

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Laurens County

Honorable J. Mark Hayes, Circuit Court Judge

MAURICE ANTHONY ODOM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001223

APPENDIX

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1 State of South Carolina

Court of General Sessions

2 County of Laurens

5 State of South Carolina)

Transcript of Record

6 vs.)

2012-GS-30-00311

7 Maurice Anthony Odom,)

2012-GS-30-00314

8 Defendant.)

2012-GS-30-00317

11 June 9 - 11, 2014

Laurens, South Carolina

12 B E F O R E:

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

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Attorneys for the State

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20 Attorney for the Defendant

22 Stacy S. Johnson, RPR
23 Circuit Court Reporter

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1 (The following proceedings were held on June 9,
2 2014.)

3 **BAILIFF:** Court come to order. The Honorable Don
4 Hocker presiding.

5 **THE COURT:** Thank you. Have a seat, everybody.

6 All right. Good morning. Let me take this
7 opportunity to welcome you to a term of general sessions
8 court, which is criminal court in this state. My name
9 is Don Hocker. I am a circuit court judge, and I've
10 been assigned to preside over this term of court this
11 week, and I am a Laurens judge. I've seen some familiar
12 faces already. It's always great to be here in Laurens.
13 I travel all over the state and there's nothing better
14 than to be back at home.

15 What we have to do is go through a qualification
16 process to determine your qualification to sit on a
17 trial jury, and the process has several parts. The
18 first part of the process will be rollcall. When your
19 name is called, you'll be asked to stand and give us
20 certain information, and I think you've already been
21 provided what information we need from you. Then the
22 second part of the process is I will ask a series of
23 questions that I'm required to ask to determine your
24 eligibility to sit on a trial jury. Then once that is
25 done, then there will be a series of questions that will

1 be asked of you concerning the -- and as I understand
2 it, there are two cases for trial this week, and there
3 will be certain questions asked that are particular to
4 each of the two cases that we have scheduled for trial.

5 So this process will take most of the morning.
6 Please be patient with us and we'll go through the
7 process as expeditiously but thoroughly as we can. So
8 with all of that said, I'm gonna turn it over to the
9 Clerk and allow them to go through the rollcall process.

10 (Whereupon, rollcall of the jury panel was
11 conducted.)

12 **THE COURT:** Okay. Ladies and gentlemen of the jury
13 panel, as I promised you, we're gonna take about a ten
14 minute break. So if anyone needs to use the restroom,
15 do so at this time. If there are any smokers, you can
16 go outside in the parking lot area and if you just need
17 to stretch your legs, then you need to do that, too, but
18 be back in ten minutes in the courtroom, okay?

19 (Whereupon, the jury panel exits the courtroom.)

20 (Recess taken.)

21 **BAILIFF:** Let's all rise and come back to order,
22 please.

23 **THE COURT:** Thank you very much. Have a seat.
24 Ladies and gentlemen of the jury panel, I'm gonna give
25 you some guidelines that you will need to follow if you

1 are selected on a trial jury. As I understand from
2 talking with the attorneys, that we will actually pick
3 two trial juries and if you are not selected on either
4 one, then you will be excused for the remainder of the
5 week, but I want to go ahead and give you some
6 guidelines now if, in fact, you are selected on one of
7 the two trial juries.

8 Cell phones -- oh, we need to -- before I do that,
9 what was that juror's name that went out and made the
10 call? Is she back yet?

11 **THE CLERK:** She's No. 8, Ms. Bodie.

12 **THE COURT:** Is Ms. Bodie back in? All right. Let's
13 everybody be at ease for just a moment. And, Mr. Bolt,
14 would you go out and check. She was going to her car to
15 make a phone call concerning the particular personal
16 matter that she had and was gonna come back in and
17 report. I don't know what car's she in.

18 **BAILIFF:** Her name is Ms. Bodie?

19 **THE CLERK:** Bodie, uh-huh.

20 **THE COURT:** So everybody be at ease for just a
21 moment, please.

22 **BAILIFF:** Here she is.

23 **THE COURT:** Come on down, ma'am, to the front.

24 (Whereupon, the following bench conference was held
25 on the record.)

1 **JUROR:** I just -- I called and I didn't get an
2 answer. I told them just to make an appointment for the
3 next week.

4 **THE COURT:** All right. So stay with us. Thank you.
5 (Bench conference concluded.)

6 **THE COURT:** This juror will stay with us. Okay.
7 Ladies and gentlemen of the jury panel, let me just go
8 over some guidelines with you. First of all, it's a
9 good practice to leave your cell phones in your car.
10 The reason for that is that if you bring it with you and
11 you forget to turn it off and it goes off while we're in
12 the middle of the trial, that can be very disruptive.
13 Even if you put it on vibration, some phones vibrate
14 pretty loud, so it's a better practice to leave your
15 cell phones in your car when you're in the courthouse
16 during the day.

17 Two, it's very important that you have no contact
18 whatsoever with any of the lawyers involved in the case,
19 any of the participants, any of the witnesses. If you
20 happen to know that they are witnesses, even if it's a
21 casual, you know, good morning, that just creates the
22 appearance of some impropriety, so just make sure that
23 you have no contact whatsoever with anyone involved in
24 the cases.

25 It's very important that you're prompt. If we take,

1 say, a lunch break and I instruct you to be back at a
2 certain time, you need to allow yourself enough time to
3 be back at the designated time that I give you because
4 if you're not and you're on the jury, we can't proceed
5 forward and take care of any business. And, again, in
6 the mornings when you're instructed to be back, please
7 allow yourself enough time. Things happen unexpectedly
8 and so if you're kind of calling it close on the time,
9 it has the potential to be a problem. Let your family
10 know that, you know, if there's an emergency that arises
11 during the day when you're here, all they have to do is
12 contact the Clerk's office and certainly we can deal
13 with that appropriately.

14 I don't think either one of these two cases from
15 what the lawyers have told me will take more than a
16 couple of days. Let me just take this opportunity to
17 thank all of you for your service here today. Even if
18 you're not selected, your appearance here today is
19 vitally important to the entire process and I just want
20 to thank you for your jury service whether or not you're
21 selected on a trial jury. And I'll tell you that it's
22 been said many times that serving on a jury is the
23 second highest civic responsibility we have, second only
24 to serving in the military, so it's vitally important
25 and your service here today is appreciated.

1 Your patience is appreciated. And as I told you,
2 I realize this can be an inconvenience for you and we
3 understand that. Some of you may be very nervous never
4 having done this before, some of you may be very
5 apprehensive of what's gonna happen, especially if
6 you're picked on a trial jury. Some of you are sitting
7 here in this courtroom today just wondering what in the
8 world have I gotten myself into, but I tell the jury
9 panels this, and I'll tell you this, just do what I do
10 each and every day. Just ask God for some guidance,
11 some wisdom and understanding, and he'll take care of
12 you.

13 So with all of that said, the first case that I
14 understand that's being called for trial that we will
15 need to select a trial jury on is the State of South
16 Carolina versus Maurice Anthony Odom. And, Mr. Odom,
17 I'm gonna ask if you'll just stand, please, sir, and
18 turn and face the jury panel for just a moment so they
19 can see. Okay. You can have a seat, sir. Thank you
20 very much.

21 I have before me three indictments charging him
22 with three separate criminal offenses, and I will tell
23 you this now and will remind you once again several
24 times throughout the trial, that these indictments are
25 not evidence of the allegations that they contain, it

1 does not consist of any evidence of guilt concerning
2 Mr. Odom. It's just the charging documents that gets
3 the case from Point A to Point B or from the origination
4 of the case to the trial of the case. That's the only
5 purpose that the indictments serve, but these
6 indictments do charge Mr. Odom with three criminal
7 offenses. One is burglary, the second is grand larceny,
8 and the third is criminal conspiracy, and I'm gonna
9 publish these indictments to you.

10 Concerning the burglary charge, it alleges that
11 Maurice Anthony Odom did in Laurens County, South
12 Carolina, on or about the 11th day of November, 2011,
13 willfully and unlawfully enter a building without
14 consent with intent to commit a crime therein, and such
15 entering or remaining in the nighttime, said building
16 being owned and/or occupied by BP of Clinton, and that's
17 in violation of Section 16-11-312 Code of Laws of South
18 Carolina.

19 The second indictment for grand larceny reads as
20 follows. That Maurice Anthony Odom did in Laurens,
21 County, the State of South Carolina, on or about the
22 11th day of November, 2011, feloniously take and carry
23 away the personal goods of BP of Clinton, a value of
24 more than \$2,000, but less than \$10,000 in value, with
25 the intent to deprive the owner permanently of such

1 goods in violation of Section 16-13-30 Code of Laws of
2 South Carolina.

3 And the third indictment charges Mr. Odom with the
4 following allegation. That Maurice Anthony Odom, along
5 with another person or persons, did in Laurens County,
6 State of South Carolina, on or about the 11th day of
7 November, 2011, willfully and unlawfully unite, combine,
8 conspire, confederate, and agree between and among
9 themselves, and have tacit understanding with each other
10 or with other persons whose names are unknown, for the
11 purpose of committing the act of burglary, and that's in
12 violation of Section 16-17-410 Code of Laws for South
13 Carolina.

14 And, again, I emphasize to you, ladies and gentlemen
15 of the jury panel, these indictments are not evidence of
16 guilt concerning these three charges, and I need to ask
17 you several questions concerning this particular case.

18 Is anyone related by blood or marriage to the
19 Defendant, Maurice Anthony Odom? If so, please stand.

20 (There was no response.)

21 **THE COURT:** Does anyone have a close personal or
22 social relationship with the Defendant, Maurice Anthony
23 Odom? If so, please stand.

24 (There was no response.)

25 **THE COURT:** Now I'm going to publish to you a list

1 of potential or possible witnesses that may testify
2 in this case. Crystal Roberts, Reid Creswell, Greg
3 Shockley, Tyrone Goggins, Nick Moyer, Hardik Patel,
4 Christopher Mixon, Jeremy Marshall and Tometrius Odom.
5 Is anyone on the jury panel related by blood or marriage
6 to any of those individuals I've just listed or does
7 anyone on the jury panel have a close personal or social
8 relationship with any of those individuals I've just
9 listed? If so, please stand.

10 (Juror stands.)

11 **THE COURT:** Okay. And your name, sir, and your
12 Juror Number?

13 **JUROR:** Timothy Williams, Juror Number 143.

14 **THE COURT:** Yes, sir?

15 **JUROR:** I'm a classmate of Tyrone Goggins.

16 **THE COURT:** Okay. You were a classmate in high
17 school?

18 **JUROR:** Yes, sir.

19 **THE COURT:** Okay. The fact that you went to high
20 school with Tyrone Goggins, would that prevent you from
21 being fair and impartial to both the State and the
22 defense in this case?

23 **JUROR:** No, sir.

24 **THE COURT:** Thank you very much, sir.

25 Now the next question involves the attorneys, and

1 I can tell you that the attorneys in this case are
2 excellent attorneys, have worked very hard in preparing
3 this case for trial and will equally work just as hard
4 during the course of the trial, and I'm gonna ask that
5 the State make their introductions first and then I'll
6 allow the defense.

7 **MR. MOWRY:** Thank you, Your Honor. Ladies and
8 gentlemen, my name is Warren Mowry. I'm the Deputy
9 Solicitor here in Laurens County. Assisting me in the
10 trial will be Dale Scott, who is the Deputy Solicitor
11 in Newberry County. He and I will be co-counsel in
12 this particular matter. Walter Bentley is our office's
13 investigator, formerly with the Laurens Police
14 Department, and then Tyrone Goggins, who is an
15 investigator/detective with the Clinton Department
16 of Public Safety. Margaret Boykin is an Assistant
17 Solicitor in our office. She is here on another
18 matter, but it will be Scott and me.

19 **THE COURT:** Okay. Thank you very much, Solicitor.
20 Ms. Wiygul.

21 **MS. WIYGUL:** My name's Elizabeth Wiygul. I
22 practice criminal law in the Upstate of South Carolina.

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

24 Has any member of the jury panel ever been
25 represented by any of these attorneys who have just

1 introduced themselves to you? If so, please stand.

2 (There was no response.)

