2 Defendant entered a dwelling without consent. A
3 dwelling is any building or portion of a building
4 in which a person ordinarily sleeps. A building
5 constructed as a dwelling that has never been
6 occupied cannot be considered a dwelling for
7 purposes of burglary, but a building as a
8 dwelling, even if the residents are temporarily
9 absent from the building.

10 In order to prove that the Defendant
11 entered the dwelling, the State does not have to
12 show that the Defendant's entire body entered the
13 dwelling. The smallest of entry is sufficient.
14 It may be any part of the body, such as a hand or
15 a foot, or even an instrument, such as a hook or
16 other instrument.

17 In addition, the State does not have to
18 prove that force was used to gain entry. If a
19 person enters a building by using deception,
20 artifice, trick or misrepresentation to get
21 consent to enter, this is an entry without
22 consent.

23 Next, the State must prove beyond a
24 reasonable doubt that the Defendant intended to
25 commit a crime, either a felony or a misdemeanor

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1 at the time of the entry into the dwelling.

2 The mere entry into a dwelling without
3 consent is not burglary. If the intent is to
4 commit a crime is formed after the entry, it is
5 not burglary.

6 On the other hand, if the Defendant
7 intended to commit a crime at the time of the
8 entry into the dwelling, it is burglary even if
9 the intent was abandoned after the entry. It
10 does not matter that the intended crime was not
11 committed.

12 Intent may be shown by acts and
13 circumstances of the Defendant and other
14 circumstances from which you may naturally and
15 reasonably infer intent.

16 Finally, to prove burglary the State
17 must prove beyond a reasonable doubt and/or any
18 of the following four things:

19 One, when entering or while in the
20 dwelling or when fleeing, the Defendant or an
21 accomplice was armed with a deadly weapon or
22 explosive.

23 A deadly weapon is an article,
24 instrument or other substance, which is likely to
25 cause death or great bodily harm. Whether an

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1 instrument has been used as a deadly weapon
2 depends on the facts and circumstances of each
3 case. The following are examples, under the law,
4 of instruments which may be deadly weapons. A
5 pistol, a shotgun, a rifle, a dirk, a dagger, a
6 knife, a slingshot, metal knuckles, a razor,
7 gasoline, a fire bomb, a Molotov cocktail and
8 even lighter fluid. A gun may be a deadly weapon
9 even if it's not operated.

10 The State must prove and/or when
11 entering while in the dwelling or when fleeing,
12 the Defendant or an accomplice caused physical
13 injury to anyone not participating in the crime.

14 And/or when entering, while in the
15 dwelling or when fleeing, the Defendant or an
16 accomplice used or threatened to use a dangerous
17 object.

18 And/or when entering while in the
19 dwelling or when fleeing, the Defendant or an
20 accomplice displayed what would appear to be a
21 knife, pistol, revolver, shotgun, machine gun, or
22 other firearm, other deadly weapon.

23 And/or the Defendant entered or remain-
24 ed in the dwelling in the nighttime. Nighttime
25 is a period between sunset and sunrise, during

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1 which there is not enough daylight to recognize a
2 person's face, except by artificial light or
3 moonlight.

4 Now, ladies and gentlemen, the
5 Defendant is also charged with armed robbery. In
6 order to prove this offense, the State must prove
7 beyond a reasonable doubt that the Defendant took
8 personal property from the person or presence of
9 another person.

10 Property is in the presence of a person
11 if it is within the person's reach, inspection,
12 observation or control so that the person could,
13 if not overcome with violence or prevented by
14 fear, keep possession of the property.

15 The State must also prove beyond a
16 reasonable doubt that the Defendant carried the
17 property away intending to permanently deprive
18 the owner of the property and to keep the
19 property for the Defendant's own use.

20 The slightest removal of the property
21 or the complete possession of the property, even
22 for an instant by the Defendant is sufficient to
23 show a taking and carrying away of the property.

24 The taking and carrying away of the
25 property must have been done with violence or by

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1 putting the owner of the property in fear of
2 violence.

3 Finally, the State must prove beyond a
4 reasonable doubt that the Defendant was armed
5 with a deadly weapon during the robbery. As I
6 said before I'm required to charge you that a
7 deadly weapon under this article is any
8 instrument or substance which is likely to cause
9 death or great bodily harm. Whether an
10 instrument has been used as a deadly weapon
11 depends on the facts and circumstances of each
12 case.

13 Again, I have to charge you that the
14 following are examples of instruments, which may
15 be deadly weapons: a pistol, a shotgun, a rifle,
16 a dirk, a dagger, a knife, slingshot, metal
17 knuckles, etcetera. A gun may be a deadly weapon
18 under the robbery statute, even if it is not
19 operating.

20 The Defendant is also charged under 16-
21 23-490 with possession of a weapon during the
22 commission of a -- or attempt to commit a violent
23 crime. The State must prove beyond a reasonable
24 doubt that the Defendant visibly displayed a
25 knife during the commission of a violent crime.

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1 A knife means any instrument or tool
2 with a sharp cutting edge, whether or not
3 fastened to a handle, which can be used to
4 inflict a cut, slash or wound.

5 In order to find the Defendant guilty
6 of possession of a weapon during the commission
7 of a violent crime, you must find the Defendant
8 guilty of either committing a violent crime or
9 attempting to commit a violent crime.

10 Murder, attempted murder, armed
11 robbery, and first degree burglary are all
12 violent crimes. The State must prove beyond a
13 reasonable doubt that the weapon further advanced
14 or helped in the commission of a violent crime.

15 Now, ladies and gentlemen, that
16 necessarily requires to take that up last.
17 Because you have to find the existence of a
18 violent crime before you can find possession of a
19 weapon during a violent crime. So that will be
20 the last issue you should deliberate.

21 Now, finally, ladies and gentlemen, the
22 Defendant in this case has raised the defense of
23 self-defense. Self-defense is a complete defense
24 and if it is established you must find the
25 Defendant not guilty. The State has a burden of

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1 disproving self-defense by proof beyond a
2 reasonable doubt. If you have a reasonable doubt
3 of the Defendant's guilt after considering all of
4 the evidence, including the evidence of self-
5 defense, then you must find the defendant not
6 guilty.

7 On the other hand, if you have no
8 reasonable doubt of the Defendant's guilt after
9 considering all the evidence, including the
10 evidence of self-defense, then you must find the
11 Defendant guilty.

12 The following elements are required to
13 establish self-defense:

14 First, the Defendant must be without
15 fault in bringing on the difficulty.

16 If the Defendant's conduct was the
17 type, which was reasonably calculated to and did
18 provoke a deadly assault, the Defendant would be
19 at fault in bringing on the difficulty and would
20 not be entitled to an acquittal based on self-
21 defense.

22 If the Defendant voluntarily
23 participated in mutual combat for purposes, other
24 than protection, the killing of the victim would
25 not be self-defense. This is true even if during

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1 the combat the Defendant feared death or serious
2 bodily injury.

3 However, if before the killing is
4 committed the Defendant withdraws and tries in
5 good faith to avoid further conflict and either
6 by word or act makes the fact known to the
7 victim, he would be without fault in bringing on
8 the difficulty.

9 For mutual combat, there must be a
10 mutual intent and willingness to fight. This
11 intent may be shown by the acts and conducts of
12 the parties and the circumstances surrounding the
13 combat.

14 In addition, it must be shown that both
15 parties were armed with deadly weapons. The
16 second element of self-defense is the Defendant
17 was actually in the imminent danger of death or
18 serious bodily injury or that the Defendant
19 actually believed he was in imminent danger of
20 death or serious bodily injury.

21 If the Defendant was actually in
22 imminent danger, it must be shown that the
23 circumstances would have warranted a person of
24 ordinary firmness and courage to strike the fatal
25 blow to prevent death or serious bodily injury.

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1 If the Defendant believed he was in
2 imminent danger of death or serious bodily
3 injury, it must be shown that a reasonably
4 prudent person of ordinary firmness and courage
5 would have had the same belief.

6 In deciding whether the Defendant
7 actually was or believed he was in imminent
8 danger of death or serious bodily injury, you
9 should consider all the fact and circumstances
10 surrounding the crime, including the physical
11 condition and characteristics of the Defendant
12 and the victim.

13 The Defendant does not have to show
14 that he was actually in danger. It is enough
15 that the Defendant believed he was in imminent
16 danger and a reasonably prudent person of
17 ordinary firmness and courage would have had the
18 same belief.

19 The Defendant has a right to act on
20 appearances, even though the Defendant's beliefs
21 may have been mistaken. It's up for you to
22 decide whether the Defendant's fear of immediate
23 danger or death or serious bodily injury was
24 reasonable and would have been felt by an
25 ordinary person in the same situation.

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1 Evidence of prior difficulties between
2 the Defendant and the victim may be considered in
3 deciding whether a threat existed, where the
4 Defendant had a reason to believe a threat
5 existed and how serious the threat was.

6 I charge you that the relative size,
7 ages and weights of the Defendant and the victim
8 may be considered in deciding the apparent or
9 actual need for force in self-defense and the
10 amount of force needed. The reputation of a
11 victim as a violent person may be considered in
12 deciding whether there was a need for force,
13 where the Defendant had reason to believe there
14 was a need for force and whether deadly force was
15 reasonably necessary.

16 The final element of self-defense is
17 that the Defendant had no other probable way to
18 avoid the danger of death or serious bodily
19 injury than to act as the Defendant did in this
20 particular instance.

21 A person in this state cannot be
22 required to make an exact calculation as to the
23 degree or amount of force which is needed to
24 avoid death or serious bodily harm. Therefore,
25 in self-defense, the Defendant has a right to use

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1 the force needed to avoid death or serious bodily
2 harm.

3 The force used in self-defense does not
4 have to be limited to the degree or amount of
5 force used by the victim. The Defendant has a
6 right to use so much force as appeared to be
7 necessary for a complete self-protection and
8 which a person of ordinary reason and firmness
9 would have believed to be needed to prevent death
10 or serious bodily harm.

11 Finally, if the Defendant is justified
12 in defending himself, were others -- then the
13 Defendant is also justified by -- now that was in
14 there erroneously. I'm going to take that out.
15 Strike that last sentence. I apologize.

16 All right. Ladies and gentlemen, there
17 are five possible verdicts which you may find in
18 this case: Murder; attempted murder; first
19 degree burglary; armed robbery; and, possession
20 of a weapon during a violent crime.

21 There is no significant order -- or no
22 significance whatsoever to the order in which
23 state these possible verdicts. It's simply one
24 has to come first and one has to come second.

25 Your jury verdict has to be unanimous;

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1 each of you have to agree. What I'm going to do
2 is once we send the evidence back, I will send
3 Mr. Foreman, the indictments back. And you'll
4 see that on the back of each of these
5 indictments, down in the far left, there is a
6 place for you to write Verdict. The verdict
7 would be Guilty or Not Guilty.

8 And the reason I'm doing that rather
9 than sending a separate page back is because
10 we've got multiple indictments and because I've
11 told you that I think you have to deal with all
12 of the other indictments before you deal with the
13 deadly weapon one. I think it's easier just to
14 do them on the indictments.

15 As I've told you, you can read these
16 indictments and read the facts, but don't take
17 them into account. But do write your verdict
18 down here. And the verdict should be guilty or
19 not guilty or not guilty or guilty; however you
20 want to do it. It's up to you. It must be
21 unanimous. Write it, sign your name, put the
22 date and knock on the door and we'll have someone
23 bring you in.