3 **THE COURT:** Is anyone on the jury panel related
4 by blood, marriage or have a close personal or social
5 relationship with any of the attorneys just introduced
6 to you? If so, please stand.

7 (There was no response.)

8 **THE COURT:** Now I understand that, members of the
9 jury panel, you know very little about this case other
10 than what I've just read to you from the indictments,
11 but I'm required to ask has any member of the jury panel
12 formed or expressed an opinion about any issue or matter
13 involved in this case? If so, please stand.

14 (There was no response.)

15 **THE COURT:** Y'all need to approach?

16 **MS. WIYGUL:** If we may, Your Honor.

17 **THE COURT:** Sure.

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

19 **THE COURT:** Going back to the question asked
20 concerning a close personal or social relationship with
21 any of the attorneys, let me qualify that, and that
22 would mean any of the individuals who are seated at
23 either table. Of course, Ms. Wiygul is by herself,
24 but at this table here with the Solicitor. So the
25 attorneys -- the question was meant to include

1 everybody introduced to you.

2 (Jurors stand.)

3 **THE COURT:** Okay. Ms. Jones, yes, ma'am?

4 **JUROR:** I guess this is the time to say that I
5 taught Tyrone Goggins and also Walter Bentley is a
6 close friend of my son, Stewart Jones.

7 **THE COURT:** Okay. All right. The fact that you
8 taught Mr. Goggins at some previous time and the fact
9 that Mr. Bentley is a close friend of your son's, would
10 that prevent you from being fair and impartial to both
11 the State and the defense in this case?

12 **JUROR:** No, sir, it would not.

13 **THE COURT:** Okay. Thank you very much, ma'am.
14 Your name and number, ma'am?

15 **JUROR:** Jessica Ridings, 103.

16 **THE COURT:** Okay. Yes, ma'am?

17 **JUROR:** I am neighbors and close friends with Walter
18 Bentley.

19 **THE COURT:** Okay. All right. The fact that you are
20 a neighbor and close friends with Mr. Bentley, would
21 that prevent you from being fair and impartial to both
22 the State and the defense in this case?

23 **JUROR:** Yes, sir.

24 **THE COURT:** Okay. All right. Then you will be
25 excused from the trial of this case. Madam clerk, if

1 you'll make that notation. You can have a seat and
2 remain with us.

3 Is there any member of the jury panel aware of any
4 bias or prejudice towards either the State or the
5 Defendant in this case? And let me mention to you that
6 -- I should have done this a moment ago. I'm gonna
7 allow anyone on the jury panel who wants to speak
8 privately with me, as you did previous, then I'll allow
9 that to take place.

10 Let me go back to the question I just asked. Is
11 there any member of the jury panel aware of any bias or
12 prejudice towards either the State or the Defendant in
13 this case? If so, please stand.

14 (There was no response.)

15 **THE COURT:** Now I don't believe this next question
16 would apply, but I need to ask it anyway. Is there any
17 member of the jury panel that was a member of the grand
18 jury which issued the three indictments in this case?
19 If so, please stand.

20 (There was no response.)

21 **THE COURT:** Is there any member of the jury panel
22 who is a member of or is a contributor to any group
23 which has as its primary concern the promotion of law
24 enforcement or victims' rights? These groups would
25 conclude, but certainly not limited to, and I'll give

1 you the acronyms for these groups, MADD, SADD or CAVE.

2 If that applies to you, please stand.

3 (There was no response.)

4 **THE COURT:** Does any member of the jury panel know
5 of any reason whatsoever why he or she should not serve
6 as a juror in this case, with particular emphasize being
7 placed on your ability to be fair and to be impartial to
8 both the State and the Defendant in this case?

9 (There was no response.)

10 **THE COURT:** Now if there's anyone who would like to
11 speak with me privately in the presence of the court
12 reporter and the attorneys involved in this case, I'll
13 allow you to do so at this time. If you'll just form a
14 line in the aisle. Okay. Seeing none.

15 Does the State have any objections or exceptions to
16 the voir dire conducted by the Court?

17 **MR. MOWRY:** No, sir.

18 **THE COURT:** Are there any additional questions that
19 the State would like to ask in voir dire?

20 **MR. MOWRY:** We have none, Your Honor.

21 **THE COURT:** Okay. Thank you very much. From the
22 defense, is there any objections or exceptions to the
23 voir dire conducted by the Court?

24 **MS. WIYGUL:** No, Your Honor.

25 **THE COURT:** Any additional questions?

1 **MS. WIYGUL:** No, Your Honor.

2 **THE COURT:** Thank you very much. Now when your
3 name is called out, you will be asked to come down to
4 the front. Stand and face both the counsel tables and
5 they will either make a decision whether to have you
6 sit on the trial jury or have you excused. They will
7 use different terminology. Now if you're not selected,
8 please do not take it personally that you're not
9 selected. Each side has certain reasons for the type of
10 person or persons that they want to serve on the trial
11 jury, so please don't take it personally if you're not
12 selected. It may turn out that you're happy that that
13 has happened, some of you may be sad that it happened,
14 but, in any event, don't take it personally. So we will
15 start with jury selection.

16 Yeah, let me see the attorneys just a second.

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

18 **THE COURT:** Okay. Madam Clerk, you may proceed.

19 **THE CLERK:** Juror Number 49, Sammy L. Gary.

20 (Whereupon, Sammy L. Gary, a black male, was called
21 forward.)

22 **THE COURT:** Are both sides aware of the number of
23 strikes?

24 **MS. WIYGUL:** Yes, Your Honor. Ten and five?

25 **THE COURT:** Right. And when your name's called out,

1 if you have any of your possessions, bring them with you
2 so if you're selected then you will go straight to the
3 jury box.

4 **THE CLERK:** So what says the State?

5 **MR. MOWRY:** The State excuses the juror.

6 **THE COURT:** Go back to your seat.

7 **THE CLERK:** Juror Number 38, David N. Easley.

8 (Whereupon, David N. Easley, a white male, was
9 called forward.)

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

11 **MR. MOWRY:** Present the juror.

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

13 **MS. WIYGUL:** Please excuse this juror.

14 **THE CLERK:** Juror Number 30, Patty C. Davenport.

15 (Whereupon, Patty C. Davenport, a white female, was
16 called forward.)

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

18 **MR. MOWRY:** Present Ms. Davenport.

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

20 **MS. WIYGUL:** Please excuse this juror.

21 **THE CLERK:** Juror Number 108, Randall S. Roughton,
22 Senior.

23 (Whereupon, Randall S. Roughton, Senior, a white
24 male, was called forward.)

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

1 **MR. MOWRY:** Present the juror.

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

3 **MS. WIYGUL:** Please excuse this juror.

4 **THE CLERK:** Juror Number 95, Cassandra T. Power.

5 (Whereupon, Cassandra T. Power, a white female, was
6 called forward.)

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

8 **MR. MOWRY:** Present the juror.

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

10 **MS. WIYGUL:** Please seat the juror.

11 **THE CLERK:** Juror Number 72, Tony D. Lyons.

12 (Whereupon, Tony D. Lyons, a black male, was called
13 forward.)

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

15 **MR. MOWRY:** Present the juror.

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

17 **MS. WIYGUL:** Please seat the juror.

18 **THE CLERK:** Juror Number 8, Margaret M. Bodie.

19 (Whereupon, Margaret M. Bodie, a white female, was
20 called forward.)

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

22 **MR. MOWRY:** Present the juror.

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

24 **MS. WIYGUL:** Please seat the juror.

25 **THE CLERK:** Juror Number 75, James T. Martin.

1 (Whereupon, James T. Martin, a white male, was
2 called forward.)

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

4 **MR. MOWRY:** Present Mr. Martin.

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

6 **MS. WIYGUL:** Please excuse this juror.

7 **THE CLERK:** Juror Number 65, Kelly S. Johnson.

8 (Whereupon, Kelly S. Johnson, a white female, was
9 called forward.)

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

11 **MR. MOWRY:** Please present Ms. Johnson.

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

13 **MS. WIYGUL:** Please excuse this juror.

14 **THE CLERK:** Juror Number 45, Michael D. Freeman.

15 (Whereupon, Michael D. Freeman, a white male, was
16 called forward.)

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

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

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

20 **MS. WIYGUL:** Please excuse this juror.

21 **THE CLERK:** Juror Number 112, Allen D. Simpson.

22 (Whereupon, Allen D. Simpson, a white male, was
23 called forward.)

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

25 **MR. MOWRY:** Please present Mr. Simpson.

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

2 **MS. WIYGUL:** Please seat this juror.

3 **THE CLERK:** Juror Number 14, Kathy D. Burks.

4 (Whereupon, Kathy D. Burks, a white female, was
5 called forward.)

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

7 **MR. MOWRY:** Please present Ms. Burks.

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

9 **MS. WIYGUL:** Please seat the juror.

10 **THE CLERK:** Juror Number 40, Furman R. Farrow.

11 (Whereupon, Furman R. Farrow, a white male, was
12 called forward.)

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

14 **MR. MOWRY:** Please present Mr. Farrow.

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

16 **MS. WIYGUL:** Please excuse this juror.

17 **THE CLERK:** Juror Number 92, Anastasia T. Polson.

18 (Whereupon, Anastasia T. Polson, a white female, was
19 called forward.)

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

21 **MR. MOWRY:** Please present Ms. Polson.

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

23 **MS. WIYGUL:** Please seat the juror.

24 **THE CLERK:** Juror Number 54, Hunter C. Graham.

25 (Whereupon, Hunter C. Graham, a white male, was

1 called forward.)

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

3 **MR. MOWRY:** Please present Mr. Graham.

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

5 **MS. WIYGUL:** Please seat the juror.

6 **THE CLERK:** Juror Number 6, Gina A. Bible. Gina
7 Bible.

8 (Whereupon, Gina A. Bible, a white female, was
9 called forward.)

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

11 **MR. MOWRY:** Please present Ms. Bible.

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

13 **MS. WIYGUL:** Please excuse this juror.

14 **THE CLERK:** Juror Number 152, Donna H. Leopard.

15 (Whereupon, Donna H. Leopard, a white female, was
16 called forward.)

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

18 **MR. MOWRY:** Please present the jury.

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

20 **MS. WIYGUL:** Please seat the juror.

21 **THE CLERK:** Juror Number 46, Shayla V. Fuller.

22 (Whereupon, Shayla V. Fuller, a black female, was
23 called forward.)

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

25 **MR. MOWRY:** The State will excuse this juror.

1 **THE CLERK:** Juror Number 118, James M. South.

2 (Whereupon, James M. South, a white male, was called
3 forward.)

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

5 **MS. WIYGUL:** Would you repeat that number?

6 **THE CLERK:** 118. What says the State?

7 **MR. MOWRY:** Please present Mr. South.

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

9 **MS. WIYGUL:** Please seat the juror.

10 **THE CLERK:** Juror Number 62, Caroline S. Hughes.

11 (Whereupon, Caroline S. Hughes, a white female, was
12 called forward.)

13 **MR. MOWRY:** I'm sorry, what was the number?

14 **THE CLERK:** 62. What says the State?

15 **MR. MOWRY:** Please present Ms. Hughes.

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

17 **MS. WIYGUL:** Please seat this juror.

18 **THE CLERK:** Juror Number 4, Kevin W. Baker.

19 (Whereupon, Kevin W. Baker, a white male, was called
20 forward.)

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

22 **MR. MOWRY:** Please present Mr. Baker.

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

24 **MS. WIYGUL:** Please excuse this juror.

25 **THE CLERK:** Juror Number 113, Edgar R. Simpson.

1 (Whereupon, Edgar R. Simpson, a white male, was
2 called forward.)

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

4 **MR. MOWRY:** Please present Mr. Simpson.

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

6 **MS. WIYGUL:** Please excuse this juror.

7 **THE CLERK:** Juror Number 67, Valerie S. Jones.

8 (Whereupon, Valerie S. Jones, a white female, was
9 called forward.)

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

11 **MR. MOWRY:** Please present Ms. Jones.

12 **THE CLERK:** Would the defense challenge for cause?

13 **MS. WIYGUL:** The defense would preserve the earlier
14 argument and challenge for cause.

15 **THE COURT:** (Nods head.)