24 Now, during the course of your
25 deliberations if you have any kind of problem or

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1 any issue, you've already dealt with it before,
2 but write out that issue or problem on a piece of
3 paper, knock on the door, and they'll bring me
4 the issue.

5 Juries sometimes ask me to give them
6 answers I can't give them. If that happens, I
7 literally will bring you into the courtroom and
8 say I've got your question, that I can't answer
9 it and send you out.

10 On the other hand, there are a lot of
11 things I can do. I can recharge a part or this
12 entire charge that I've read to you. It's up to
13 you. Whatever you need, I will do my best to
14 help you.

15 I just will tell you that there are
16 some things that I'm prevented by law from doing.
17 So you ask the question and I'll tell you whether
18 I can answer it.

19 At this time, I'm going to send you
20 back and for the last time tell you don't begin
21 deliberating. I give both parties a right to ask
22 me to change my charge or if I've read something
23 wrong or included something that shouldn't be
24 included, I'll look at it and see. Most likely,
25 the charge is going to remain as it was. So in a

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1 few minutes the bailiff will bring you all the
2 evidence that's been marked and the indictments
3 and at that point you can finally begin
4 deliberating on this case.

5 When you reach a verdict, knock on the
6 door and they'll bring it to you. But at this
7 point, I need you to go back one last time.

8 I need the extra juror to wait for me
9 in the hall. So just the twelve of you go back.
10 Don't begin discussing this case until we bring
11 you the information, okay?

12 (JURY OUT @ 12:48 P.M.)

13 THE COURT: Okay. Anything from the
14 State?

15 SOLICITOR PRICE: No, Your Honor. No
16 problem with the charge.

17 THE COURT: Any addition from you,
18 Mr. Frost?

19 DEFENDANT FROST: No, sir.

20 THE COURT: Now, let me ask you
21 something. You had that dwelling thing that you
22 wanted me to charge. Do you have a piece of that
23 in -- because did I make that a Court's Exhibit
24 yesterday.

25 COURT REPORTER: You did.

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1 MR. COLE: Yes, Your Honor.

2 THE COURT: Just for the record, Mr.
3 Frost asked me to include, what was it -- Exhibit
4 Number, what, 4?

5 COURT REPORTER: Three.

6 THE COURT: And, again, this is for
7 appeal purposes so you're protected. I decided
8 not to charge that, but it's in the record, okay?
9 The only thing that could be considered on appeal
10 is what's in the record. So for your sake, I'm
11 kind of over-including stuff, but I think that's
12 the only way to be fair to you since you're
13 proceeding *pro se*.

14 Okay. Y'all need to come up here and
15 look at the evidence.

16 SOLICITOR PRICE: Your Honor, the
17 only other thing that maybe the clerk could make
18 sure that the Foreman is aware of is that the
19 possession of a weapon charge and the murder
20 charge were, of course, on the same indictment.
21 The possession of a weapon.

22 THE COURT: And you (Clerk) can just
23 tell them on that one.

24 CLERK: Okay. And I'll put that
25 first in there. They just need to draw a line.

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1 You okay with me just draw a line and put murder
2 at the top?

3 SOLICITOR PRICE: Yes, sir.

4 THE COURT: Okay. I didn't know
5 that. I apologize. So that one, they'll have
6 two.

7 Okay. Mr. Frost, come up here and make
8 sure that everything you've got into evidence is
9 marked. It has to be marked. And then these
10 indictments will be sent back there with them.

11 Mr. Frost, mainly you just need to
12 double check and make sure everything you think
13 you put in, you put in.

14 (APPROVAL OF EXHIBITS)

15 THE COURT: You know what, it's not
16 that I mistrust Richard, because I don't, but to
17 make it clear, I'm going to bring them back in
18 and explain that murder thing to them. That way
19 it's on the record.

20 I took out the "not" in the attempted
21 murder, didn't I?

22 SOLICITOR PRICE: Yes, sir.

23 THE COURT: Yeah. I did. I mean,
24 it was in it but I just flew through it. Yeah.
25 And I'm going to bring them back in and explain

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1 this. I just should have noticed that.

2 In fact, do either one of y'all have if
3 I draw the line on the back here and put Murder
4 at the top and then possession of a weapon
5 underneath it.

6 SOLICITOR PRICE: No, sir.

7 THE COURT: Do y'all care about
8 that?

9 DEFENDANT FROST: (Negative response)

10 THE COURT: So for the record, I'm
11 making the change here.

12 CLERK: So would you like it in red?

13 THE COURT: Yeah. Okay. Let me
14 show y'all what I've done and I've done it in
15 red, so -- I put murder here and then drawn a
16 line and possession of a weapon during a violent
17 crime and I'm going to explain that to them.

18 So bring them back in and I'll do that
19 and then we'll send them back out with the
20 indictments and the evidence.

21 (JURY IN @ 12:56 P.M.)

22 THE COURT: Let me tell you one
23 thing that we've discovered after you got out.
24 There will be no additional charge, so you can
25 relax. But the indictment for murder and

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1 possession of a weapon during a violent crime,
2 those are on the same indictment. There's Count
3 1 and Count 2 and there's some coffee or some-
4 thing spilled that one. I have, in red pen,
5 written Murder here and drawn a line. And then
6 drawn a line and put possession of a weapon
7 during a violent crime. So you'll have two
8 different verdicts or two verdicts on that one
9 form. So murder first and then possession of a
10 weapon and just write under there guilty or not
11 guilty. That's the only change. The rest of
12 them are individual indictments and because of
13 the way the law is, those two had to be on the
14 same one. I just didn't want you to miss
15 something. Okay. Go back to the jury room.

16 Ma'am (alternate), you can just stay
17 right here. And in about ten seconds you'll
18 have all of this. At that point begin your
19 deliberations.

20 (JURY OUT @ 12:57 P.M.)

21 THE COURT: Ms. McBride, meet me
22 right here and I'll talk to you.

23 (ALTERNATE JUROR EXCUSED)

24 (JURY IN DELIBERATION @ 12:57 P.M.)

25 THE COURT: Okay. We're at-ease

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1 until they have a question, okay?

2 (COURT AT EASE)

3 (JURY NOTIFIATION @ 1:47 P.M.)

4 (DEFENDANT PRESENT)

5 THE COURT: I'm advised that we have a
6 verdict. Bring in the jury, please.

7 (JURY IN)

8 THE COURT: All right. You can
9 publish it.

10 CLERK: If it pleases the Court.
11 This is the first indictment. Docket number
12 2013-GS-04-00646, count 1, murder. The jury
13 finds guilty; count 2, the weapon, possession of
14 a weapon during a violent crime. The jury finds
15 guilty.

16 In the indictment number -- docket
17 number 2013-GS-04-00649, this is the indictment
18 for robbery, armed robbery, robbery while armed
19 with a deadly weapon, the jury finds guilty.

20 Indictment number 2013-GS-04-00648,
21 this is the indictment for burglary. Burglary
22 in the first degree, the jury finds guilty.

23 And indictment for docket number 2013-
24 GS-04-00647, indictment for murder or attempted
25 murder, the verdict is guilty.

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1 THE COURT: All right. Has either
2 side asked for a polling or want a polling of the
3 jury?

4 SOLICITOR PRICE: Not from the State,
5 Your Honor. #

6 THE COURT: Mr. Frost, do you want a
7 polling of the jury?

8 DEFENDANT FROST: Yes.

9 THE COURT: Okay. Mr. Clerk, if
10 you would poll the jury.

11 CLERK: If these were your verdicts
12 -- you want me to do an individual or just all in
13 one.

14 THE COURT: All in one.

15 CLERK: If this was your verdict
16 would you show by the raising of your right hand?

17 JURY: (Unanimous affirmative
18 response)

19 CLERK: Thank you very much.

20 THE COURT: All right. Thank you.
21 All right. Ladies and gentlemen, I have to, for
22 the last time, send you back to the jury room. I
23 have to be a little bit of cleanup we have to do.
24 And then I'll be back to speak to you personally
25 in a few minutes but I want to publically thank

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1 you for your patience. And quite frankly I watch
2 juries all the time and I noticed that y'all
3 listened to every thing and I appreciate it very
4 much. So head back to the jury room for the last
5 time. I'll be back in a few minutes.

6 (JURY OUT @ 1:50 P.M.)

7 THE COURT: All right. Any Motions
8 from the State?

9 SOLICITOR PRICE: Not at this time,
10 Your Honor.

11 THE COURT: Yes, sir. Any Motions?

12 DEFENDANT FROST: I would like to put
13 a Motion in for a mistrial due to the fact that I
14 could not question Thomas Miller on his
15 credibility. And I'd like to put another Motion
16 for a mistrial due to the fact that they didn't
17 produce swab samples, blood samples from the
18 residence.

19 THE COURT: Okay. And so two
20 Motions for mistrial. Anything else?

21 Speak with the lawyer just to make
22 sure.

23 DEFENDANT FROST: (Confers with Mr.
24 Cole).

25 MR. COLE: Your Honor, we would --

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1 Mr. Frost also asks that -- he'd move for a new
2 trial based on the grounds that were stated
3 previously and his belief that no reasonable jury
4 could have found him guilty based on the evidence
5 presented. So we'd ask for a new trial on that
6 ground.

7 THE COURT: Okay. All right. Well,
8 like I said, I've tried to protect those two
9 reasons for mistrial and somebody who is *pro se*.
10 That's fine. I'm going to deny your motion for
11 mistrial and deny your motion for a new trial.
12 But you're protected for the record.

13 Let me go back there and talk to them
14 and like I normally do.

15 Do y'all normally have sentencing
16 sheets?

17 SOLICITOR PRICE: Your Honor, I do.
18 I also wanted to put the Court on notice that I
19 served the defendant with a notice of life
20 without parole earlier this year. In fact, it
21 was last year's life papers, in 2015, based on
22 his prior first degree arson attempts, which is a
23 most serious offense. And I have that paperwork
24 for the Court.

25 THE COURT: Okay. Get all that

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1 paperwork ready. Give me five minutes to go talk
2 with them. What I do is, Mr. Frost so you know,
3 I just basically go back and tell them they can
4 stay or they're released. I mean, there's
5 nothing funny going on. I'll be right back with
6 sentencing.

7 (COURT AT-EASE)

8 (DEFENDANT PRESENT)

9 THE COURT: Give me -- yeah. That's
10 okay. Have a seat. Have you got the forms that
11 I can go ahead and start signing?

12 SOLICITOR PRICE: Yes, sir. Oh, I'm
13 sorry. Mr. Cole is getting them -- yes, he's got
14 them.

15 THE COURT: Okay. Do you have a
16 sentencing sheet on that arson?

17 SOLICITOR PRICE: Yes, sir. It's
18 attached to the notice that I handed up as well.

19 THE COURT: Thank you. If y'all
20 will give me a minute to sign all this stuff I've
21 got to .

22 All right. To avoid any confusion I
23 need you to correct me on this. On the murder,
24 it's thirty to life; right?

25 SOLICITOR PRICE: Yes, sir, Your

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1 Honor.

2 THE COURT: All right. And the
3 attempted murder?

4 SOLICITOR PRICE: It is also thirty
5 to life.

6 THE COURT: All right.

7 COURT REPORTER: Speak up, please.

8 THE COURT: And the burglary first
9 degree is thirty?

10 SOLICITOR PRICE: Fifteen to life.

11 THE COURT: Fifteen to life.

12 And the armed robbery?

13 SOLICITOR PRICE: That is ten to
14 thirty.

15 THE COURT: Ten to thirty. And you
16 have noticed him, I see, back on July 21st of 2015
17 of your notice to ask me to sentence him with
18 life without parole because he has a most serious
19 offense of arson; is that correct?