16 **THE CLERK:** Juror Number 39, Andriek D. Evans.

17 (Whereupon, Andriek D. Evans, a black female, was
18 called forward.)

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

20 **MR. MOWRY:** Please present Ms. Evans.

21 **THE CLERK:** Would the defense challenge for cause?

22 **MS. WIYGUL:** No. Please present this juror.

23 **THE COURT:** One alternate.

24 **THE CLERK:** Juror Number 126, Karen L. Teague.

25 (Whereupon, Karen L. Teague, a white female, was

1 called forward.)

2 **MR. MOWRY:** 106?

3 **THE CLERK:** 126. What says the State?

4 **MR. MOWRY:** Please present Ms. Teague.

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

6 **MS. WIYGUL:** Please excuse this juror.

7 **THE CLERK:** Juror Number 26, Marie O. Cotoc.

8 (Whereupon, Marie O. Cotoc, a white female, was
9 called forward.)

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

11 **MR. MOWRY:** Please present the juror.

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

13 **MS. WIYGUL:** Please excuse this juror.

14 **THE CLERK:** Juror Number 3, Tamara P. Bailey.

15 (Whereupon, Tamara P. Bailey, a white female, was
16 called forward.)

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

18 **MR. MOWRY:** The State would excuse the juror.

19 **THE CLERK:** Okay. Juror Number 22, Darrell L.
20 Chadwick.

21 (Whereupon, Darrell L. Chadwick, a white male, was
22 called forward.)

23 **THE CLERK:** Would the State challenge for cause?

24 **MR. MOWRY:** No.

25 **THE CLERK:** Would the defense challenge for cause?

1 **MS. WIYGUL:** No.

2 **THE CLERK:** Please be seated.

3 **THE COURT:** Okay. Ladies and gentlemen, I'm gonna
4 ask that Mr. Bolt take you back to your jury room for
5 just a little bit and get you to kind of see where
6 you'll be spending some of your time this week and also
7 give you an opportunity to get to know one another, and
8 we'll bring you back in just a little bit. We are going
9 to pick another jury and we're not gonna put y'all back
10 into the panel to where you possibly could be picked on
11 a second jury, so I'm gonna ask you just go back to your
12 jury room and we'll bring you out shortly.

13 And, again, let me -- one other thing, and you'll
14 hear me tell you this throughout the whole trial,
15 don't start talking about this case. Even though you
16 know very little about it, don't begin any of your
17 discussions, any of your deliberations, no conversations
18 whatsoever, on anything related to this case, okay?
19 We'll bring you back out shortly.

20 (Whereupon, the jury retires to the jury room.)

21 **THE COURT:** Okay. Does the State have any
22 exceptions to jury selection?

23 **MR. MOWRY:** No exceptions, no objections.

24 **THE COURT:** Okay. Other than the one matter we've
25 already discussed, which we'll deal with --

1 **MS. WIYGUL:** Your Honor, just the matter we've
2 already discussed.

3 **THE COURT:** Okay. Thank you very much. All right.
4 Now, Solicitor, are you ready to call the second case
5 for purposes of jury selection?

6 **MR. MOWRY:** That would be Ms. Boykin, Your Honor.

7 (Proceedings held at the bench on an unrelated case;
8 not reported.)

9 (Recess taken.)

10 **MS. WIYGUL:** Do you want to go ahead and put this on
11 the record while they're out?

12 **THE COURT:** Yes, let's go ahead and do that and
13 then --

14 **MS. WIYGUL:** I would actually waive the presence
15 of my client. I've told him what the objections would
16 be.

17 **THE COURT:** Okay. We'll note your objection,
18 which was made at sidebar, at the appropriate time. We
19 just agreed that you would put it on the record when
20 we had a chance. So, Ms. Wiygul, I'll be glad to hear
21 from you.

22 **MS. WIYGUL:** Your Honor, this is in regards to
23 Juror Number 67, Valerie Jones. We would object to the
24 appearance of impropriety in her selection and her not
25 being struck for cause on the basis of her being

1 friendly with the Court, with Your Honor, having taught
2 Your Honor's son, having taught the main detective in
3 this case, and her son being close friends with the
4 Solicitor's investigator in this case.

5 **THE COURT:** Thank you. And the fact that
6 Ms. Jones did indicate that she could still be fair
7 and impartial to both the State and the defense at
8 sidebar, I indicated that I would deny your motion
9 and would do so on the record. Thank you.

10 **MR. MOWRY:** And, Your Honor, if I could just place
11 on the record also she has probably taught thousands of
12 people. Laurens is not that big of county, there aren't
13 that many attorneys in Laurens. Quite frankly, I would
14 have been more concerned had any close relationship
15 existed between one of the attorneys, either Ms. Wiygul
16 and myself, rather than Your Honor. I mean, Your Honor
17 is the impartial arbiter anyway and so I think under
18 those circumstances there's no difficulty whatsoever.

19 **THE COURT:** Thank you very much, Solicitor, and
20 Ms. Wiygul.

21 **MS. WIYGUL:** Thank you, Your Honor.

22 (Recess taken.)

23 **THE COURT:** Mr. Bolt, will you bring the trial jury
24 out, please.

25 (Whereupon, the jury returns to the courtroom.)

1 **BAILIFF:** All jurors present, Your Honor.

2 **THE COURT:** Thank you very much, Mr. Bolt.

3 Ladies and gentlemen of the jury, in discussing
4 this case with the lawyers, it appears that we're not
5 going to start it until in the morning. Consequently,
6 you'll be excused for the remainder of the day and be
7 back in your jury room no later than 9:30 in the
8 morning. Make sure that you've got your jury tag on.
9 And any time we break for lunch, always keep that on
10 so if you're at a restaurant and some of the parties,
11 witnesses, lawyers, they'll know, if they don't
12 automatically recognize you, but they'll see that pin
13 and know that they need to stay clear, okay?

14 So be promptly back in the jury room at 9:30 in the
15 morning. This afternoon, this evening, don't talk about
16 this case. Again, you don't really know about it other
17 than what I've briefly explained to you. You may have
18 some family members that are really curious about what
19 happened today. You can say I've been picked on a trial
20 jury and leave it at that. We'll see you back promptly
21 at 9:30 in the morning. Have a good evening.

22 (Whereupon, the jury was excused for the day.)

23 **THE COURT:** Okay. We'll be at recess until 9:30 in
24 the morning --

25 **MR. MOWRY:** Thank you, Your Honor.

1 **MS. WIYGUL:** Thank you.

2 **THE COURT:** -- as concerns this case.

3 (The proceedings were concluded for June 9, 2014.)

4 (The following proceedings were held on June 10,
5 2014.)

6 **THE COURT:** There's another witness I need to bring
7 to the jury's attention to make sure that there's no
8 relation. I'm sure not because I think it's another
9 Patel and we already published one Patel name, right?

10 **MR. MOWRY:** Yes, sir.

11 **MS. WIYGUL:** That -- that is one of the pre-trial
12 issues we have, Your Honor.

13 **THE COURT:** Well, all right. Then I won't mention
14 it when I bring them out. We'll see what the pre-trial
15 is.

16 **MS. WIYGUL:** Your Honor, I apologize for the delay.
17 We were -- there was a mix up with an audio recording in
18 this case, so Mr. Odom was back there listening to it
19 this morning, so he's just now back there changing out.

20 **THE COURT:** Okay.

21 (Recess taken.)

22 **THE COURT:** Okay. I'm gonna bring the jury out and
23 just explain to them that we've got some work to do in
24 this case before we actually start just so they don't
25 think we're not doing anything.

1 Bring the jury out, please, Mr. Byers.

2 (Whereupon, the jury returns to the courtroom at
3 9:57 AM.)

4 **THE COURT:** All right. Let the record reflect the
5 jury's back in. Good morning. I was actually dealing
6 with another case. That's why we didn't get started on
7 this until 9:30 -- I mean, not 9:30, it's almost 10:00
8 now.

9 I've been informed by the lawyers that they have
10 some pre-trial matters that need to be taken up with the
11 Court, so I didn't want you to think while we had you
12 sitting back in the jury room that we were not doing
13 anything, just kind of lounging around. We're not.
14 We're working. And I can assure you that any time you
15 are in the jury room and not out here, we are working
16 on the case.

17 So with that said, I'm gonna need a little time
18 to deal with these pre-trial matters with the lawyers
19 before we actually get started with the case, so I'm
20 going to ask you to go back to the jury room and be
21 patient with us, please, and we'll just get you back as
22 soon as we possibly can, okay?

23 (Whereupon, the jury retires to the jury room.)

24 **THE COURT:** Okay. Ms. Wiygul, I understand that
25 you have some pre-trial matters and I think there's two

1 issues that you just need to put on the record from the
2 conversations we had at sidebar yesterday, so I'm just
3 going to turn it over to you, ma'am.

4 **MS. WIYGUL:** Thank you, Your Honor. First off,
5 Judge, it's come to my attention that Mr. Bixley,
6 the Court's --

7 **THE COURT:** Bixler. Uh-huh.

8 **MS. WIYGUL:** I apologize.

9 **THE COURT:** That's okay. Not a problem.

10 **MS. WIYGUL:** -- the Court's law clerk had applied
11 for and anticipates accepting a position with the
12 Laurens County Solicitor's Office at the end of his
13 current clerkship. Because of that we ask that he be
14 excluded from this case.

15 **THE COURT:** Okay. And that -- that objection is
16 certainly noted. He has not been officially hired yet
17 and your motion's denied, but so noted for the record.

18 **MS. WIYGUL:** Thank you, Your Honor.

19 **MR. MOWRY:** And if I could just simply put on the
20 record as to that issue, Your Honor, Lyon has been
21 completely forthright and ethical about this. He has
22 not made any attempt to divulge or -- to obtain or to
23 divulge confidential information, so we've pretty much
24 put up a wall as far as that's concerned.

25 **THE COURT:** Thank you very much, Solicitor. Okay.

1 Ms. Wiygul?

2 **MS. WIYGUL:** Your Honor, I'd also like to put on
3 the record that Mr. Odom was of the understanding that
4 Judge Griffith had ordered that Mr. Odom's phone records
5 be produced by the State in this case. I have discussed
6 that issue with both Mr. Mowry and Mr. Scott and they
7 have no recollection of such an order being made.

8 **THE COURT:** Okay.

9 **MS. WIYGUL:** No phone records have been ordered
10 in either this case or any of the pending charges in
11 Laurens or Newberry, so I just wanted to put that on the
12 record.

13 **THE COURT:** Okay.

14 **MR. MOWRY:** Mr. Odom's memory and mine have diverged
15 on a number of issues, Your Honor, but I can tell you
16 that I know of no issue in the past where that has ever
17 come up. This is the first I've ever heard of it.

18 **THE COURT:** Okay. And it's my understanding,
19 Ms. Wiygul, that there's been some previous attorneys
20 for Mr. Odom and so at least Mr. Odom is claiming that
21 in other representation he recalls Judge Griffith making
22 some order. That's why you, yourself, do not have any
23 independent recollection.

24 **MS. WIYGUL:** That is correct, Your Honor. I didn't
25 become involved with this case until very late in the

1 game.

2 **THE COURT:** Right. Okay.

3 **MR. MOWRY:** And also, Your Honor, there are a lot
4 of other cases that either are or have been pending
5 involving this matter from a whole bunch of different
6 counties; Edgefield, Kershaw, as well as Newberry and
7 Laurens. There may have been others, but we have had
8 -- Ms. Wiygul is at least the fifth attorney that I've
9 dealt with in regard to Mr. Odom. Jerry Spring, Tom
10 Broadwater, Tara Waters and Chelsea McNeill previously,
11 and so there is a real good chance that something might
12 have been said in another county, but nothing has been
13 done as far as we recall regarding phone records.

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

15 **MS. WIYGUL:** And, Your Honor, I apologize, has the
16 jury been sworn in?

17 **THE COURT:** No. No, I wanted to deal with the
18 pre-trial matters first before I swore the jury in.

19 **MS. WIYGUL:** Okay. It was brought to my attention
20 by Mr. Mowry last night that the alleged victim in this
21 case, Hardik Patel, is not available and I was informed
22 that they would be requesting that Ramesh Patel testify
23 in his place, who is Mr. Hardik Patel's father.

24 **MR. MOWRY:** No, brother actually, Your Honor. If I
25 said father, that's --

1 **MS. WIYGUL:** And is this gentleman that's here named
2 Ramesh?

3 **MR. MOWRY:** Yes.

4 **MS. WIYGUL:** Okay. Your Honor, we would adamantly
5 object to that. I believe it's a Rule 5 Brady violation.
6 It's just kind of trial by ambush. I've researched my
7 cross-examination for Hardik Patel. I know absolutely
8 nothing about Ramesh Patel. He's not listed on any of
9 the incident reports. I have no reason to believe he
10 has personal knowledge of this. If he was ever
11 interviewed by the police, that information was not
12 provided to me. He's not listed as the registered owner
13 of this company and the actual alleged victim that's
14 listed in the indictment, that business went under back
15 in 2012, and Mr. Patel's name was not associated with
16 that corporation either.

17 **MR. MOWRY:** Your Honor, it is a store that is the
18 victim. Mr. Patel is the manager of it at this time.
19 His --

20 **MS. WIYGUL:** Your Honor, I would ask that he clarify
21 which Mr. Patel he's referring to.

22 **MR. MOWRY:** Ramesh Patel is the manager and will
23 testify to that. He was at the scene that night. His
24 brother was listed as the key holder, yes. He is -- was
25 listed on the corporate documents, but he will also

1 testify it's a family business, so he has knowledge.
2 The whole purpose of his testimony would be to identify
3 pictures of the scene, to valuate the items that were
4 stolen for the larceny purposes and to be able to
5 testify that no one had permission to throw a rock
6 through the window and steal cigarettes that night or at
7 any other time.

8 **MS. WIYGUL:** May I respond, Your Honor?

9 **THE COURT:** Sure.

10 **MS. WIYGUL:** I understand why the State wants
11 Mr. Patel to testify; however, the victim notification
12 form was filled out by Hardik Patel, who noted he wanted
13 to be notified of anything going on with this case.
14 Mr. Ramesh Patel is not mentioned anywhere in the
15 incident report. The first time I'd ever heard his name
16 was last night -- or yesterday late afternoon. This is
17 just -- this is simply trial by ambush. This is the
18 whole purpose for discovery.

19 **MR. MOWRY:** It doesn't change the facts of the case
20 at all, Your Honor. It's just a different individual
21 and he's gonna testify to the same thing that Hardik
22 Patel would testify to, but he is, unfortunately, out of
23 town.

24 **MS. WIYGUL:** Your Honor, this case has been pending
25 for three years and it was the State's choice as to when

1 to bring it to trial.

2 **THE COURT:** Where is he? You say he's out of town.
3 Where?

4 **MR. MOWRY:** He's on vacation in Myrtle Beach,
5 Your Honor, and I -- we just don't have any contact
6 information for him. Since Ramesh Patel was available,
7 I would say that -- I would submit that he is an easy
8 substitute in the case and that, honestly, I am
9 astonished by Ms. Wiygul's protestations. I cannot
10 see in any way how this -- this is a burden for her.

11 **THE COURT:** Okay. Did he give any statements to the
12 police, Ramesh?

13 **MR. MOWRY:** No, sir. Ramesh Patel also -- he was
14 there. He lives a short distance away. He helped
15 calculate how much the value was on the cigarettes and
16 other items that were taken.

17 **MS. WIYGUL:** Your Honor, that is not notated in any
18 of the materials I've been provided.

19 **MR. MOWRY:** And she can cross-examine on that,
20 Your Honor. That's the police's responsibility --

21 **MS. WIYGUL:** I would also point out --

22 **THE COURT:** Wait a minute, wait a minute. We've
23 got a great court reporter, but, y'all, please, be
24 careful in not talking over each other and the Court.
25 Did -- Hardik Patel, did he give a statement?

1 **MR. MOWRY:** He did not give a statement, Your
2 Honor.

3 **THE COURT:** Okay. All right. Now other than
4 coming up with the value of the goods allegedly taken,
5 what you plan, Solicitor, for Ramesh to testify to, is
6 that information disclosed in the discovery materials,
7 incident report, et cetera?

8 **MR. MOWRY:** Yes, sir.

9 **THE COURT:** Okay.

10 **MS. WIYGUL:** Your Honor?

11 **THE COURT:** Yes.

12 **MS. WIYGUL:** Mr. Hardik Patel actually did have
13 interaction with the responding officers. He's the one
14 that took them to the video cameras, he's the one that
15 pulled up the security system. He's listed in the
16 incident report as the owner. This is just --

17 **THE COURT:** Right. Well, if -- if Ramesh Patel
18 is going to testify to matters that have been already
19 disclosed through whatever means, the incident report,
20 whatever, if that information has been disclosed to
21 you, Mr. Wiygul, then how are you prejudiced by that
22 information that you are aware of? And the Solicitor
23 says that information's been disclosed. How would
24 the defense be prejudiced by that information being
25 testified to at trial by either Ramesh or Hardik if

1 you already are aware of the information? Now if
2 Ramesh is going to testify to matters that you have no
3 idea about, then I could see some prejudice there, but
4 if you're aware of the facts, the information, why does
5 it matter that it's going to come out of the mouth of
6 Ramesh as opposed to Hardik?

7 **MS. WIYGUL:** Your Honor, we have no -- I have no
8 information on Ramesh Patel as to what his position
9 was in November of 2011. I don't know that he worked
10 there then. I've had no opportunity to hunt for any
11 information that I could use in cross-examination to
12 attack his credibility or anything else of that nature.
13 Mr. Odom has the right to confront his alleged victim
14 in this case and the alleged victim is listed as Hardik
15 Patel.

16 **MR. MOWRY:** Actually, the alleged victim is listed
17 as the BP Store.

18 **THE COURT:** Right. I'm looking at the indictment,
19 and the indictment alleges BP of Clinton, and then in
20 parentheses I guess the official corporate name is BIJC,
21 maybe doing business as BP of Clinton. That's what the
22 indictment shows.

23 **MS. WIYGUL:** Correct, Your Honor. However, the
24 Victim Assistance Program form provided by the
25 Solicitor's office filled out at the scene of the

1 incident contains Hardik Patel's information. It
2 contains his home phone number, not a work phone number.
3 It contains his marital status, his date of birth and
4 states that he wishes to be notified of everything going
5 on with this case.

6 **THE COURT:** Right, right.

7 **MR. MOWRY:** Your Honor, one person fills out a
8 victim impact statement. It may be a family that gets
9 broken in on, but, for example, the wife and children
10 might not fill out a victim impact statement, just the
11 father and husband, but that does not mean that all of
12 them are not victims.

13 **MS. WIYGUL:** And, Your Honor, unfortunately this
14 was not just a sole proprietorship owned by a family
15 and shared equally. This was a registered corporation
16 with the registered agent listed as a James R. Perry of
17 Simpsonville, South Carolina.

18 **MR. MOWRY:** If you'd like, Your Honor, we will
19 proffer Mr. Patel's testimony.

20 **THE COURT:** Well, what I was going to suggest, and
21 I didn't know if -- what order the State intended to
22 call their witnesses, but I was gonna maybe suggest
23 giving Ms. Wiygul the opportunity in your presence to
24 sit down and talk with Mr. Patel.

25 **MR. MOWRY:** He was gonna be our second witness,

1 Your Honor, but we can certainly do that before we get
2 started.

3 **MS. WIYGUL:** Your Honor, I don't --

4 **THE COURT:** Again -- again, if defense is aware of
5 the information, the facts that Mr. Patel is going to
6 testify to, for example -- I'm just using this as an
7 example. Evidently it's alleged that a rock was thrown
8 into the store building to maybe gain some entrance into
9 that. That is a fact that this gentleman will testify
10 to and defense is already aware of that. So, again,
11 and I don't want to keep beating a dead horse, but if
12 you're aware of the information that he is going to
13 testify to, then I don't see where it matters that his
14 name doesn't show up on the victim impact statement or
15 that his name doesn't show up elsewhere. I realize it
16 was not disclosed, but I don't see where you're
17 prejudiced if you are aware of the facts that he's going
18 to testify to. So that's why I was thinking maybe sit
19 down and talk with him and make sure that all of the
20 facts that he's gonna testify to you're aware of so that
21 there is no surprise.

22 So at this juncture I'm gonna deny your motion and
23 -- but maybe we'll figure out a time when you can sit
24 down with him.

25 **MS. WIYGUL:** And, Your Honor, just to protect the

1 record --

2 **THE COURT:** Sure.

3 **MS. WIYGUL:** -- I would just state that my main
4 basis is a Rule 5 Brady violation and that it completely
5 undercuts my ability to attack Mr. Patel's credibility
6 on the stand.

7 **THE COURT:** Okay. All right. What other matters
8 or issues do we have?

9 **MS. WIYGUL:** Your Honor, I would renew my objection
10 as to the juror Valerie Jones.

11 **THE COURT:** Right. Okay. That was -- if I recall,
12 she indicated in private voir dire that her family knew
13 my family very well and that her -- one of her sons,
14 Stewart, was close friends with Walter Bentley, and I
15 think I'm stating this correctly, and -- but she was
16 able to say that she could still be fair and impartial
17 to both sides, but your objection to Valerie Jones
18 serving on this jury is denied.

19 **MS. WIYGUL:** And just for clarification, Your
20 Honor, she also taught the chief detective or the lead
21 detective in this case.

22 **THE COURT:** Right, right. Officer Goggins. That's
23 right.

24 **MS. WIYGUL:** Your Honor, we would also make a
25 motion in limine to -- just to have the Court or the

1 State, either one, instruct the State witnesses that we
2 are here for a trial only on the events of November 11,
3 2011. Mr. Odom has numerous other pending charges from
4 different alleged victims, different dates, and we would
5 simply make a motion that they limit their testimony to
6 the incident that the State has chosen to bring for
7 trial.

8 **MR. MOWRY:** And there is one fly in that ointment,
9 Your Honor. Christopher Mixon, one of the State's
10 witnesses in this case, has pled guilty on several
11 counts of burglary in various counties in South
12 Carolina, including Laurens, and he would allege that
13 this was all under the instigation of Maurice Anthony
14 Odom. We will talk specifically about this night, but
15 my point is if Ms. Wiygul begins to cross-examine him
16 on his prior record, then I should be able to explain
17 how that came about. It's not that Maurice Anthony Odom
18 was involved in only this one case or is alleged to have
19 been involved in only this one case. If she begins to
20 cross-examine him about Mr. Mixon about the multiplicity
21 of cases, I would submit that I should be able to do
22 redirect about his co-defendant in those cases.

23 **THE COURT:** Okay. Well, let's just deal with it if
24 it does come up. Now I don't know what Ms. Wiygul's
25 cross-examination is going to consist of. So if you

1 believe that in some fashion that possibly she has
2 opened a door, then bring it to the Court's attention
3 at that time and then we'll deal with it.

4 **MS. WIYGUL:** And, Your Honor, if I could, I would
5 ask that the Court listen to arguments from both sides
6 on this issue and make a preliminary finding so I know
7 how far I can push without opening that door.

8 **THE COURT:** Okay.

9 **MS. WIYGUL:** My main concern is that, as I said, the
10 State has control of this docket, the State chose which
11 cases to bring to trial. They could have brought more
12 than one at once. It's been known to happen on multiple
13 occasions. For them to only bring one, which obviously
14 I think they believe that's their strongest case, but
15 then to want to discuss all these others is completely
16 inappropriate and unfair to Mr. Odom.

17 **THE COURT:** Okay. As I understand it, there is a
18 potential State witness by the name of Christopher
19 Mixon --

20 **MR. MOWRY:** That's correct, Your Honor.

21 **THE COURT:** -- who has already pled guilty to some
22 charges and is serving time in SCDC?

23 **MR. MOWRY:** Or has served his time and is out now.

24 **THE COURT:** Oh, is he out?

25 **MR. MOWRY:** Yes, sir.

1 **THE COURT:** Okay. And that there is some connection
2 allegedly between Nixon and this Defendant?

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

4 **THE COURT:** And the connection is basically what,
5 Solicitor?