20 SOLICITOR PRICE: Yes, sir.

21 THE COURT: Okay. Come on up, Mr.
22 Frost.

23 DEFENDANT FROST: Yes, sir.

24 THE COURT: Okay, anything from the
25 State, Solicitor?

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1 SOLICITOR PRICE: No, sir, Your
2 Honor. Only that he has served fifteen hundred
3 and two (1,502) days. But, again, we've served
4 him notice.

5 THE COURT: Okay. I'll just put
6 down here to be given credit for that.

7 All right. Mr. Frost, anything you
8 want to tell me? First, how old are you?

9 DEFENDANT FROST: Fifty-three (53).

10 THE COURT: Okay. I'll be happy to
11 hear from you.

12 DEFENDANT FROST: You know, I'd just
13 like to tell my mama over there that I love her
14 and pray for her. I love you, Mama.

15 THE COURT: Anything else? What
16 happened in there? I mean, it's all pretty
17 clear.

18 DEFENDANT FROST: Like I said, the
19 officer rolled up in there on a burglary in
20 progress. Me and my dad had a conflict, but
21 Officer Chris Vaughn rolled up in there and he
22 put all them cuts on my dad because he ---

23 THE COURT: You're sticking with ---

24 DEFENDANT FROST: It's the truth.
25 It's the truth.

State of South Carolina v. Robert Joe Frost

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Case No. 13-GS-04-0646 through 0649

Jury Trial of August 22-25, 2016

Verdicts & Sentences

1 THE COURT: Okay.

2 DEFENDANT FROST: It is the truth.

3 THE COURT: Okay. All right. Well,
4 Mr. Frost, the jury found you guilty of all these
5 things and the State, of course, has asked me to
6 give you life without parole. That is something
7 that is discretionary with me ---

8 SOLICITOR PRICE: No, sir, Your
9 Honor. Unfortunately, I think once we serve him
10 notice it's ---

11 THE COURT: You served him?

12 SOLICITOR PRICE: Yes, sir. And
13 because it was a most serious offense, it's non-
14 discretionary.

15 THE COURT: You understand that
16 because of that I don't have any option, which is
17 odd. You understand that?

18 DEFENDANT FROST: I plead the mercy
19 of the Court.

20 THE COURT: Well, let me just tell
21 you. It's all -- I don't think this probably
22 would make any difference, quite frankly. That
23 applies to the murder?

24 SOLICITOR PRICE: Yes, sir. We
25 served him for all of them so technically the

State of South Carolina v. Robert Joe Frost

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Case No. 13-GS-04-0646 through 0649

Jury Trial of August 22-25, 2016

Verdicts & Sentences

1 first degree burglary which also carries up to
2 life would qualify as well.

3 THE COURT: All right. Mr. Frost,
4 as I said you've been served with a notice to
5 seek life without parole because of the arson
6 charge that you had in September 21st 1990, Judge
7 Epps.

8 So, on the sentence of or on the charge
9 of murder, the sentence of life without the
10 possibility of parole. That runs concurrent with
11 all the other sentences.

12 The armed robbery charge is thirty
13 years.

14 On the burglary, the sentence is life
15 without parole. That runs concurrent.

16 And on the attempted murder, that is
17 life without parole. That runs consecutive to
18 the murder charge.

19 And I understand and I don't take any
20 great glee in this because I understand at your
21 age what this means. And believe it or not, I
22 will think of you until I die and will say a
23 prayer for you.

24 DEFENDANT FROST: Thank you.

25 SOLICITOR PRICE: Your Honor, I'm so

Verdicts & Sentences

25 THE COURT: Thank you. By the way,

State of South Carolina v. Robert Joe Frost

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Case No. 13-GS-04-0646 through 0649

Jury Trial of August 22-25, 2016

Verdicts & Sentences

1 you send me whatever you need.

2 CLERK: We would ask that everybody
3 stay in the courtroom just another minute.

4 THE COURT: And here's the life
5 without parole thing.

6 Yeah. They're letting the jurors go so
7 we told them we'd let them go first.

8 SOLICITOR PRICE: Thank you, Your
9 Honor.

10 (COURT IN RECESS)

11 (TRANSCRIPT CONCLUDED)

12

13

14

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24

State of South Carolina v. Robert Joe Frost

630

Case No. 13-GS-04-0646 through 0649

Jury Trial of August 22-25, 2016

Certificate of Court Reporter

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the jury trial
in the within action heard August 22 through August
25, 2016, before The Honorable J. Cordell Maddox as
prepared from the audio notes of Vivian C. Cross,
assigned Court Reporter;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Greenville, South Carolina

FORM 5

STATE OF SOUTH CAROLINA

FILED-CLERK'S OFFICE
ANDERSON SC

2018CP-04-01466

County of AndersonIN THE COURT OF COMMON PLEAS
JUL 25 PM 1:07Robert Frost 121218

Full name and prison number (if any) of Applicant

COMMON PLEAS AND
GENERAL SESSIONS

v.

APPLICATION FOR

State of South Carolina

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 Lee, Corr, Inst, 990 Wilsack, Hwy
Bishopville, SC, 29010
2. Name and location of Court which imposed sentence Anderson County
Clerk of Court, PO, Box 8002, Anderson SC, 29622
3. Name(s) of co-defendant(s) (if any) 0
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-04-0646 Murder 2013-GS-04-0649 Robbery
 - (b) 2013-GS-04-0647 Attempted Murder

A TRUE COPY

JUL 25 2018

Richard S. Kiley
ANDERSON CLERK OF COURT

- (c) 2013-GS-04-0648 Burglary 1st degree
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 125/2016, 3 life with out parole 30
- (b) years Run Consecutive
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty jury Trial
- (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. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 16/2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) yes
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 6th Amendment Confrontation Clause violated
- (b) 5th, 14th Amendment Due process Clause violated
- (c) No investigation on false frivolous charges against me.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Not being able to question ex-investigator affected by
- (b) Equal Right to protection from the Law
- (c) No investigation ex-investigator credibility
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? 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. NO
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NO
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. No
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. No
- ii. _____
- iii. _____
- iv. _____

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

- i. No
- 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. No
- ii. _____
- iii. _____

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

- i. No
- 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) Ineffective Assistance of Appellate Council
 (b) Solicitor ~~respectively~~ not Recognize Motion, Grievance
 (c) Ineffective judge not Recognize Perjury on ex-investigator
Thomast E. Miller

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

- (a) your arraignment and plea? Pro. Se
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (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?

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. Appellate Defense, Katherine H. Hudgins
1330 Lady Street, Suite 401, Columbia, SC, 29211-1589
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Appeal
 ii. _____
 iii. _____

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

New Trial

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

No

STATE OF SOUTH CAROLINA)

County of

Robert Fest)

VERIFICATION

I, _____, 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 Fest

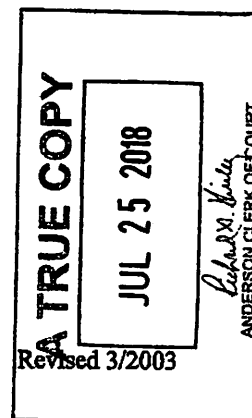
SWORN to and subscribed before me this 20
day of July, 2018.

Unique Greene (L.S.)
Notary Public

My Commission Expires:

9-29-2027

FILED-CLERK'S OFFICE
ANDERSON SC
2018 JUL 25 PM 1:08
COMMON PLEAS AND
GENERAL SESSIONS



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

I, Robert Frost, 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.

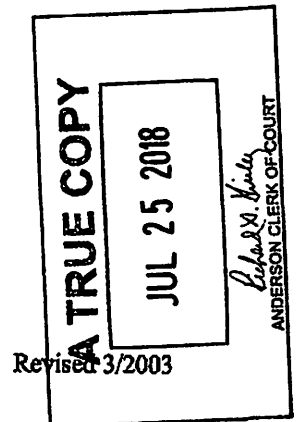
Robert Frost
Applicant

SWORN or affirmed to and subscribed before me this
20 day of July, 2018.

Uniqua Greene
Notary Public

My Commission Expires: 9-29-2027

FILED-CLERK'S OFFICE
ANDERSON SC
2018 JUL 25 PM 1:08
COMMON PLEAS AND
GENERAL SESSIONS



FILED-CLERK'S OFFICE
ANDERSON SC

IN the Court of General Sessions
Anderson County

JUL 25 PM 1:07

COMMON PLEAS AND
GENERAL SESSIONS

State South Carolina . Motion to Prescient
Against . Post-Conviction Relief
Robert Frost . and Exhibit A-25
. Warrent 3500, 412, 413
. 414, 415, 416

Now Come the defendant Name in above
Caption to Move before this Honorable
Court for Post-Conviction Relief
and Application to be file with clerk
office and clock copy sent back to
me.

Respectfully Submitted
Pro. Se. attorney
Robert Frost

Date
July 20/2018

Robert Frost 171218
F-1-A-1137, Lee, Corr, ENST
990 Wisaaky Hwy
Bishopville, SC, 29010

A TRUE COPY

JUL 25 2018

Richard M. Miller
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Robert Frost, #171218,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-04-01466

**RETURN, PARTIAL MOTION TO
DISMISS, AND MOTION FOR MORE
DEFINITE STATEMENT**

Respondent, making its Return to the application for post-conviction relief filed on July 25, 2018, would respectfully show this Court:

I.

Robert Frost (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its April 2013 term, the Anderson County Grand Jury indicted Applicant for murder (2013-GS-04-00646), possession of a weapon during the commission of a violent crime (2013-GS-04-00646), attempted murder (2013-GS-04-00647), and first-degree burglary (2013-GS-04-00648), armed robbery (2013-GS-04-00649). Gregory Lee Cole, Jr., Esquire initially represented Applicant on these charges. Assistant Solicitor Lauren D. Price, of the Tenth Circuit Solicitor's Office, prosecuted the case.

On November 10, 2015, Applicant appeared before the Honorable R. Lawton McIntosh and moved to relieve his counsel and proceed *pro se*. After warning Applicant of the dangers of self-representation, Judge McIntosh granted Applicant's motion, but required Mr. Cole to remain as standby counsel. ROA 17-18. In granting the motion, Judge McIntosh found Applicant had waived

his right to an attorney and had met the *Faretta*¹ factors. ROA 18.

Thereafter, on August 22-25, 2016, Applicant proceeded to a jury trial before the Honorable J. Cordell Maddox, Jr. Following deliberations, the jury convicted Applicant as indicted on all counts. Judge Maddox sentenced Applicant to concurrent terms of imprisonment of five years for the weapons charge, life without the possibility of parole for murder, life without the possibility of parole for first-degree burglary, and thirty years for armed robbery. Judge Maddox also sentenced Applicant to a consecutive term of life without the possibility of parole for attempted murder.

Applicant filed a timely notice of appeal, and Appellate Defender Kathrine H. Hudgins, of the South Carolina Commission on Indigent Defense—Division of Appellate Defense, perfected an appeal on Applicant's behalf. Following the submission of an *Anders*² brief by appellate counsel, Applicant filed a *pro se* brief on September 7, 2017. In this *pro se* brief, Applicant raised the following issues:

1. Did the judge err in denying [Applicant's] motion for a directed verdict to the burglary charge where evidence was presentend that [Applicant's] checks and other mail was [sic] received at residents [sic] (also directed verdict issue (2) argued together;
2. Did the judge err in denying [Applicant's] pretrial motion to question Investigator Thomas E. Miller credibility;
3. Did the judge err in not granting Applicant a [sic] expert witness to examine the cuts to verify if it was the correct murder weapon used in evidence;
4. Did the judge err in denying Applicant's motion for a mistrial due to the fact that he could not question Thomas E. Miller on his credibility;
5. Did the court err in failing to grant [Applicant] a [sic] investigator because he was African American;
6. Did the court err in not granting a mistrial due to that fact no blood samples or swab samples was produced from the residence; [and]
7. Did the judge err in continuing the trial after Applicant put in a motion for a new file when his file was missing?

¹ *Faretta v. California*, 422 U.S. 806 (1975).

² *Anders v. California*, 389 U.S. 738 (1967).

After considering Applicant's *pro se* brief and reviewing the case pursuant to *Anders*, the Court of Appeals dismissed Applicant's appeal by unpublished opinion on April 4, 2018. *State v. Frost*, Op. No. 2018-UP-137 (S.C. Ct. App. filed April 4, 2018). The remittitur was issued on April 25, 2018.

II.

During the week leading up to this incident date, July 15, 2012, Applicant was acting abnormally, in that he was angry and depressed. ROA 214. On July 15, 2012 Applicant went to a neighbor's house to use the neighbor's phone to call his girlfriend. ROA 229. After calling his girlfriend, Applicant then stated: "I'm going to go do something very crazy, I'm going to kill somebody." ROA 229. Applicant also called the Davenports and threatened to kill them. ROA 367, 401. Neighbors then saw Applicant put two black knives in his saddlebags. ROA 230. Applicant then stated to his neighbor: "Samantha, I love you but I gotta go. You can have everything out of my house you want because the next time you see me, you'll be seeing me on the 11:00 News." ROA 215, 230. Applicant then got on his motorcycle and left. ROA 215.

Later, neighbors of Faye and James Davenport, Applicant's mother and stepfather, observed a motorcycle park in the Davenport's back driveway. ROA 254-55. Applicant got off the motorcycle with a long, silver object in his hand, which he got from the saddlebag. ROA 255. He then kicked in the back door. ROA 256, 370, 401-02. At the time, Applicant did not live with the Davenports. ROA 387-88.

Applicant put a knife to Mrs. Davenport's throat and said he needed money. ROA 370. She told him she had a billfold on the kitchen island, but Applicant stated: "I'm going in there and kill that son of a bitch, James." ROA 372. She followed Applicant to the bedroom, and Mr. Davenport

was standing in the door with a baseball bat. ROA 373. Mrs. Davenport was able to close and lock the bedroom door with her and Mr. Davenport inside, but Applicant kicked the door in with the knife raised in his hand. ROA 374.

Mr. Davenport then hit Applicant with the bat. ROA 374. Applicant then went after Mr. Davenport with the knife, and Mr. Davenport fell between the bed and the wall. ROA 375. The two started wrestling, but Applicant was stabbing Mr. Davenport. ROA 375-76. Mrs. Davenport then saw Applicant "going to his throat." ROA 376, 409-10.

Mrs. Davenport then ran from the room, but Applicant caught up with her, stating "I'm going to kill you now." ROA 376. Mrs. Davenport then saw a police car, and she yelled for help. ROA 377, 398. Applicant stabbed her twice and left the knife in her blouse. ROA 377-78. Applicant then ran out the back of the house to his motorcycle. ROA 379-80.

Lieutenant Vaughn was dispatched to the incident location in reference to a burglary in progress. ROA 287-88; 331-32, 351-52. Upon arrival, he noticed a motorcycle in the driveway. ROA 291. He then exited his vehicle and approached the side of the house, where he observed that the doorjamb appeared to be broken. ROA 292. He then approached the front of the house, and he heard a woman crying for help. ROA 293. Lieutenant Vaughn then went to the side of the house and observed Applicant sitting on the motorcycle. ROA 294. Applicant kicked the kickstand up, and Lieutenant Vaughn drew his weapon and ordered Applicant off of the motorcycle and ordered him to lay on the ground. ROA 294. Applicant at first did not comply, stating his had been hit with a baseball bat and could not get down, but then later complied. ROA 294-95. Due to the cut on the man's head, Lieutenant Vaughn called EMS. ROA 296. He also called for additional units. ROA 296.

Mrs. Davenport continued to yell for help, yelling ““He’s killed my husband!”” ROA 296. After additional officers arrived, Lieutenant Vaughn then went into the house, where he observed Mrs. Davenport slumped over in the kitchen/dining room area. ROA 296-97. A knife was next to Mrs. Davenport. ROA 230. He then proceeded to the front bedroom, where Mrs. Davenport stated her husband was. ROA 297, 300. He observed a man lying on the floor, right behind the door, covered in blood. ROA 301-02. There was a baseball bat behind Mr. Davenport’s legs³. ROA 302. He again spoke with Mrs. Davenport, who told him he had saved her life because when he pulled up, her son was in the kitchen with her. ROA 304. She also told him when her son saw him approach the front of the house, he took the knife and stabbed her. ROA 304-05.

The autopsy of Mr. Davenport revealed he had multiple blunt force trauma injuries and multiple sharp force traumatic injuries. ROA 466. He had eight stab and cut injuries over the left side of his abdomen, multiple cut injuries on his left arm, which appeared to be defensive wounds, several cuts on his flank, and a cut on the left side of his neck, which went into the neck tissue and cut the jugular vein and carotid artery. ROA 467-68. There was a minimum of eighteen stab and cut wounds on Mr. Davenport’s body. ROA 468. These cuts were received from the front of Mr. Davenport, most likely by a right-handed individual, with a single-edged blade. ROA 468, 471. The cause of death was exsanguination. ROA 471.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. 6th Amendment Confrontation Clause violated;

³ Lieutenant Vaughn testified he observed EMS move the baseball bat when they arrived on scene. ROA 318.

- a. Not being able to question ex-investigator affectedly [sic];
- 2. 5th, 14th Amendment Due Process Clause violated;
 - a. Equal right to protection from law;
- 3. No investigation on false frivolous charges against me;
 - a. No investigation ex-investigator credibility;
- 4. Ineffective assistance of appellate council [sic];
- 5. Solicitor ineffective not [sic] recognize motion, grievance;
- 6. Ineffective judge not recognize perjury [sic] on ex-investigator Thomas F. Miller.

Attached to this Return and incorporated by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, and the post-conviction relief application. 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, SCRCP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCP.

IV.

Applicant alleges several instances of trial court error. Specifically, Applicant alleges he was denied his right to confrontation in that he was denied the ability to effectively cross-examine

Investigator Thomas E. Miller. Applicant further alleges he was denied the right to investigate Investigator Miller's credibility. Still further, Applicant contends the trial court erred in failing to recognize the alleged perjured testimony of Investigator Miller. Applicant also contends he was denied his right to equal protection.

These allegations should be summarily dismissed. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at an applicant's trial or on appeal is not cognizable in an application for post-conviction relief. S.C. Code Ann. § 17-27-20(b); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for post-conviction relief. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001); *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997); *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973).

Applicant's allegations listed above could have been, or were, raised at trial and thereafter on appeal. Indeed, Applicant made numerous attempts pre-trial to obtain a private investigator to look into alleged incidents involving Investigator Miller. See ROA 14-15; 33-34; 37-40; 55-56; 66-67; 102-10. Applicant also attempted to bring out these alleged incidents at trial during cross-examination. ROA 567-70, 572. Furthermore, Applicant raised these very issues on appeal in his *pro se* brief to the Court of Appeals. Therefore, these allegations should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

V.

Respondent submits Applicant's allegations of ineffective assistance of appellate counsel are without merit. A defendant is entitled to effective assistance of appellate counsel. *Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an

applicant must establish both deficiency and prejudice. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See *Ezell v. State*, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); *Southerland*, 337 S.C. 615-16, 524 S.E.2d at 836. See also *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." *Smith v. Robbins*, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." *Jones*, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. *Tisdale*, 357 S.C. at 476, 594 S.E.2d at 167. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." *Smith v. Robbins*, 528 U.S. at 288 (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

In order to meet his burden, an applicant must establish a reasonable probability that, but for appellate counsel's failure to raise a specific issue on appeal, he would have prevailed on his appeal. *Smith*, 528 U.S. at 285-86.

Respondent submits Applicant can satisfy neither deficiency nor prejudice on the part of appellate counsel, particularly in light of the fact he has wholly failed to set forth any facts in support of his claim. Respondent, therefore, moves for a more definite statement with respect to this allegation. Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

The allegation of ineffective assistance of appellate counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

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

VII.

WHEREFORE, Respondent requests an evidentiary hearing be held on the claims of ineffective assistance of appellate counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

for KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

10/21, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Robert Frost, #171218	)	Case No.: 2018-CP-04-01466
	)	
Applicant,	)	
	)	SUPPLEMENTAL APPLICATION FOR
v.	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Applicant Robert Frost, by and through his appointed counsel, responding to the State of South Carolina's Return, Partial Motion to Dismiss, and Motion for a More Definite Statement, would show this Court as follows:

This matter is before the Court on Applicant Frost's Application for Post-Conviction Relief. In his *pro se* application, Mr. Frost alleged as grounds for relief violations of his 5th, 6th and 14th Amendment rights, including several trial errors revolving around the trial judge allowing the testimony of an investigator (Mr. Miller) Mr. Frost alleges was the actual murderer; the refusal of the trial court to allow Mr. Frost to impeach a police investigator regarding that Investigator Miller's subsequent arrest in what Mr. Frost alleges was a similar incident; the failure of the trial court to dismiss the burglary charge where the evidence shows Mr. Frost received mail at the residence; the trial court's denial of Mr. Frost's applications for a defense expert witness to examine the wounds to the decedent and for a defense investigator to investigate Mr. Frost's allegations of the Investigator Miller's involvement in the crime; and the prosecution's and the court's failure to charge Investigator Miller with perjury. Mr. Frost also alleged ineffective assistance of appellate counsel. None of Mr. Frost's allegations are of trial counsel ineffectiveness, as Mr. Frost represented himself, *pro se*, at trial.

20 FEB 5 PM 4:11:02
Anderson, SC COB, CP/CS

The State has moved to dismiss all grounds, other than those relating to ineffective assistance of appellate counsel, pursuant to *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). The allegations of Mr. Frost were raised by him at trial. Because the below signed counsel for Mr. Frost believes the claims unrelated to ineffective assistance of appellate counsel are not cognizable in a post-conviction relief proceeding, counsel does not oppose summary dismissal of these claims.

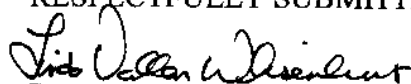
The State has further moved for a more definite statement as to the issue of effectiveness of appellate counsel. As the State recognizes, Mr. Frost is entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830 (1985). Therefore, Mr. Frost, in response to the State's request for a more definite statement, hereby supplements his Application for Post-Conviction Relief with regard to his claim of ineffective assistance of appellate counsel:

1. Appellate counsel was ineffective in failing to raise the following issues, preserved below, which would have entitled Mr. Frost to reversal on appeal:
 - a. the trial judge allowing the testimony of an investigator (Mr. Miller) Mr. Frost alleges was the actual murderer;
 - b. the refusal of the trial court to allow Mr. Frost to impeach a police investigator regarding that Investigator Miller's subsequent arrest in what Mr. Frost alleges was a similar incident;
 - c. the failure of the trial court to dismiss the burglary charge where the evidence shows Mr. Frost received mail at the residence;
 - d. the trial court's denial of Mr. Frost's applications for a defense expert witness to examine the wounds to the decedent and for a defense investigator to

investigate Mr. Frost's allegations of the Investigator Miller's involvement in the crime; and

- e. the prosecution's and the court's failure to charge Investigator Miller with perjury.