6 **MR. MOWRY:** The connection is they were both from
7 Barnwell. Mr. Nixon would testify that he knew
8 Mr. Odom. Mr. Nixon has told me that he was aware that
9 Mr. Odom was involved in a scheme and he was short of
10 money himself and wanted to get some so that he could
11 continue going to school, the costs were making it
12 prohibitive for him, so he asked Mr. Odom about it,
13 Mr. Odom explained to him what his scheme was and
14 Mr. Nixon agreed to take part in that scheme. They
15 would go, smash windows, get inside, grab cigarettes,
16 and flee.

17 **THE COURT:** So it sounds like to me this is a Lyle
18 situation, some prior bad acts, a common --

19 **MR. MOWRY:** Common scheme or plan, yes, sir.

20 **THE COURT:** -- scheme or plan. I mean, that's the
21 tact of the State in this?

22 **MR. MOWRY:** Yes, sir.

23 **MS. WIYGUL:** And, Your Honor, we would object to
24 that on the grounds that it is just more confusing than
25 probative. Mr. Nixon has also been charged and pled

1 to multiple burglaries where Mr. Odom was not the
2 co-defendant or given statements where he was with other
3 people.

4 **THE COURT:** Well, you know -- and I can certainly
5 understand you want some preliminary guidance from the
6 Court as far as -- I think the only way to handle this
7 is when Mixon is called we'll just have to have an
8 in-camera hearing on his testimony and let me hear
9 exactly what he has to say before I can make any sort of
10 ruling. I mean, this sounds like to me we have a Lyle
11 situation.

12 **MR. MOWRY:** Yes, sir.

13 **THE COURT:** We're just gonna have to hear it out.

14 **MR. MOWRY:** Yes, sir. Very good.

15 **MS. WIYGUL:** And, Your Honor, that's -- it's my
16 understanding that that's the State's only objection is
17 as to Mr. Mixon and not as to the other state witnesses.

18 **THE COURT:** Is that correct? As far as these
19 police officers not testifying as to any other potential
20 pending charges or anything on that?

21 **MR. MOWRY:** I have no trouble with charges, Your
22 Honor. The fact that there were other break-ins in the
23 area in a similar fashion, the officers will go into
24 because -- especially Officer Moye, who would be our
25 first witness. That explains why he was particularly

1 checking the incident location. They had had a break-in
2 in there the previous month and -- in a similar fashion
3 and so he was giving particular scrutiny to convenience
4 stores on the Interstate. That was the method of
5 operation at least. I'm not gonna go into who was doing
6 it. Just the fact that it was being done.

7 **MS. WIYGUL:** And, Your Honor, again, we would
8 adamantly object to that because those charges are
9 pending against Mr. Odom, they occurred prior in time
10 to this event, but the State chose to bring this one to
11 trial.

12 **MR. MOWRY:** We're not gonna bring up his name in
13 connection with those, Your Honor. We're simply gonna
14 bring up the fact that those events occurred.

15 **THE COURT:** So if they're not, and the State can
16 specifically -- well, I don't -- think let me think out
17 loud here for just a second. Why, Solicitor, does --
18 why do you need to bring out that this officer was
19 paying really close attention to this subject break-in?
20 I would hope that he would pay close attention to
21 investigating every break-in regardless of whether
22 there's been others occurring or not.

23 **MR. MOWRY:** The main reason, Your Honor, is he is
24 pulling into the parking lot. You can see it on the
25 store's surveillance video. He is pulling into the

1 parking lot, you can see his lights flash as the
2 defendants are starting to go out of the window. They
3 had been in for about a minute. And I admire the
4 response time of local law enforcement, but thinking
5 they're gonna get there in a minute is not exactly
6 rational. That would be almost super human response
7 time. And so to explain why he was there. It wasn't
8 just by random luck. It was by a calculated design on
9 Deputy Moye's part that he was gonna be checking the
10 various convenience stores on the Interstate to make
11 sure that they were intact.

12 **THE COURT:** I think by virtue of the fact that
13 these charges are, in fact, pending against the
14 Defendant, even though you're not going to try to have
15 any evidence elicited that he has been charged with
16 these other break-ins, I think the insinuation could
17 very well be prejudicial and I don't think you
18 necessarily need to explain to the jury why he was
19 there as the defendants -- or as people were getting
20 out of the store. Just let the jury believe that was
21 really good police work. So I'm gonna grant the motion
22 for the defense.

23 **MR. MOWRY:** All right.

24 **MS. WIYGUL:** And, Your Honor, two more issues.
25 We would ask that the witnesses in this case be

1 sequestered.

2 **THE COURT:** Okay. All right. The -- is Officer
3 Goggins the --

4 **MR. MOWRY:** Chief investigator.

5 **THE COURT:** -- chief investigator? He can stay.
6 Of course, Mr. Bentley's the State's investigator.

7 **MR. MOWRY:** Yes, sir. Mr. Bentley will not be
8 testifying. Since Mr. Patel is also considered one of
9 the victims in the case, even though Hardik is listed on
10 there, I would ask that he be allowed to stay pursuant
11 to the Victims' Rights Bill.

12 **MS. WIYGUL:** And, Your Honor, pursuant to the
13 Victims' Rights Bill, Mr. Patel should have been
14 notified ten days ago that this trial was scheduled and
15 he should be here to testify.

16 **THE COURT:** Well, I'm not going to allow Mr. Patel's
17 filling the victim's form out that that's going to tie
18 our hands up in anything. He didn't know that he had to
19 list the victim as being the corporation. I mean, he
20 just put his name down there. So that victims' rights
21 form, I'm not gonna allow that to tie our hands.

22 **MS. WIYGUL:** And, Your Honor, this puts Mr. Ramesh
23 Patel in a position where he can sit there and listen
24 to what the testimony is and by the time he takes the
25 stand he'll know what to say.

1 **THE COURT:** Well, I'm gonna allow you to interview
2 Mr. Patel in the Solicitor's presence.

3 **MS. WIYGUL:** Your Honor, I'm very uncomfortable
4 interviewing a witness. That's normally something I
5 would have an investigator do for fear that I would turn
6 myself into a witness on the case.

7 **THE COURT:** Well, you know, I'm just giving you
8 kind of the opportunity to have a heads up on what he's
9 gonna testify to. You know, if you don't want -- if
10 for whatever reason, legitimate, you don't want to take
11 advantage of that, I mean, that's your call. I mean,
12 I'm not gonna force you to do that. I was trying to be
13 of some assistance because you're claiming that you are
14 prejudiced by the fact that this Mr. Patel is going to
15 testify and I was just going to give you the opportunity
16 to kind of get a little heads up, but --

17 **MS. WIYGUL:** And I do appreciate that, Your Honor,
18 but the position I'm in is that if I ask Mr. Patel if
19 the sky is blue and he tells me no, it's green and then
20 I put him on the stand and he says yes, it's blue, then
21 my hands are tied.

22 **THE COURT:** Well, I wouldn't -- I'm certainly not
23 gonna instruct you on how to cross-examine him, but you
24 can certainly say didn't you just ten minutes ago tell
25 me back in the back room that the sky was a different

1 color? I mean -- well, he is a representative of the
2 named victim in the indictment, and that's what I'm
3 going with, I'm not going to go with some victims'
4 rights form, and the victim stated in the indictment is
5 BP of Clinton, BIJC, Inc., as the victim. He is the
6 representative of that in some capacity and I'm gonna
7 allow him to stay in as the representative of the victim
8 in the case.

9 **MS. WIYGUL:** And, Your Honor, one more thing.
10 Just to protect the record, Mr. Mowry did make a very
11 reasonable plea offer in this case. He made an offer
12 for ten years, nonviolent, that would take care of these
13 charges, concurrent time on the Newberry charges, and
14 would essentially take care of all Mr. Odom's pending
15 charges around the State.

16 **MR. MOWRY:** Well, not around the State. In our
17 circuit.

18 **MS. WIYGUL:** In Laurens -- in the Eighth Circuit.
19 And so that offer has been relayed to Mr. Odom and he
20 has chosen to proceed with trial.

21 **THE COURT:** Okay.

22 **MR. MOWRY:** We made an alternative offer, Your
23 Honor, to plead guilty to accessory before and after the
24 fact with no recommendation as to time. I should say
25 accessory before and after the fact and conspiracy, and

1 so that offer was made as well.

2 **THE COURT:** Okay.

3 **MS. WIYGUL:** With no recommendation, that is
4 correct, Your Honor.

5 **THE COURT:** Okay. That's noted for the record.
6 What else do we have?

7 **MS. WIYGUL:** I believe that's all of the issues I
8 have, Your Honor.

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

10 **MR. SCOTT:** Are we just gonna kind of roll into
11 openings and then go straight into witnesses? If so,
12 I'm going to instruct at least our first witness
13 regarding the break-ins at the BP.

14 **THE COURT:** Did you guys not want to do some
15 marking of some exhibits?

16 **MR. MOWRY:** Pre-marking exhibits and I wanted to
17 make sure that Ms. Wiygul has seen these things before
18 we started.

19 **THE COURT:** Okay. Let's take about a ten minute
20 recess, get the exhibits marked. Also you can talk with
21 your first witness about what he cannot testify to. So
22 we'll be in recess about ten minutes.

23 (Recess taken.)

24 (State's Exhibit Numbers 1 through 31 were marked
25 for identification.)

1 **THE COURT:** All right. We got everybody?

2 **MR. MOWRY:** Yes, sir.

3 **THE COURT:** All right. We're back on the record.
4 Let me just add one more comment to the defense's
5 objection to Ramesh Patel testifying. Now, Ms. Wiygul,
6 certainly during his testimony if he testifies as to
7 matters that have not been disclosed through discovery,
8 then certainly you -- I mean, I don't want you to think
9 that I'm trying to handicap you in any manner. You
10 certainly can object. The Solicitor indicates that
11 everything he's gonna testify to has been disclosed
12 except maybe as to the value of some items, but
13 certainly if he testifies to something brand new that
14 you've never been -- that information's not been
15 provided to you, I want you to know that certainly you
16 have every right to offer an objection and then we'll
17 deal with it at that time, okay?

18 **MS. WIYGUL:** Thank you, Your Honor.

19 **THE COURT:** Thank you. We'll bring the jury out.
20 Prior to swearing the jury, I'm going to tell them that
21 the Court inadvertently failed to disclose one potential
22 witness, that being Ramesh Patel, and make sure that
23 there's no relationship of any kind with him. Then
24 we'll have the jury sworn and I will appoint a
25 foreperson of the jury and then we'll get started with

1 the preliminary charge and then the opening.

2 Ms. Wiygul, do you have a matter for the record?

3 **THE COURT:** Your Honor, I appreciate the Court's
4 willingness to take on responsibility for having left
5 out this name, but I don't believe that would be
6 appropriate in this case. I have no objection to the
7 Court checking with the jury and making sure that they
8 have no knowledge of this witness, but I don't think
9 it's appropriate for the Court to make it sound like it
10 was just something the Court overlooked.

11 **THE COURT:** Okay. So you want me to say that the
12 State failed to disclose this? I mean, I don't know if
13 we need to lay blame and that's gonna help at all.

14 **MS. WIYGUL:** Your Honor, just there's an additional
15 witness will be fine.

16 **THE COURT:** All right. Okay. I'll do it that way
17 then.

18 All right. Let's bring the jury out.

19 (Whereupon, the jury enters the courtroom at
20 10:46 AM.)

21 **THE COURT:** You can sit down. When you come in the
22 jury box, feel free to sit down.

23 **BAILIFF:** All present, Your Honor.

24 **THE COURT:** Thank you, Mr. Byers. Ladies and
25 gentlemen, thank you for your patience. Again, I don't

1 want to keep overstating this, but we have been working.
2 And oftentimes when we have excellent lawyers in the
3 case, as we have here today, they work the judge pretty
4 good, but I do appreciate your patience.

5 A couple of housekeeping matters. One potential
6 witness, the name of that witness was not disclosed
7 yesterday. A Ramesh Patel is a potential witness in
8 this case and I will need to ask you, ladies and
9 gentlemen of the jury, if any of you are related by
10 blood or marriage to Ramesh Patel or if any of you have
11 a close personal or social relationship with Mr. Ramesh
12 Patel. If so, please stand.