RESPECTFULLY SUBMITTED,



Linda Vallar Whisenhunt SC Bar #13028
Linda Vallar Whisenhunt, LLC
213 South Main Street
Anderson, SC 29624
(864)225-3125

Anderson, South Carolina

February 5, 2020

Robert Frost vs. State of South Carolina 2018-CP-04-01466 February 18, 2020

1 State of South Carolina
2 County of Anderson In the Court of Common Pleas

3
4 Robert Frost,)
5 Applicant,) 2018-CP-04-01466
6 -vs-) February 18, 2020
7 State of South Carolina,)
8 Respondent.)
9 _____) Transcript of Record

10

11

B E F O R E:

12

The Honorable R. Scott Sprouse, Judge

13

14

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

15

Linda Whisenhunt, Esquire
16 Attorney for the Applicant

17

Lillian Meadows, Esquire
18 Attorney for Respondent

19

20

21

22

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

23

24

25

26

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KATHRINE HUDGINS

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E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
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None offered.

For the Respondent:

Marked	Description	<u>I.D.</u>	<u>Admitted</u>
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None offered.

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1 MS. MEADOWS: May it please the court. The next
2 matter is Robert Frost versus the State of South
3 Carolina, docket number 2018-CP-04-1466.

4 During its April 2013 term, the Anderson County
5 Grand Jury indicted applicant for murder and possession
6 of a weapon during the commission of a violent crime.
7 Both are under indictment 2013-GS-04-0646, attempted
8 murder under indictment number 2013-GS-04-647,
9 first-degree burglary under indictment number
10 2013-GS-04-648, and armed robbery under indictment
11 number 2013-GS-04-649.

12 On April 22, 2016, applicant proceeded to a jury
13 trial before the Honorable J. Cordell Maddox.
14 Applicant appeared pro se but Gregory Lee Cole,
15 Esquire, served as a standby counsel. Assistant
16 Solicitor Lauren Price prosecuted the case.

17 The jury returned a verdict of guilty on all
18 indictments, and Judge Maddox sentenced the applicant
19 to concurrent terms of five years for the weapons
20 charge, life without possibility of parole on the
21 murder charge, life without the possibility of parole
22 on the first-degree burglary charge, and 30 years on
23 the armed robbery charge.

24 Judge Maddox also sentenced applicant to a
25 consecutive term of life without the possibility of

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1 parole for attempted murder.

2 Applicant filed a timely notice of appeal, and
3 Appellate Defender Kathrine Hudgins perfected the
4 appeal by filing an Anders brief.

5 Applicant also filed a pro se brief in response,
6 and the court of appeals affirmed applicant's
7 conviction on April 4, 2018.

8 On July 25, 2018, applicant filed a timely
9 application for PCR. Applicant is present today and
10 represented by Linda Whisenhunt, Esquire.

11 And, Judge, Ms. Whisenhunt has filed an amended
12 application on Mr. Frost's behalf, so we would ask
13 those allegations be put on the record before we get
14 started.

15 THE COURT: Ms. Whisenhunt --

16 Do we have a packet on this?

17 MS. WHISENHUNT: Your Honor, as it relates to the
18 amended application, the specific amendments that are
19 set forth on the second page, item 1, those are
20 allegations A through E. Those have been filed, and
21 those are the allegations that we intend to pursue,
22 your Honor.

23 They all relate to issues that were reserved at
24 trial by Mr. Frost that he contends would be items that
25 would be, at the appellate level, cause for reversal

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1 that were not raised by Kathrine Hudgins, who was the
2 attorney representative from the Office of Appellate
3 Defense.

4 THE COURT: Okay. I see.

5 MS. WHISENHUNT: May we proceed, your Honor?

6 THE COURT: Yes, ma'am. Call your first witness.

7 MS. WHISENHUNT: Your Honor, Mr. Frost, on behalf
8 of him, I call Robert Frost.

9 ROBERT FROST,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. WHISENHUNT:

13 Q Please state your name for the record.

14 A Robert Frost.

15 Q Mr. Frost, I want to talk with you first about the
16 PCR process.

17 Do you understand the purpose of the PCR process?

18 A Yes, ma'am.

19 Q Have you and I had sufficient opportunity to talk
20 about what a PCR is?

21 A Yes, ma'am.

22 Q And you understand, based on our conversations,
23 that if you are successful in this process, that you
24 will not automatically be released?

25 A Yes, ma'am.

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1 Q Do you understand that, if you are successful, the
2 guilty verdict could be set aside, but you would have
3 the opportunity only to start over with this process.

4 Do you understand that?

5 A Yes, ma'am.

6 Q And do you understand, based on our discussions,
7 that there are risks involved in a PCR?

8 A Yes, ma'am.

9 Q And have we discussed those risks?

10 A Yes, ma'am.

11 Q Have we discussed that the risks include that the
12 State, in starting over, could seek something even more
13 severe than they sought?

14 A Yes, ma'am.

15 Q They could possibly seek the death penalty?

16 A Yes, ma'am.

17 Q And knowing those risks, do you wish to proceed
18 with the PCR?

19 A Yes, ma'am.

20 Q Mr. Frost, after you were charged, were you
21 appointed a lawyer to represent you?

22 A Yes, ma'am.

23 Q And did you have, in fact, several, a series of
24 appointed lawyers?

25 A Yes, ma'am.

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1 Q Ultimately, did you make the decision to proceed
2 pro se, to proceed with representing yourself?

3 A Yes, ma'am. After firing four attorneys, yes,
4 ma'am.

5 Q And did you proceed pro se with a trial in this
6 matter?

7 A Yes, ma'am.

8 Q So in this PCR, you're not complaining about
9 representation at the trial level because you, in fact,
10 represented yourself; is that correct?

11 A Yes. Yes, ma'am.

12 Q All right. However, following -- at that trial,
13 there were several things that you believed happened
14 that would have been grounds for an appeal; is that
15 correct?

16 A Yes, ma'am.

17 Q And we're going to talk about each of those
18 specifically and why you believe there are grounds for
19 appeal.

20 Those particular issues, was it your desire that
21 those be raised to the appeals court?

22 A Yes, ma'am.

23 Q And were you represented in the appeal?

24 A Yes, ma'am.

25 Q Who were you represented by?

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1 A Ms. Hudgins.

2 Q Is she with the Office of Appellate Defense?

3 A Yes, appellate defense.

4 Q Did you have an opportunity, over the course of
5 her representing you in that appeal, to meet with
6 Ms. Hudgins?

7 A No, ma'am.

8 Q Did you ever speak with her on telephone
9 conversations like you and I did?

10 A No, ma'am.

11 Q So you never had the opportunity to raise these
12 issues with her in person?

13 A No, ma'am.

14 Q Did you write her letters and raise these issues
15 with her?

16 A Yes, ma'am.

17 Q Did she file a brief on your behalf?

18 A Yes, ma'am, an Anders brief.

19 Q Did that brief raise any of these issues?

20 A No, ma'am, none.

21 Q Is it your contention, as part of this PCR
22 application, that her failure to raise those issues was
23 a problem?

24 A Yes, ma'am.

25 Q And that you were provided insufficient

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1 representation?

2 A Yes, ma'am.

3 Q Let's talk about what those issues are. And these
4 are set forth in the supplemental application that we
5 filed on your behalf. And you and I have talked about
6 all of these, right?

7 A Yes, ma'am.

8 Q The first is that the trial judge allowed the
9 testimony of Investigator Miller, who you allege was
10 the actual murderer?

11 A Yes.

12 Q Is that an issue that you believe should have been
13 raised on appeal?

14 A Yes, ma'am.

15 Q And did Ms. Hudgins fail to raise that?

16 A Yes, ma'am.

17 Q A second issue, that the trial court refused to
18 allow you to impeach the police investigator regarding
19 a subsequent arrest?

20 A Yes, ma'am.

21 Q And --

22 A Two arrests. He was arrested twice.

23 Q And the trial court did not allow you to question
24 the investigator about that?

25 A No. They violated my Sixth Amendment. They would

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1 not let me question him about his arrest whatsoever.

2 Q Okay. So you believe this is a violation of your
3 Sixth Amendment rights?

4 A Yes, violation of my Sixth Amendment rights.

5 Q And you believe it should have been raised on
6 appeal?

7 A Yes, ma'am. It should have been raised on appeal.

8 Q And Ms. Hudgins failed to raise it?

9 A Ms. Hudgins failed to do so.

10 Q Turning to the next issue, you claim that the
11 trial court failed to dismiss the burglary charge where
12 there was, in fact, evidence that you lived at this
13 residence?

14 A Yes, ma'am. My social security check went to the
15 residence for 13 years. My money was going there to
16 the residence.

17 Q And you believe that their failure to dismiss that
18 burglary charge violated your due process rights?

19 A Yes, ma'am.

20 Q You believe that that issue should have been
21 raised on appeal?

22 A Yes, ma'am.

23 Q And did Ms. Hudgins raise that issue on appeal?

24 A No, ma'am, she didn't.

25 Q All right. Turning to the next issue, and this

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1 one has several parts to it. You requested the court
2 that you be allowed to hire an investigator on your
3 case; is that correct?

4 A Yes, ma'am.

5 Q Ultimately, did they get you an investigator?

6 A Yes, ma'am.

7 Q And who was that investigator?

8 A It was the chief of police's deputy's brother, the
9 ones that tortured and killed my father --

10 Q Let's go back.

11 Tell me the name of the person that they gave you
12 as an investigator.

13 A They gave me Scott Hawkins. He's the brother of
14 Jason Hawkins, who is the sheriff of Iva right now, but
15 he was a deputy at the time.

16 Q Okay. So the investigator they gave you, you
17 claim is biased?

18 A Yeah, he's biased. He's family. He's the ones
19 that I was claiming that killed my dad.

20 Q Because of his relationship with the chief of
21 police, he was biased?

22 A Yes. He was a brother. He was biased, yes.

23 Q And you believe by giving you a biased
24 investigator, that was fundamentally unfair?

25 A Yes, ma'am.

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1 Q And because it was fundamentally unfair, it also
2 violated your due process rights?

3 A Yeah, violated my due process rights, yes, ma'am.

4 Q If you, in fact, had gotten an unbiased
5 investigator, were there several things that you wanted
6 that investigator to look into?

7 A Yes, ma'am.

8 Q Was one of those important things the fact that
9 there should have been some DNA testing?

10 A DNA. They never even turned in blood samples. My
11 father got into it with one of the police officers. He
12 cut one of the police officers. The police officer's
13 blood was on scene and they knew it, and they did not
14 turn in the DNA tests. And I --

15 Q If you had had an investigator who was independent
16 and unbiased --

17 A Yes, ma'am.

18 Q -- you could have requested that DNA testing?

19 A Yes, ma'am. He would have turned in the DNA
20 testing. He would have done that himself, if I had an
21 investigator who wasn't biased.

22 Q And you believe the failure to have an unbiased
23 investigator was an issue that should have been raised
24 in appeal?

25 A Yes, ma'am.

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1 Q Did Ms. Hudgins raise that issue?