13 (There was no response.)

14 **THE COURT:** Okay. Thank you very much. Madam
15 Clerk, would you swear the trial jury in, please.

16 **THE CLERK:** Yes, sir. If you will stand, please,
17 and raise your right hand.

18 (Whereupon, the Jury was duly sworn by the Clerk of
19 Court at 10:48 AM.)

20 **THE COURT:** Thank you very much. It is necessary
21 that we appoint a foreperson of this jury. Now let me
22 explain to you that whoever serves as the foreman, if
23 it's a male, or forelady, if it's a female, I want to
24 explain to you that that person's vote when it's time to
25 reach a verdict in this case carries no more weight, no

1 more significance than everybody else's vote, but we
2 have to have a person to wear several hats. Number one,
3 we need a person to serve as a spokesperson between the
4 jury and the Court during the course of this trial. If
5 there's some concern or some problem that arises, we
6 need someone to be the spokesperson for the jury.

7 Secondly, in just a moment I'm gonna give you some
8 preliminary instructions and I need someone to make sure
9 that those instructions are followed by the jury. And,
10 lastly, we need someone to organize and conduct your
11 deliberations when you get this case to decide a
12 verdict. But, again, I emphasize the fact that the
13 foreperson's vote carries no more weight than everyone
14 else's vote.

15 And I've decided, Ms. Power, I've appointed you as
16 the forelady of this jury. Now you will maintain -- you
17 don't need to do it now, but the next time you come in
18 this very first seat will always be your seat where you
19 will sit. The alternate, Darrell Chadwick, you are
20 sitting in the correct seat. You will always maintain
21 that seat when you're in the jury box. Everybody else
22 on the jury, you can sit wherever you'd like. Now it's
23 been my experience that most juries like to kind of sit
24 in the same seat. It's like going to church. You
25 always have that same seat in the same pew. And you

1 don't have to sit in the same seat, but if you want to,
2 then that's certainly your right. That will just be a
3 decision that you folks will make, okay?

4 Now, ladies and gentlemen of the jury, we are
5 starting the trial in the case of the State of South
6 Carolina versus Maurice Anthony Odom. Mr. Odom has
7 already been identified to you yesterday. And before
8 we begin this trial, I want to tell you that this trial
9 probably will be different from what you might expect.
10 Many people do not have the chance to attend actual
11 court sessions as you are doing now today and you may
12 think from watching TV or movies or reading books that
13 trials are always full of high drama, intense action
14 and riveting circumstances. While all of these things
15 may be true at times, this trial is definitely not
16 for entertainment. It is a fundamental part of our
17 democracy. A search for the truth in an effort to make
18 sure that justice is done between the parties before
19 this court. Searching for the truth and making sure
20 that justice is done is often slow, deliberate and
21 repetitive. The opposite of what you may have seen on
22 television or in movies or have read in books. This
23 courtroom is a place of honor dedicated to the
24 protection and preservation of citizens' rights. What
25 many have called to be the greatest justice system ever

1 created.

2 The attorneys appearing before you are advocates
3 for the parties they represent, but first and foremost,
4 they are officers of this court sworn to uphold the
5 integrity and fairness of our judicial system and to
6 help you in the search for the truth. You should expect
7 them to be professional, competent and ethical in the
8 representation of their client's interest and remember
9 that you've taken an oath to try this case to reach a
10 fair and just verdict and, therefore, you are also
11 expected to be professional, reasonable and ethical as
12 well, and I'm sure that you will be.

13 I want to thank you once again for accepting this
14 important responsibility of jury service and for your
15 contribution to our justice system.

16 Now what I will now say to you is intended to serve
17 as an introduction to the trial of this case. These
18 remarks are not a charge on the law in this case. I
19 will instruct you on the law applicable to this case
20 at the end of the trial before you retire to consider
21 your verdict. This preliminary instruction is merely an
22 explanation of the procedure that we will follow in the
23 trial of this case so that you may better understand
24 what may be happening. And I'll tell you now you're not
25 permitted to take notes during the trial of this case.

1 Consequently, it is incumbent upon you to be very
2 attentive and alert at all times because when you
3 receive this case and start your deliberations it is,
4 therefore, necessary that you rely on your memory of
5 what has been testified to, what has been offered into
6 evidence. So, please, be very attentive and alert at
7 all times.

8 Now as I told you yesterday, the Defendant has
9 been charged with criminal offenses in indictments.
10 The elements of those charges or those crimes will be
11 explained to you at the conclusion of this trial, but
12 also, as I told you yesterday, these indictments are
13 just simply the charges by which the case is brought
14 into court and they are not in any sense whatsoever
15 evidence of any of the allegations the indictments
16 contain.

17 The Defendant has exercised his constitutional
18 right and has pled not guilty to these indictments.
19 Therefore, the State has the burden of proving each and
20 every element of each crime charged beyond a reasonable
21 doubt standard and it will be your duty, Madam Forelady
22 and ladies and gentlemen of the jury, to decide whether
23 the State has met that burden of proof. Your purpose as
24 jurors is to find and determine the facts. You are the
25 sole judge of the facts in this case. If at any time

1 during the course of this trial I make any comment
2 regarding the facts, you must disregard it. You are to
3 determine the facts from the testimony you hear and any
4 other evidence introduced in court. It is up to you to
5 determine the inferences which you feel may properly be
6 drawn from the evidence presented. It is especially
7 important that you perform your duty of determining the
8 facts diligently and conscientiously because ordinarily
9 there is no way to correct an erroneous determination of
10 the facts by a jury.

11 On the other hand, and with equal emphasis, the same
12 law that makes you the judges of the facts makes me the
13 judge of the law. The law as given by the Court is the
14 only law that you may consider. You must accept and
15 follow it even though you may disagree with it. I can't
16 tell you what the facts are and you cannot disagree with
17 me about what the law is or what the law should be.
18 Your job is to take the law as I give it to you and
19 apply it to the facts as you find them from the
20 testimony of the witnesses and other evidence that is
21 introduced. After doing that, you will render your
22 verdict, a true and just verdict, under the solemn oath
23 that you just took as jurors.

24 Now as I've already explained to you, and I'll
25 explain again and you'll hear this from me throughout

1 the whole trial, until I tell you it is time to start
2 your deliberations, you cannot discuss this case with
3 anyone, including your fellow jurors, any friends, any
4 family members, anyone involved in this case, anyone
5 that you may come into contact with.

6 Also it is very important that during this trial
7 you are not allowed or permitted to do any independent
8 research on your own. We all have access to the
9 Internet through cell phones and computers and the like
10 and you cannot on your own do any independent research
11 into this case, into the law in this case, anything
12 related to this case whatsoever. You cannot. And also,
13 and I don't anticipate, but there may be some news
14 accounts of this case in the newspapers or radio or
15 television. If that is the case, you are not permitted
16 to consider anything that appears in the newspaper or
17 on TV or in the radio about this trial. It's very
18 important, Madam Forelady and ladies and gentlemen of
19 the jury, to keep an open mind and not decide any issues
20 in this case until all of the evidence has been
21 presented, the parties have made their closing arguments
22 through their attorneys and I have instructed you on the
23 law in this case. It is your solemn responsibility to
24 determine the guilt or innocence of the Defendant as to
25 each charge and your verdict must be based solely on the

1 evidence as it is presented to you in this trial and on
2 the law as I instruct you during and at the close of the
3 trial.

4 Now there may be from time to time an objection
5 made by one of the lawyers or one of the lawyers may say
6 Judge, I have a matter of law to take up with the Court,
7 and consequently that may require me to excuse you to
8 the jury room because I might in making a legal ruling
9 might have to discuss some of the facts with the lawyers
10 and I don't want to discuss facts in your presence
11 because, again, it is solely up to you as members of
12 this trial jury to decide what the facts are in this
13 case. So I don't want to improperly influence you in
14 any manner. If we can, we will sometimes have what's
15 called sidebar conferences where I don't have to excuse
16 you, but if it's necessary to excuse you, then I'll do
17 that.

18 Now you will hear testimony from witnesses. I
19 understand that there's going to be some exhibits
20 offered into evidence. You have a right to consider
21 anything that is in the record that will help you
22 evaluate this case. And, again, it's up to you to pay
23 very close attention to all of the witnesses, their
24 testimony, to observe the witnesses, to listen to their
25 testimony, pay close attention to the attorneys and to

1 the Court. Don't let your thoughts wander, but give
2 strict attention to everything that goes on in this
3 trial so you will be in the correct position to
4 determine what the true fact are, to apply the law to
5 those facts and thus render a true and just verdict.

6 Now I will ask the State are there any objections
7 or exceptions to the Court's preliminary charge?

8 **MR. MOWRY:** No objections, no exceptions, Your
9 Honor.

10 **THE COURT:** Thank you, Solicitor. Ms. Wiygul, any
11 objection?

12 **MS. WIYGUL:** None from defense, Your Honor.

13 **THE COURT:** Ma'am?

14 **MS. WIYGUL:** None from the defense.

15 **THE COURT:** Thank you very much. All right. I'm
16 gonna ask the State to make their opening argument.

17 **MR. MOWRY:** Thank you, Your Honor. May I approach
18 and may I get the indictments?

19 **THE COURT:** Yes.

20 **OPENING STATEMENT**

21 **MR. MOWRY:** Ms. Foreman, ladies and gentlemen of
22 the jury, let me reintroduce myself. It's been a while
23 since I spoke to you. My name, again, is Warren Mowry.
24 I'm a Deputy Solicitor. I'm more or less the supervisor
25 here in Laurens County. Dale Scott, the Deputy

1 Solicitor, my counterpart in Newberry, is at the table
2 with me, along with Walter Bentley, our office's
3 investigator, and Tyrone Goggins, a detective with the
4 Clinton Department of Public Safety.

5 All of us together are here today to present this
6 case for the State. I call myself an assistant
7 solicitor. If you lived in California, I'd be called a
8 deputy district attorney. I am the State's attorney in
9 this matter. South Carolina in many ways does things
10 in a peculiar fashion. I think we're the only state in
11 the nation that calls its chief prosecuting officers
12 solicitors. I just give you that information. David
13 Stumbo is your elected circuit solicitor. He represents
14 the Eighth Judicial Circuit in South Carolina. All the
15 counties in South Carolina are selected together in
16 various numbered circuits. We're the Eighth Circuit
17 and our circuit includes Laurens, Newberry, Abbeville
18 and Greenwood. Solicitor Stumbo represents all those
19 counties and he has hired Mr. Scott and myself to handle
20 cases in Laurens and in Newberry.

21 In any event, ladies and gentlemen, we will be
22 presenting three charges against this Defendant, Maurice
23 Anthony Odom. We will prove to you by the presentation
24 of the testimony of the witnesses we will bring before
25 you and the exhibits we will present to you that

1 Mr. Odom is guilty of burglary. We will also prove to
2 you that he is guilty of larceny and we will prove to
3 you that he's guilty of conspiracy.

4 What I hold in my hand, as His Honor has already
5 told you, are indictments. Indictments are the charging
6 papers. They are the means by which the State can
7 present charges against an individual and bring them
8 into court.

9 What do these various charges mean? Let me just
10 give you a little thumbnail sketch of these so you will
11 know what we're getting into and what to listen for.
12 Burglary. It's against the law in South Carolina, and
13 I believe in every other state in the country, I'm
14 fairly confident that's the case, to commit a burglary.
15 Burglary is unlawful entry, without consent, into
16 another person's building with the intent to commit a
17 crime inside, okay? Now you might go by a house under
18 construction and the door's open and you wander in there
19 and you just want to look around, you know, maybe you're
20 interested in the construction. Have you committed a
21 burglary? Well, you've made an entry into that place
22 without permission, but what crime were you intending to
23 commit? All I wanted to do was look and see how they
24 built this place, so that would not be a crime. What
25 would be a crime? Going into somebody else's building,

1 whether it's a store or a house or a shed, an office, a
2 school, a church, anything like that, with the intention
3 to steal from that place, that would be a burglary,
4 okay?

5 And that, quite frankly, ladies and gentlemen, is
6 all larceny is. Larceny is stealing and what we will
7 prove through the testimony of our witnesses, ladies
8 and gentlemen, is that Mr. Odom and another individual
9 broke out a window in the BP store on Highway 72 and
10 Highway 26, just outside of Clinton. Used a rock, threw
11 it through the window, went inside and stole large
12 garbage bags full of cartons of cigarettes. We will
13 prove to you that those cigarettes were valued at more
14 than \$2,000.

15 That is essentially what burglary and larceny are
16 all about. Burglary, the entering into the building
17 with the intention to commit a crime, and the actual
18 crime, the grand larceny being committed, is the
19 stealing of the cigarettes.

20 And the final charge that we have against Mr. Odom
21 is criminal conspiracy. Conspiracy simply is the
22 meeting of two minds. Two people getting together and
23 agreeing that they are going to commit a crime. And
24 you will hear from Mr. Odom's co-defendant, ladies and
25 gentlemen, that that's exactly what happened. That they

1 got together, that they decided how they were gonna go
2 about it and, in fact, executed the crime. We will
3 submit to you a surveillance video that will show you
4 two individuals breaking into the place and sweeping
5 large quantities of cigarettes into bags and then
6 attempting to flee. You will also hear from a deputy
7 sheriff from Laurens County that happened to pull into
8 the parking lot just as the two were exiting the store
9 and they fled and they left their bags behind. They
10 got out of the store with the bags, but they left them
11 there.

12 Essentially, ladies and gentlemen, that doesn't make
13 any difference as to whether or not these two committed
14 a larceny, okay? A larceny generally is the taking and
15 carrying away of another person's property without that
16 person's permission with the intention to permanently
17 deprive that person of that property, okay? Whether or
18 not they managed to get away with it doesn't make any
19 difference. If I come home tonight and I stop a burglar
20 in my house and he's moved my TV from out of its slot
21 and he has it down on the floor getting ready to carry
22 it out but I surprised him and he flees and leaves it
23 behind, he's still committed a larceny because he's
24 moved it some degree, and that I submit to you, ladies
25 and gentlemen, is exactly what happened here and that is

1 what the State will prove.

2 Now there are a number of things that I'm gonna ask
3 you to do during the course of this trial, and the first
4 one is to listen very carefully to the testimony that
5 comes off of this witness stand because it's from here
6 that you're going to get all of the information, all the
7 facts about the case for your consideration, and it's
8 from that, from that evidence, from that information,
9 that you determine whether or not, in fact, this
10 defendant is guilty of the crimes with which he's been
11 charged. Nothing that I'm telling you, nothing that
12 Ms. Wiygul is gonna tell you, nothing that anybody else
13 tells you is evidence. Only what comes off this witness
14 stand and the pieces of physical evidence, whether
15 they're photographs or videos or what have you, that are
16 admitted into evidence. Those are the items that you
17 will consider in determining what the facts in the case
18 are.

19 As His Honor told you, you are the factfinders. You
20 determine what the truth is. Now I can submit all day
21 to you what the truth is, but y'all have to make that
22 determination based on the facts and the evidence that
23 comes before you, okay?

24 The second thing I'd ask you to do is at the close
25 of the trial His Honor is gonna instruct you on the law

1 in the case and it is from that instruction that you
2 must determine whether or not the facts fit the crime.
3 You determine what the facts are, but His Honor is the
4 law giver in the case. He will tell you what the law
5 is in the case. I've given you a recitation of it. I
6 certainly have no intention of misstating it, but if
7 there's any difference between what I tell you and what
8 His Honor tells you, you agree with that.

9 Another thing I want you to realize is what His
10 Honor tells you may not be the law as you think it is.
11 It may not be the law as you think it ought to be. That
12 doesn't matter. By the oath that you've taken, you must
13 accept the law the judge gives you and determine whether
14 or not the facts fit the crimes.

15 The third thing I'm gonna ask you to do, ladies and
16 gentlemen, is to use your common sense. Each and every
17 one of y'all comes from a different background perhaps,
18 a different lifestyle, whatever, but each and every one
19 of y'all have at least one thing in common, and that's
20 common sense. So I'd ask you to use your common sense
21 when you are listening to the evidence, use your common
22 sense when are applying that evidence to the law His
23 Honor gives you, and use your common sense when you get
24 together back in the jury room to render a verdict. If
25 you do all those three things, you're going to come back

1 with a just, fair and true verdict, and that's all any
2 of us ask.

3 Now I'm gonna tell you, ladies and gentlemen, that
4 -- I want to make you aware of this before we start.
5 You're gonna hear from the Defendant's co-defendant,
6 Christopher Nixon. Mr. Nixon will tell the story about
7 how he and Maurice Anthony Odom did this break-in.
8 Christopher Nixon has been convicted of several
9 burglaries. You will hear about those. He is a
10 convicted felon. But I submit to you that he is before
11 you with no promises, no rewards, no hope of anything
12 like that. He is simply here to tell you the truth and
13 I believe you will find him in spite of his criminal
14 record to be a credible witness.

15 Once you have heard all of the State's evidence,
16 once you have heard the law from His Honor, I believe
17 that common sense will tell you that the State will
18 have done its duty and that this Defendant is guilty as
19 charged. Thank you very much.

20 **THE COURT:** Thank you, Solicitor. Ms. Wiygul.

21 **MS. WIYGUL:** Mr. Nixon is gonna tell you a story
22 all right. It's gonna be entertaining. The BP on
23 Highway 72 was broken into. There's no question about
24 that. They may show you a video. There are two people,
25 they're masked, they throw a rock through the window,

1 they try to steal cigarettes. That is not an issue.
2 It happened. Mr. Nixon said it happened with Mr. Odom.
3 We say it did not. That's what this case comes down
4 to.

5 The papers that Mr. Mowry showed you, the
6 indictments, those are charging documents. These are
7 warrants. They're also charging documents. They're
8 the initial ones that the officers fill out to tell
9 people what they're charged with. They're very
10 important. Investigation is very important. We live
11 in a time like no other. There is forensics that I
12 used to watch on Star Trek and now it's real, and they
13 didn't use any of it. It's very important to listen
14 to what the people on the stand say today. It's also
15 important to listen to what they don't say. It's
16 important to listen to exactly what evidence they have
17 that causes them to believe that Mr. Odom is guilty
18 because as everyone has told you this morning, as of
19 right now Mr. Odom's not guilty. He's not guilty of
20 anything. He walked into this courtroom innocent. You
21 can't even consider whether he's guilty or whether you
22 think he's guilty until you begin your deliberations.
23 Right now he is sitting here as an innocent man. I
24 am confident that it takes more than the word of a
25 20-year-old kid to convict a grown man of these kind of

1 charges and I'm confident that you will feel the same
2 way. Thank you.

3 **THE COURT:** Thank you, Ms. Wiygul.

4 All right. Solicitor, you want to call your first
5 witnesses.

6 **MR. SCOTT:** Thank you. The State calls Nick Moye.

7 **MS. WIYGUL:** Your Honor, in anticipation could I
8 ask for permission to move freely around the courtroom
9 to see any exhibits?

10 **THE COURT:** You position yourself wherever you need
11 to be.

12 **MS. WIYGUL:** Thank you, Your Honor.

13 **THE COURT:** Thank you.

14 SERGEANT NICK MOYE,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q. All right. Will you tell this jury who you are.

19 A. My name's Nick Moye. I'm a sergeant with the
20 sheriff's office. I've been employed since April of
21 2008.

22 Q. All right. November 11, 2011, what were you doing
23 that night?

24 A. Back at that time, I was not a sergeant, I was just
25 a deputy assigned to the Clinton/Joanna area of Laurens

1 County.

2 Q. What were your duties?

3 A. Normal patrol responsibilities; calls for service,
4 property checks, things of that nature.

5 Q. Do you remember that night?

6 A. I do.

7 Q. So you were on general patrol at that time in the
8 Clinton area?

9 A. I was.

10 Q. Did you have an opportunity to respond to the BP on
11 Highway 72?

12 A. In this particular case, I arrived on-scene and
13 observed the audible alarm was going off and I proceeded
14 to go around and check the building where I found the
15 broken window.

16 Q. All right. So let me back up. You were just on
17 routine parole and you approached the BP on 72 and as
18 you're passing by you hear that alarm from your patrol
19 car?

20 A. That's correct.

21 Q. What did you do next?

22 A. I immediately notified dispatch that the audible
23 alarm was going off and they were telling me that at
24 that same exact time they were receiving a 9-1-1 from
25 the alarm company, which would have been dispatched

1 to the City of Clinton because it was in their
2 jurisdiction.

3 Q. Okay. Do you remember approximately what time it
4 was when you arrived at that BP?

5 A. By reading the incident report, I know it was after
6 midnight, but I couldn't recall that until reading the
7 report.

8 Q. Okay. But it was dark out?

9 A. It was.

10 Q. It was nighttime?

11 A. I worked the second shift for us; 7:00 PM to
12 7:00 AM.

13 Q. Let me show you what's been premarked as State's
14 Number 1. What is this?

15 A. This is a map or a photo from the Interstate area.
16 This is Exit 54, which is Highway 72 East, Exhibit 52,
17 which is Highway 56, and the space in between.

18 Q. All right. So this is just, I guess, an aerial of
19 that portion of Clinton?

20 A. In between. In between those two Interstate exits.

21 Q. All right. It fairly and accurately represents this
22 area to your knowledge?

23 A. This is an older photo, but, yes. This road right
24 here is now completed, it's not a dirt road anymore, but
25 other than that, yes.

1 Q. Do you see the location of the BP that you were just
2 testifying about?

3 A. I do.

4 MR. SCOTT: Your Honor, the State would offer
5 State's Number 1 for admission?

6 **THE COURT:** What says the defense?

7 **MS. WIYGUL:** Without objection.

8 **THE COURT:** Without objection, it will be State's
9 Number 1 in evidence.

10 (State's Exhibit Number 1, an aerial photograph, was
11 admitted into evidence.)

12 **MR. SCOTT:** Judge, I'd ask for permission for the
13 witness to step down from the stand and label a couple
14 of spots on this diagram.

15 **THE COURT:** All right, and that will be fine. I
16 will just instruct the witness to speak up loud because
17 if you're talking in a different direction away from the
18 court reporter, it will make it a little harder for her
19 to pick up everything you say, so speak up loud, okay?

20 **THE WITNESS:** Yes, sir.

21 (Whereupon, the witness leaves the witness stand.)

22 BY MR. SCOTT:

23 Q. All right. Stand right here. All right. What is
24 this road right here?

25 A. This road is I-26. This would be the Columbia

1 direction, up would be Spartanburg.

2 Q. Okay. So this would be the eastbound, this would be
3 the westbound?

4 A. Eastbound side, westbound.

5 Q. Okay. And what exit is this?

6 A. Highway 72 East would be Exit 54.

7 Q. Is that the one where I always see the Fatz
8 Restaurant from the Interstate?

9 A. That's correct. The Fatz is located right here.

10 Q. Okay. And what's that?

11 A. That is a motel. I don't recall the name of it.

12 Q. The Hampton Inn? You can see --

13 **MS. WIYGUL:** Objection, Your Honor. He said he did
14 not recall the name of it.

15 **THE COURT:** All right. Try not to lead, Solicitor.

16 BY MR. SCOTT:

17 Q. Do you have -- it doesn't matter. It's a hotel?

18 A. Yes.

19 Q. What's this road right here?

20 A. It's State Highway 72 East, which takes you from
21 Clinton to Whitmire.

22 Q. Do you see the BP you were talking about a little
23 while ago?

24 A. Right here.

25 Q. Okay. Would you take one of these stickers and

1 label that? Maybe don't put it over, just --

2 A. (Witness complies.)

3 Q. Yeah. All right. Do you recall which direction on
4 72 you were travelling whenever you responded to the
5 scene? Can y'all hear me?

6 A. I was travelling from the City of Clinton headed
7 out into the county. When I came across the bridge
8 over I-26 and got right in front of the store -- and
9 this picture's real small, but the store entrance has
10 two separate entrances, but with like a little flower
11 design or something in between the two entrances. When
12 I heard the audible alarm, I pulled into the furthest
13 entrance from the Interstate.