2 A No, ma'am.

3 Q And, finally, you had an issue with the court's
4 failure to charge the investigator with perjury; is
5 that correct?

6 A Yes, ma'am.

7 Q And you believe that the court failing to charge
8 the investigator with perjury is an issue that should
9 have been raised on appeal?

10 A Yes, ma'am. I asked him in court, did he resign
11 from office due to arrest charges, and he told me no.
12 And I asked him twice. I said, "You are sure that you
13 didn't resign from office due to arrest charges?" and
14 he said "no."

15 Q And that occurred in the trial?

16 A That occurred in the trial.

17 Q And that's on the record?

18 A That's on record.

19 Q And you believe that indicates that he committed
20 perjury?

21 A Yes, he committed perjury.

22 Q And that should have been raised on appeal?

23 A That should have been raised, yes, ma'am.

24 Q Did Ms. Hudgins raise that?

25 A No, ma'am. Ms. Hudgins didn't raise that.

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1 MS. WHISENHUNT: I have no further questions.

2 THE COURT: All right. Ms. Meadows,
3 cross-examination.

4 MS. MEADOWS: Judge, I have nothing for this
5 witness.

6 THE COURT: Okay.

7 Thank you, Mr. Frost. You can step down.

8 MS. WHISENHUNT: Your Honor, the next witness I
9 would call on behalf of Mr. Frost would be Kathrine
10 Hudgins with the Office of Appellate Defense.

11 It is my understanding that Ms. Hudgins has
12 requested that her testimony be through a telephone
13 conference, so I believe we may need an opportunity to
14 get that set up.

15 THE COURT: And it's my understanding that's with
16 consent of all parties; is that correct?

17 MS. MEADOWS: Yes, sir.

18 MS. WHISENHUNT: And the State consents, your
19 Honor, as long as we can hear her and she can hear me
20 and be able to answer the questions.

21 THE COURT: That's my concern. I want to make
22 sure the microphone is at the phone so everyone in the
23 courtroom can hear. Particularly, the court reporter
24 needs to be able to take it down.

25 So if anyone cannot hear, let us know immediately,

Kathrine Hudgins - Direct

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1 and we'll try to rectify that.

2 Madam Clerk, see if you can get this set up.

3 (Pause in proceedings.)

4 THE CLERK: Ms. Hudgins, are you still there?

5 MS. HUDGINS: I'm still here.

6 THE COURT: Can everyone hear her?

7 MS. WHISENHUNT: This is Linda Whisenhunt, and my
8 client, Mr. Frost, and I can both hear.

9 THE COURT: Okay. All right.

10 Put Ms. Hudgins under oath, and we'll proceed.

11 **KATHRINE HUDGINS,**

12 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 **DIRECT EXAMINATION**

14 **BY MS. WHISENHUNT:**

15 Q Good morning, Ms. Hudgins. It's Linda Whisenhunt.
16 I'm the attorney who's been appointed to represent
17 Mr. Frost in the PCR.

18 A Good morning.

19 Q Good morning.

20 Please state your name for the record.

21 A It's Kathrine Hudgins, spelled H-u-d-g-i-n-s.
22 Kathrine with a K.

23 Q And, Ms. Hudgins, who do you work with?

24 A I work for appellate defense.

25 Q And what is your role with appellate defense?

Kathrine Hudgins - Direct

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1 A I'm an appellate defender.

2 Q All right. And did you have the opportunity to
3 represent Mr. Frost on an appeal from a conviction in
4 the Tenth Circuit?

5 A Yes, I did.

6 Q And over the course of that representation, did
7 you meet with Mr. Frost?

8 A No, I did not.

9 Q Did you have an opportunity to talk with him by
10 telephone?

11 A I don't recall if Mr. Frost and I spoke by
12 telephone or not. If he called me, I absolutely would
13 have spoken with him.

14 Q Did you have an opportunity to review his
15 transcript and any correspondence that he may have sent
16 you?

17 A Yes.

18 Q Did you, in fact, file an appeal on his behalf
19 from that conviction?

20 A I did.

21 Q And did you include a brief of issues?

22 A I did.

23 Q And what issues did you raise?

24 A I can just read you the statement of issue on
25 appeal from the brief, if that's acceptable.

Kathrine Hudgins - Direct

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1 Q That's fine.

2 A I raised the issue of whether or not the trial
3 judge erred in instructing the jury that a specific
4 intent to kill is not an element of attempted murder.

5 Q Was that the only issue that you raised on appeal?

6 A Yes.

7 Q Do you understand that Mr. Frost had other issues
8 that he wanted raised on appeal?

9 A I do.

10 Q Specifically, he claims that the trial judge, in
11 allowing testimony of the investigator, Mr. Miller, who
12 Mr. Frost alleges was the actual murderer, that that
13 was an error, and that should have been raised on
14 appeal?

15 A I understand that's his allegation.

16 Q Did you raise that issue?

17 A I did not.

18 Q How about the refusal of the trial court to allow
19 Mr. Frost to impeach the police investigator regarding
20 that investigator's subsequent arrest? Did you
21 understand that Mr. Frost wanted to raise that issue on
22 appeal?

23 A I did.

24 Q And did you raise that issue?

25 A I did not.

Kathrine Hudgins - Cross

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1 Q And, in addition, do you understand that Mr. Frost
2 had an issue with the court's failure to dismiss a
3 burglary charge where there was evidence showing
4 Mr. Frost lived at the residence?

5 A I did.

6 Q Did you raise that issue?

7 A I did not.

8 Q And it's your understanding that Mr. Frost also
9 had an issue related to the court's failure to appoint
10 him an independent investigator?

11 A I do.

12 Q And do you understand that Mr. Frost claimed that
13 that violated his due process right of fundamental
14 fairness, and that he did not have an unbiased
15 investigator?

16 A I understand that's his allegation.

17 Q And did you raise that issue on appeal?

18 A I did not.

19 Q And, finally, did you raise the issue related to
20 the court's failure to charge Investigator Miller with
21 perjury following his testimony at the trial?

22 A I did not raise that issue.

23 Q But you understand that was also an issue that
24 Mr. Frost wanted raised on appeal?

25 A I do.

Kathrine Hudgins - Cross

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1 Q All right. So you would concede that you failed
2 to raise all of these issues that he wanted raised?

3 A That's correct.

4 MS. WHISENHUNT: I have no further questions.

5 THE COURT: All right. Ms. Meadows.

6 CROSS-EXAMINATION

7 BY MS. MEADOWS:

8 Q Good morning, Ms. Hudgins.

9 A Good morning.

10 Q Lillie Meadows for the State.

11 So how long have you been an appellate defender or
12 have you been doing appellate work?

13 A I've been doing appellate work for approximately
14 20 years. I have been with appellate defense for
15 13 years, I believe.

16 Q Okay. And once you receive a file -- I mean, once
17 you receive the record and everything, how do you go
18 about identifying possible direct appeal issues?

19 A I read the transcripts throughout. I read the
20 entire transcript. As I'm reading the transcript, I'm
21 paying particular attention to legal issues that may
22 come up, whether or not those issues are preserved for
23 appellate review, as well as trying to understand the
24 strengths and the weaknesses of the case and how that
25 might support any type of a legal issue I'll be

1 presenting.

2 Q And, then, would you mind giving us a brief
3 explanation of how or what your understanding is of how
4 the Anders procedure works?

5 A The Anders procedure works when the appellate
6 lawyer is unable to find, in the appellate lawyer's
7 opinion, meritorious issues for appeal. The appellate
8 lawyer will then file a legal issue and then submit it
9 through the Anders procedure.

10 At that point the court will, rather than simply
11 reviewing the issues presented in the Anders brief, the
12 court of appeals or the appellate court will review the
13 entire record and do their own review of possible legal
14 issues that could become an issue on appeal.

15 Q Okay. So in your reviewing the record and looking
16 for direct appeal issues, are you thinking about
17 whether you'll file an Anders or merits brief at that
18 time, or do you kind of decide that later on?

19 A I decide that later on, after I have completed my
20 review of the transcripts, had an opportunity to
21 research the legal issues that may have come up during
22 the trial.

23 Q And then when you file an Anders brief, the
24 appellant is also allowed to file his own pro se brief,
25 correct?

Kathrine Hudgins - Cross

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1 A That is correct.

2 Q Okay. And then, like you said, the court of
3 appeals conducts their own review of the case, correct?

4 A That's correct.

5 Q Okay. And if they do find any meritorious issue,
6 either in your brief, the appellant's pro se brief, or
7 in their own review of the record, what do they do or
8 what do they ask you to do?

9 A They will issue an order and order me to brief the
10 issue as a merits issue, whether it's the issue that I
11 raised, that they want me to change it from an Anders
12 to a merits, or whether it's an issue that the
13 appellant may have raised that the court takes an
14 interest in. They will send it back to me and ask me
15 to brief that issue or issues.

16 Q And then, in this case, Mr. Frost did file a pro
17 se brief, correct?

18 A Correct.

19 Q And the court did not ask you for further
20 briefing, correct?

21 A That's correct.

22 Q And, also, do you typically speak with the
23 appellant on the phone or through letters or anything
24 once you get the case?

25 A I -- I certainly talk with my clients if they call

1 me. They have the ability to call us collect, and
2 certainly, I would accept those collect calls. And I
3 read all the correspondence that my clients send to me.

4 Q Okay. And why did you decide to file an Anders
5 brief in this case instead of a merits brief?

6 A I didn't find any meritorious issues that were
7 preserved for appellate review. In this case, the
8 issue that I raised was, what I thought, a good legal
9 issue. Unfortunately, there wasn't an objection to the
10 charge as it was given.

11 My hope was that, since Mr. Frost was pro se, that
12 the appellate court might overlook some of the
13 procedural defaults and preservation rules, given a pro
14 se defendant. Unfortunately, they didn't in this case,
15 but that was my thinking.

16 Q Okay. And then, let's see. Do you recall this
17 situation here with Mr. Frost attempting to get an
18 investigator? I know there were several hearings on
19 this issue with Judge McIntosh before the trial.

20 A I recall the pretrial hearing, yes. I have those
21 transcripts as well.

22 Q Okay. All right.

23 MS. MEADOWS: Nothing further from the State.

24 THE COURT: Okay.

25 Any redirect?

Kathrine Hudgins - Redirect
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1 MS. WHISENHUNT: Just a couple questions, your
2 Honor.

3 REDIRECT EXAMINATION

4 BY MS. WHISENHUNT:

5 Q Ms. Hudgins, so is it my understanding you were
6 aware of the issues that Mr. Frost had that I
7 delineated with you, but you just determined they
8 weren't legally sufficient?

9 A That's right.

10 Q Okay.

11 MS. WHISENHUNT: I have no further questions.

12 THE COURT: Anything further from this witness?

13 MS. MEADOWS: Nothing from the State, Judge.

14 MS. WHISENHUNT: And nothing from Mr. Frost.

15 And we have no additional witnesses, your Honor.

16 THE COURT: Thank you, Ms. Hudgins.

17 THE WITNESS: Thank you for allowing telephone
18 testimony. I appreciate that very much.

19 THE COURT: All right.

20 Anything further?

21 MS. WHISENHUNT: Nothing further, your Honor.

22 THE COURT: Anything from the State?

23 MS. MEADOWS: Nothing from the State, Judge.

24 THE COURT: Summation. We'll let the State go
25 first, and, Ms. Whisenhunt, I'll give you last

1 argument.

2 MS. MEADOWS: Judge, I would just rely on
3 Ms. Hudgins' testimony and the fact that Mr. Frost
4 essentially raised most of the issues that he raises
5 here in his pro se brief to the court of appeals. They
6 did not find any issues meritorious and affirmed his
7 conviction, so that's all I have.

8 THE COURT: Thank you, Ms. Meadows.

9 Ms. Whisenhunt.

10 MS. WHISENHUNT: Yes, your Honor. I would just
11 ask you to review the record, review the transcript,
12 that, in fact, Mr. Frost raised these issues at trial.
13 These were of grave concern to him, and that he
14 believes he would have been better off if he had had an
15 attorney brief those.

16 While he concedes with the State, asserts that he
17 did raise those to the appellate court, he believes
18 that if he had had proper representation to raise those
19 by a lawyer who was skilled in appellate defense to
20 brief those, that he would have been successful on one
21 or more of them, and nothing further.

22 THE COURT: Thank you, Ms. Whisenhunt.

23 Well, there is a large amount of material that's
24 been submitted, so I want to take some time and read
25 it. So I'm going to take this under advisement. I'll

Robert Frost vs. State of South Carolina 2018-CP-04-01466 February 18, 2020

1 have my law clerk send you a decision when I make it.

2 (WHEREUPON, proceedings adjourned at 11:23 a.m.)

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Robert Frost vs. State of South Carolina 2018-CP-04-01466 February 18, 2020

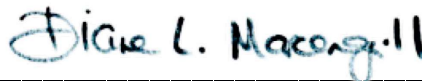
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina at the time of the proceedings, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 18th day of February 2020.

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 interest to any party hereto.

June 19, 2020



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Robert Frost, SCDC #171218,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE TENTH JUDICIAL CIRCUIT

Case No. 2018-CP-04-1466

ORDER OF DISMISSAL

A TRUE COPY

APR - 6 2020

Richard H. Hixley
CLERK OF COURT

I. INTRODUCTION

The matter before the Court is an action for post-conviction relief (PCR) commenced by Robert Frost (Applicant) on July 25, 2018. The State requested an evidentiary hearing through its return on October 2, 2018. On February 18, 2020, this Court convened an evidentiary hearing at the Anderson County Courthouse before the undersigned. Applicant was present and represented by Linda Whisenhunt, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his appellate counsel, Kathrine H. Hudgins, Esquire (Appellate Counsel). In addition to the pleadings in this action, the Court had before it a copy of the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's appellate records, including the trial transcript and record on appeal, and Applicant's records from the South Carolina Department of Corrections.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its April 2013 term, the Anderson County Grand Jury indicted Applicant for murder (2013-GS-04-0646), possession of a weapon during the commission of a violent crime (2013-GS-04-0646), attempted murder (2013-GS-04-0647), first-degree burglary (2013-GS-04-00648), and armed robbery (2013-GS-04-0649). Assistant Solicitor Lauren D. Price, of the Tenth Circuit Solicitor's Office, prosecuted the case.

A. Pre-Trial Hearings

On November 10, 2015, Applicant appeared before the Honorable R. Lawton McIntosh and moved to relieve counsel and proceed *pro se*. At that point, Applicant was represented by his fourth appointed trial counsel, Gregory Lee Cole, Jr., Esquire. (R. 3). After warning Applicant of the dangers of self-representation, Judge McIntosh granted Applicant's motion, but required Mr. Cole to remain as standby counsel. (R. 17-18). In granting the motion, Judge McIntosh found Applicant had waived his right to an attorney and had met the *Faretta*¹ factors. (R. 18).

B. Summary of Evidence Adduced at Trial

During the week leading up to this incident date, July 15, 2012, Applicant was acting abnormally, in that he was angry and depressed. (R. 214). Applicant had called his mother and stepfather and threatened to kill them. (R. 367, 401). On July 15, 2012, Applicant went to a neighbor's house to use the neighbor's phone to call his girlfriend. (R. 229). After calling his girlfriend, Applicant stated: "I'm going to go do something very crazy, I'm going to kill somebody." (R. 229). Neighbors then saw Applicant put two black knives in his saddlebags. (R. 230). Applicant stated to his neighbor: "Samantha, I love you but I gotta go. You can have

¹ *Faretta v. California*, 422 U.S. 806 (1975).

everything out of my house you want because the next time you see me, you'll be seeing me on the 11:00 News." (R. 215, 230). Applicant then got on his motorcycle and left. (R. 215).

Later, neighbors of Faye and James Davenport, Applicant's mother and stepfather, observed a motorcycle park in the Davenport's back driveway. (R. 254-55). Applicant got off the motorcycle with a long, silver object in his hand, which he got from the saddlebag. (R. 255). He then kicked in the back door. (R. 256, 370, 401-02). At the time, Applicant did not live with the Davenports. (R. 387-88).

Applicant put a knife to Mrs. Davenport's throat and said he needed money. (R. 370). She told him she had a billfold on the kitchen island, but Applicant stated: "I'm going in there and kill that son of a bitch, James." (R. 372). She followed Applicant to the bedroom, and Mr. Davenport was standing in the door with a baseball bat. (R. 373). Mrs. Davenport was able to close and lock the bedroom door with her and Mr. Davenport inside, but Applicant kicked the door in with the knife raised in his hand. (R. 374).

Mr. Davenport then hit Applicant with the bat. (R. 374). Applicant went after Mr. Davenport with the knife, and Mr. Davenport fell between the bed and the wall. (R. 375). The two started wrestling, but Applicant was stabbing Mr. Davenport. (R. 375-76). Mrs. Davenport then saw Applicant "going to his throat." (R. 376, 409-10).

Mrs. Davenport then ran from the room, but Applicant caught up with her, stating "I'm going to kill you now." (R. 376). Mrs. Davenport then saw a police car, and she yelled for help. (R. 377, 398). Applicant stabbed her twice and left the knife in her blouse. (R. 377-78). Applicant then ran out the back of the house to his motorcycle. (R. 379-80).

Lieutenant Chris Vaughn of the Iva Police Department was dispatched to the incident location in reference to a burglary in progress. (R. 287-88, 331-32, 351-52). Upon arrival, he

noticed a motorcycle in the driveway. (R. 291). He then exited his vehicle and approached the side of the house, where he observed that the doorjamb appeared to be broken. (R. 292). He then approached the front of the house, and he heard a woman crying for help. (R. 293). Lieutenant Vaughn then went to the side of the house and observed Applicant sitting on the motorcycle. (R. 294). Applicant kicked the kickstand up, and Lieutenant Vaughn drew his weapon and ordered Applicant off of the motorcycle and ordered him to lay on the ground. (R. 294). Applicant at first did not comply, stating his had been hit with a baseball bat and could not get down, but then later complied. (R. 294-95). Due to the cut on the man's head, Lieutenant Vaughn called EMS. (R. 296). He also called for additional units. (R. 296).

Mrs. Davenport continued to yell for help, yelling: "He's killed my husband!" (R. 296). After additional officers arrived, Lieutenant Vaughn then went into the house, where he observed Mrs. Davenport slumped over in the kitchen/dining room area. (R. 296-97). A knife was next to Mrs. Davenport. (R. 230). He then proceeded to the front bedroom, where Mrs. Davenport stated her husband was. (R. 297, 300). He observed a man lying on the floor, right behind the door, covered in blood. (R. 301-02). There was a baseball bat behind Mr. Davenport's legs.² (R. 302). He again spoke with Mrs. Davenport, who told him he had saved her life because when he pulled up, her son was in the kitchen with her. (R. 304). She also told him when her son saw him approach the front of the house, he took the knife and stabbed her. (R. 304-05).

The autopsy of Mr. Davenport revealed he had multiple blunt force trauma injuries and multiple sharp force traumatic injuries. (R. 466). He had eight stab and cut injuries over the left side of his abdomen, multiple cut injuries on his left arm, which appeared to be defensive wounds, several cuts on his flank, and a cut on the left side of his neck, which went into the neck tissue and cut the jugular vein and carotid artery. (R. 467-68). There was a minimum of eighteen

² Lieutenant Vaughn testified he observed EMS move the baseball bat when they arrived on scene. (R. 318).

BSS

stab and cut wounds on Mr. Davenport's body. (R. 468). These cuts were received from the front of Mr. Davenport, most likely by a right-handed individual, with a single-edged blade. (R. 468, 471). The cause of death was exsanguination. (R. 471).

C. Verdict & Subsequent Proceedings

On August 25, 2016, the jury found Applicant guilty as indicted on all counts. Judge Maddox sentenced Applicant to concurrent terms of life without the possibility of parole for murder, life without the possibility of parole for first-degree burglary, and 30 years for armed robbery. Judge Maddox also sentenced Applicant to a consecutive term of life without the possibility of parole for attempted murder.

Applicant filed a timely notice of appeal, and Appellate Defender Kathrine H. Hudgins perfected the appeal on Applicant's behalf by filing an *Anders*³ brief with the Court of Appeals.

Applicant then filed a *pro se* brief, raising the following issues:

1. Did the judge err in denying [Applicant's] motion for a directed verdict to the burglary charge where evidence was present that [Applicant's] checks and other mail was [sic] received at residents [sic] (also directed verdict issue (2) argued together;
2. Did the judge err in denying [Applicant's] pretrial motion to question Investigator Thomas E. Miller credibility;
3. Did the judge err in not granting Applicant a [sic] expert witness to examine the cuts to verify if it was the correct murder weapon used in evidence;
4. Did the judge err in denying Applicant's motion for a mistrial due to the fact that he could not question Thomas E. Miller on his credibility;
5. Did the court err in failing to grant [Applicant] a [sic] investigator because he was African American;
6. Did the court err in not granting a mistrial due to that fact no blood samples or swab samples was produced from the residence; [and]
7. Did the judge err in continuing the trial after Applicant put in a motion for a new file when his file was missing?

³ *Anders v. California*, 389 U.S. 738 (1967).

After considering Applicant's *pro se* brief and reviewing the case pursuant to *Arnders*, the Court of Appeals dismissed Applicant's appeal in an unpublished opinion on April 4, 2018. *State v. Frost*, Op. No. 2018-UP-137 (S.C. Ct. App. filed April 4, 2018). The case was returned to the circuit court on April 25, 2018. Applicant timely commenced this PCR action on July 25, 2018.

III. ISSUES BEFORE THIS COURT

In his original PCR application, Applicant alleged he was being held in custody unlawfully based on

1. 6th Amendment Confrontation Clause violated;
 - a. Not being able to question ex-investigator affectedly [sic];
2. 5th, 14th Amendment Due Process Clause violated;
 - a. Equal right to protection from law;
3. No investigation on false frivolous charges against me;
 - a. No investigation ex-investigator credibility;
4. Ineffective assistance of appellate council [sic];
5. Solicitor ineffective not [sic] recognize motion, grievance;
6. Ineffective judge not recognize perjury [sic] on ex-investigator Thomas E. Miller.

Pursuant to Rule 71.1, SCRPC, Applicant, through PCR counsel, amended his application to include the following claims:

1. Ineffective assistance of appellate counsel for failing to raise the following issues, which would have entitled Mr. Frost to reversal on appeal:
 - a. The trial judge allowing the testimony of an investigator (Mr. Miller) Mr. Frost alleges was the actual murderer;
 - b. The refusal of the trial court to allow Mr. Frost to impeach a police investigator regarding that Investigator Miller's subsequent arrest in what Mr. Frost alleges was a similar incident;
 - c. The failure of the trial court to dismiss the burglary

charge where the evidence shows Mr. Frost received mail at the residence;

- d. The trial court's denial of Mr. Frost's applications for a defense expert witness to examine the wounds to the decedent and for a defense investigator to investigate Mr. Frost's allegations of the Investigator Miller's involvement in the crime; and
- e. The prosecution's and the court's failure to charge Investigator Miller with perjury.

At the outset of the evidentiary hearing, PCR counsel expressly withdrew all allegations pled in the original PCR application. To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

- 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2. That the court was without jurisdiction to impose sentence;
- 3. That the sentence exceeds the maximum authorized by law;
- 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed them by the Sixth and Fourteenth Amendments to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013); *see generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625

(1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.*

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an

applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." *Id.* at 687 (emphasis added). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

V. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in

this action incorporated by way of the State's return, this Court proceeds to the claims raised in the amended application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Appellate Counsel

Beyond the right to effective assistance of counsel at trial, a criminal defendant is constitutionally entitled to the effective assistance of appellate counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, (1985) (finding that to be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair). However, "Counsel is not obligated to assert all nonfrivolous issues on appeal, as '[t]here can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review.'" *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000) (quoting *Jones v. Barnes*, 463 U.S. 745, 752 (1983)). Indeed, "[w]innowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Id.* (quoting *Smith v. Murray*, 477 U.S. 527, 536 (1986)).

In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *E.g.*, *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). The applicant must demonstrate (1) that his "counsel's representation fell below an objective standard of reasonableness" in light of the prevailing professional norms, *Strickland*, 466 U.S. at 688, and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *Id.* at 694; *see Smith v. Robbins*, 528 U.S. 259

(2000) (holding that habeas applicant must demonstrate that “counsel was objectively unreasonable” in failing to file a merits brief addressing a nonfrivolous issue and that there is “a reasonable probability that, but for his counsel's unreasonable failure . . . , he would have prevailed on his appeal”).

Specifically, when an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show failure to raise that issue was objectively unreasonable and that, but for this failure, there is a reasonable probability he would have prevailed on appeal. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836; *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). In applying *Strickland* to claims of ineffective assistance of counsel on appeal, however, “reviewing courts must accord appellate counsel the presumption that he decided which issues were most likely to afford relief on appeal.” *Jarvis*, 236 F.3d at 164 (internal citation omitted). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” *Id.* (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

In the *Anders* brief filed on Applicant’s behalf, Appellate Counsel raised the following issue: “Did the trial judge err in instructing the jury that a specific intent to kill is not an element of attempted murder?”⁴ Appellate Counsel testified that she believed this issue had merit, however, it was unpreserved. Appellate Counsel testified that she hoped the Court of Appeals would overlook the preservation issue since Applicant represented himself at trial. However, this was not the case.

⁴ To the extent Applicant alleges Appellate Counsel should have filed a merits brief, the *Strickland* standard similarly applies. See *Smith v. Robbins*, 528 U.S. 259, 285 (2000) (finding that *Strickland* is the proper standard for evaluating claim that appellate counsel was ineffective in neglecting to file a merits brief). Thus, an applicant must first show appellate counsel was objectively unreasonable . . . in failing to find arguable issues to appeal—that is, that counsel unreasonably failed to discover nonfrivolous issues and to file a merits brief raising them.” *Id.* The applicant must then show a reasonable probability that, “but for his counsel’s unreasonable failure to file a merits brief, he would have prepared on appeal.” *Id.*

Appellate Counsel further testified that she was aware of the issues Applicant wanted her to raise, as they are nearly identical to several issues Applicant raised in his *pro se* brief. Appellate Counsel testified she did not follow Applicant's requests to raise these issues because she did not find them to be legally sufficient. This Court agrees, and finds Applicant failed to show that any of the issues he contends Appellate Counsel should have raised were stronger than the issue raised.

As an initial matter, issues (a) and (e), both relating to Investigator Miller, were not raised by Applicant at trial, and therefore not preserved for appellate review. Appellate Counsel cannot be found ineffective for failing to raise unpreserved issues. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised and ruled upon by the trial judge."). Issues (b), (c), and (d), were all raised by Applicant in his *pro se* brief. Applicant has therefore failed to show either deficiency or prejudice on the part of Appellate Counsel. Accordingly, Applicant's ineffective assistance claim pertaining to appellate counsel is **DENIED**.

VI. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VII. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant has not established any constitutional violations or

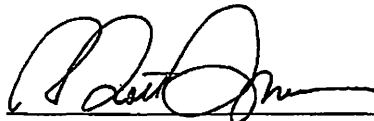
deprivations that would require this Court to grant his application for post-conviction relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

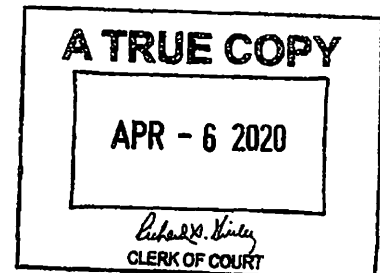
1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 25 day of March, 2020.



THE HONORABLE R. SCOTT SPROUSE
Presiding Circuit Court Judge
Tenth Judicial Circuit

Waltham, South Carolina



20 APR 6 AM 11:59:56
Anderson, SC CUC, CP/GS

DOCKET NO. 2013GS04 00646

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

APR 14 2013

Term

ARREST WARRANT NUMBER

J500413

J500415

ACTION OF GRAND JURY

TRUE BILL

APR 16 2013

Foreperson of Grand Jury

Date:

Foreperson

VERDICT

Murder - GUILTY

Possession of a Weapon during violent crime -

Foreperson of Petit Jury

Date:

8/25/16

THE STATE

vs.

Robert Joe Frost

EJB

Indictment for

COUNT ONE: Murder / Murder

SC Code: 16-03-0010, 0020

CDR Code: 0116

COUNT TWO: Weapon / Possession of a

Weapon during violent crime

SC Code: 16-23-0490

CDR Code: 0549

GUILTY

COMMITMENT

8/25/16 - R

A TRUE COPY

JUL 25 2018

Richard M. White
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

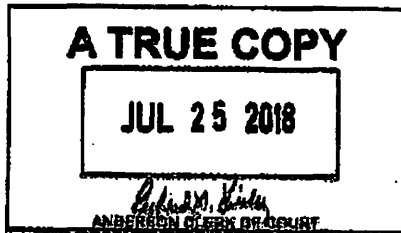
At a Court of General Sessions, convened on APR 16 2013, the Grand Jurors of Anderson County present upon their oath:

COUNT ONE**Murder / Murder**

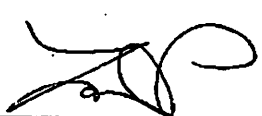
That Robert Joe Frost, did in Anderson County, on or about July 15, 2012, unlawfully and with malice aforethought kill James Davenport by means of stabbing the victim with a knife and that James Davenport died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO**Possession of a Weapon During the Commission of a Violent Crime**

That Robert Joe Frost, did in Anderson County on or about July 15, 2012, while committing the crime of Murder, a crime of violence, have in his possession a knife, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

DOCKET NO. 2013GS04 00647

WITNESSES

Tommy Miller, Iva Police Dept.

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

APR 16 2013

Term

ARREST WARRANT NUMBER

J500414

THE STATE

VS.

Robert Joe Frost

COMMITMENT

8/25/10-RH

ACTION OF GRAND JURY

TRUE BILL

APR 16 2013

Foreperson of Grand Jury
Date: Foreperson

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 8/25/10

EJB

Indictment for

Murder/Attempted Murder

SC Code: 16-03-0029
CDR Code: 3410.

A TRUE COPY

JUL 25 2018

Richard M. Kistner
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

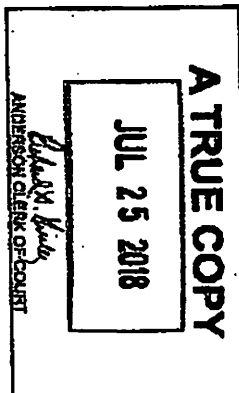
INDICTMENT

APR 16 2013

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Murder/Attempted Murder

That Robert Joe Frost did in Anderson County on or about July 15, 2012, did unlawfully with malice aforethought and with the intent to kill, attempted to kill Faye Davenport, by stabbing the victim with a knife. This is in violation of 16-3-29 of the South Carolina Code of Laws (1976) as amended.



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

DOCKET NO. 2013GS04 00648

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

APR 16 2013

Term

THE STATE

vs.

Robert Joe Frost

COMMITMENT

8/25/16

ACTION OF GRAND JURY

TRUE BILL

APR 16 2013

Paul Kelle

Foreperson of Grand Jury

Date:

Foreperson

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

8/25/16 *[Signature]*

EJB

Indictment for

Burglary / Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311

CDR Code: 0079

A TRUE COPY

JUL 25 2018

Robert X. Kelle
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

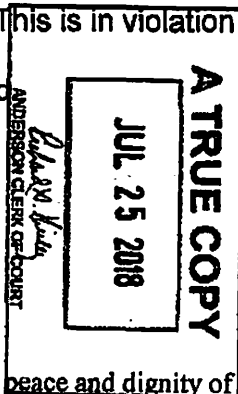
APR 16 2013

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Burglary / Burglary (After June 20, 1985) - First degree

That Robert Joe Frost did in Anderson County, on or about July 15, 2012, willfully and unlawfully enter the dwelling of James and Faye Davenport located at [REDACTED] East Front Street, Iva, South Carolina, without consent and with the intent to commit a crime therein and/or when, in effecting entry or while in the dwelling or in immediate flight he or another participant in the crime, is armed with a deadly weapon or explosive; and/or causes physical injury to a person who is not a participant in the crime; and/or uses or threatens the use of a dangerous instrument; and/or displays what is or appears to be a knife, pistol, rifle, shotgun, machine gun, or other firearm; and/or the burglary is committed by a person with a previous record of two or more convictions for burglary or housebreaking or a combination of both; and/or the entering or remaining occurs in the nighttime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976)

as amended



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

WITNESSES

Tommy Miller, Iva Police Dept.

ARREST WARRANT NUMBER

J500416

ACTION OF GRAND JURY

TRUE BILL

APR 16 2013

Foreperson of Grand Jury

Date: Foreperson

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 8/25/16

DOCKET NO. 2013GS04 00649

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

APR 16 2013

Term

THE STATE

vs.

Robert Joe Frost

EJB

Indictment for

Robbery / Armed Robbery, robbery while armed
or allegedly armed

SC Code: 16-11-0330(A)
CDR Code: 0139

COMMITMENT

8/25/16-RF

A TRUE COPY

JUL 25 2018

Robert M. Miller
ANDERSON CLERK OF COURT

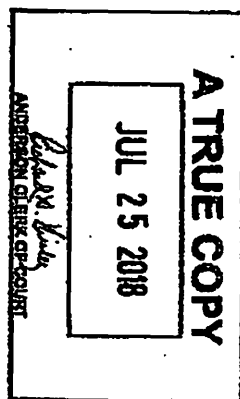
STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on APR 16 2013, the Grand Jurors of Anderson County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That Robert Joe Frost did in Anderson County, on or about July 15, 2012, while armed with a deadly weapon, to wit: a knife, or while alleging either by action or words he/she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: cash money in the amount of \$75.00 from the person or presence of Faye Davenport. This is in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in black ink, consisting of a stylized 'Z' or 'S' shape followed by a loop.

ASSISTANT SOLICITOR