14 Q. Did the alarm cause you to pull in or did you intend
15 to pull in there and do a welfare check?

16 A. I intended to go to that store and do a property
17 check.

18 Q. From what you described, as you were pulling in you
19 hear the alarm going off?

20 A. Yes, sir.

21 Q. Okay. Thank you. You can take the witness stand.

22 (Whereupon, the witness resumes the witness stand.)

23 Q. Let me show you State's Number 2. Do you recognize
24 that?

25 A. Yes, sir.

1 Q. And what is that?

2 A. It is the front of the BP gas station on Highway 72.

3 Q. Let me show you State's Number 4. Do you recognize
4 that?

5 **THE COURT:** Solicitor, if you don't mind, can you
6 go on the opposite side of the witness stand so you
7 won't be blocking the witness from the court reporter?

8 A. That is the corner of the building where this window
9 right here was broken out.

10 Q. All right. State's Number 5, do you recognize
11 that?

12 A. That is the same corner. That window right here is
13 what was broken out. It's just a further back view of
14 this photo.

15 Q. Okay. State's Number 3, what's that?

16 A. That is a photograph from the incident location that
17 night with the window busted out.

18 **MR. SCOTT:** Your Honor, the State would offer
19 State's 2, 3, 4 and 5 for admission into evidence.

20 **MS. WIYGUL:** Without objection.

21 **THE COURT:** All right. Without objection, 2, 3, 4
22 and 5 are now in evidence.

23 (State's Exhibit Numbers 2 through 5, photographs,
24 were admitted into evidence.)

25 BY MR. SCOTT:

1 Q. All right. This is State's Number 2. Tell the jury
2 what this is.

3 A. This is the front door of the store, so this
4 photograph was taken out front near the gas pumps.

5 Q. Okay. And you testified earlier that you pulled
6 into the front of the BP gas station. Kind of show the
7 jury what direction you took when you pulled in the
8 driveway there.

9 A. I would have been coming from this way coming across
10 after pulling into the store.

11 Q. All right. What happened when you pulled into the
12 store?

13 A. After I made the turn around the store over here on
14 this side, that's when I observed the broken glass.

15 Q. Okay. Let me show you State's Number 5. All right.
16 Is that -- is that, I guess, the direction you went in
17 after you pulled to the front of the store?

18 A. That's correct.

19 Q. All right. What glass did you say was broken?

20 A. This one right here.

21 Q. Okay. Let me show you State's Number 3 here. What
22 is that?

23 A. That is the window that was broken out.

24 Q. Is that how it appeared that night when you got
25 there?

1 A. Yes.

2 Q. Okay. After you observed the broken window --
3 here's another one. Let me show you State's Number 4.
4 Is that just the same picture of the window?

5 A. It is.

6 Q. Okay. What did you observe, if anything, once you
7 noticed that glass was broken?

8 A. After I arrived and notified dispatch of the alarm,
9 then I proceeded around the building. I observed a
10 male subject coming out of this window and he took off
11 running to the back of the store.

12 Q. Okay. What did you do?

13 A. I attempted to catch up with him, but once I made
14 the turn around the store, I lost him.

15 Q. So you were only able to that night and in person
16 view one suspect leaving out the window?

17 A. In person viewing one person, that's correct.

18 Q. Okay. And you observed the general area in which he
19 ran?

20 A. That's correct.

21 Q. What did you do as a result of this?

22 A. I went back to secure the location to see if anyone
23 else was in there or just secure the scene until I could
24 get backup units.

25 Q. All right. And then did you contact some backup

1 units?

2 A. I did. Due to the alarm and my radio traffic to
3 dispatch, Clinton units were already en route. And
4 after hearing what I'd said over the radio, we had other
5 county units and, I believe, highway patrol en route
6 also.

7 Q. All right. But Clinton Police Department came to
8 the scene?

9 A. They were the first to arrive on the scene.

10 Q. Do you remember Tyrone Goggins being there?

11 A. Later.

12 Q. I know, like you said, this is kind of taken at
13 quite a distance, but could you generally show in which
14 direction the suspect ran?

15 A. Here's the store. I was -- the suspect exited
16 through the side glass and ran to the back of the store.
17 At that time, once I made it around, he was out of my
18 sight. I had assumed that he had ran into the woods.

19 Q. Okay. So he ran to your knowledge around this way
20 and that's where you lost track of him in that wood line
21 there?

22 A. Back around more towards the dot that I placed.

23 Q. Did you inform assisting agencies of what you had
24 observed?

25 A. I did.

1 Q. Did you tell them what direction you saw the suspect
2 run in?

3 A. I did.

4 Q. The BP, that's in Laurens County?

5 A. Yes, sir.

6 Q. Okay. And you say it was after midnight that all
7 this occurred?

8 A. That's correct.

9 **MR. SCOTT:** That's all. Answer any questions
10 Ms. Wiygul may have.

11 **THE COURT:** Cross-examination, Ms. Wiygul?

12 CROSS-EXAMINATION

13 BY MS. WIYGUL:

14 Q. Sergeant Moyer, you identified Exhibit 3 for the
15 State; is that correct?

16 A. Yes, ma'am.

17 Q. Could you tell us what this number is at the top of
18 this picture?

19 A. This number right here?

20 Q. Yes, sir. Would that be a law enforcement case
21 number?

22 A. That would be the City of Clinton's case number for
23 this incident. It's not a sheriff's office case number.
24 Our numbers are different.

25 Q. Okay. But it would be a Clinton law enforcement

1 number -- or case number?

2 A. That's correct.

3 Q. Did you open a case with the sheriff's office from
4 this incident?

5 A. I don't believe I did.

6 Q. Did you write an incident report?

7 A. I don't recall, but I'm gonna say I did not because
8 the case itself would be a City of Clinton case.

9 Q. Okay. And you stated that before Clinton PD showed
10 up you had already chased a suspect out of the building
11 and saw him run into the woods?

12 A. That's correct.

13 Q. Okay. And you only saw the one person, correct?

14 A. That's correct.

15 Q. Okay. Did you -- were you present whenever a
16 Deputy Marshall or an Officer Marshall arrived?

17 A. I believe he was the first officer on-scene.

18 Q. Okay. And were you present whenever a person with
19 a key to the store showed up?

20 A. That's correct.

21 Q. And was that person Hardik Patel?

22 A. I do not recall his name.

23 Q. Okay. Would that sound right?

24 A. Possibly. I believe his last name was Patel, but
25 I'm not sure on the first name.

1 Q. Okay. Would you expect -- you said you'd been with
2 the sheriff's office since 2008?

3 A. Yes, ma'am.

4 Q. What information is generally included in an
5 incident report?

6 A. The incident date and time, the location, any
7 suspect information, if available, victim's information,
8 and a narrative that lists the events of what happened
9 in the incident.

10 Q. It's important for it to be accurate; is that
11 correct?

12 A. That's correct.

13 Q. Is it important in an incident report to list anyone
14 you spoke with at the scene that gave information?

15 A. Yes.

16 **MS. WIYGUL:** Okay. Thank you, Sergeant. I have no
17 further questions.

18 **THE COURT:** Anything in redirect, Solicitor?

19 REDIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q. Just to clarify, you said Marshall was first on the
22 scene?

23 A. I believe so.

24 Q. I thought you were the first one.

25 A. No, the first Clinton officer arriving on the scene

1 after hearing that I was on the scene first.

2 Q. And you didn't write the incident report; is that
3 correct?

4 A. That's correct.

5 **MR. SCOTT:** Thank you.

6 **THE COURT:** Anything on recross?

7 RECROSS EXAMINATION

8 BY MS. WIYGUL:

9 Q. Deputy, have you seen the incident report that was
10 produced earlier?

11 A. I read it today.

12 Q. Okay. Well, when you read the incident report, did
13 it surprise you to note that it was different than your
14 recollection of events?

15 A. It seemed right on with my recollection. I'm not a
16 hundred percent sure. I didn't read it word for word.

17 Q. Would it --

18 A. I just glanced over it.

19 Q. Would it surprise you to -- well, would it help
20 you if you could look over it again to refresh your
21 recollection?

22 A. Sure.

23 Q. The officer that prepared that incident report, he
24 didn't mention that you saw a suspect run into the
25 woods, did he? He stated that you heard movement after

1 he had already arrived.

2 A. No, ma'am. This incident report, the second
3 sentence says, "While en route the reporting officer,
4 R slash O abbreviated, was advised that Deputy Moyer
5 was already out at the location with subject that had
6 bush-bonded behind the building." That is a police term
7 for meaning the subject had ran out from behind the
8 building.

9 Q. Bush-bonded?

10 A. Yes, that's what we call it.

11 Q. Is there a notation that you heard movement and you
12 and the deputy actually entered the building together?

13 A. There is.

14 Q. And that's incorrect, isn't it?

15 A. Incorrect? I don't recall that, but according to
16 this I know we waited until -- I do remember that we
17 waited until the key holder came on the scene before we
18 entered the building because we didn't want to damage
19 any evidence that was there from that open window.

20 Q. Okay. But you had been in there just to try and
21 catch the person you saw running out the back, right?

22 A. I had not made entry into the building until the key
23 holder arrived.

24 Q. Okay. Then that's where I got confused, Sergeant.
25 Were you outside when you saw the suspect exit the

1 building?

2 A. I was still in motion in my parole car.

3 Q. You were still in your car and you saw him take off
4 through -- into the woods?

5 A. Around the building and after I got out and went
6 around the building, he was gone.

7 Q. Okay. All right. That makes more sense.

8 **MS. WIYGUL:** Thank you, Sergeant. I don't have any
9 further questions.

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

12 **THE WITNESS:** Yes, sir.

13 (Witness excused.)

14 **THE COURT:** Let's take a ten minute recess. Madam
15 Forelady and ladies and gentlemen of the jury, I remind
16 you not to start discussing this case among yourselves.
17 We'll take a brief recess and get you back in and
18 proceed with the trial.

19 (Whereupon, the jury retires to the jury room.)

20 **MS. WIYGUL:** Your Honor --

21 **THE COURT:** Excuse me?

22 **MS. WIYGUL:** They were just asking if he could be
23 excused and I --

24 **THE COURT:** Oh, sure. Yes, sir. You're free to go.

25 (Recess taken.)

1 **THE COURT:** All right. Anything on the record
2 before we bring the jury out from the State?

3 **MR. MOWRY:** No, sir.

4 **THE COURT:** The defense?

5 **MS. WIYGUL:** No, Your Honor.

6 **THE COURT:** All right. Let's bring the jury out.
7 (Whereupon, the jury returns to the courtroom.)

8 **BAILIFF:** All present, Your Honor.

9 **THE COURT:** Thank you very much. You may proceed,
10 Solicitor.

11 **MR. MOWRY:** Thank you, Your Honor. The State would
12 call Ramesh Patel.

13 RAMESH PATEL,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MOWRY:

17 Q. You are Ramesh Patel?

18 A. Yes, sir.

19 Q. Mr. Patel, where do you live?

20 A. I live on Highway 72 in Clinton, South Carolina.

21 Q. Okay. We've heard testimony about the Highway 72
22 BP. What relationship do you have to that store?

23 A. That is a store that's owned by my family for the
24 last six years and it is in close proximity to my house,
25 within a mile.

1 Q. Okay. On which -- are you on the same side of I-26
2 as the store now?

3 A. No, on the other side.

4 Q. On the opposite side?

5 A. Yes, sir. Toward Clinton.

6 Q. About how far away are you?

7 A. About one mile exactly.

8 Q. Okay. So very close by?

9 A. Yes, sir.

10 Q. You say your family has owned it for the last six
11 years; is that right?

12 A. Yes, sir.

13 Q. Did you, in fact, own it on November 11th of 2011?

14 A. Yes, sir, we did.

15 Q. Do you recall what hours the store was open on that
16 day?

17 A. Our hours are 8 AM in the morning till 10 PM at
18 night.

19 Q. Okay. So a 14-hour day?

20 A. Yes, sir.

21 Q. And at, say, 2:30 in the morning or anywhere after
22 midnight really the store would be closed; is that
23 right?

24 A. Yes.

25 Q. Once the store is closed, does anybody else besides

1 your family have any permission to go into the store?

2 A. Not at all.

3 Q. About 2:30 on the morning of the 11th, did you
4 receive any kind of notification that alerted you to
5 anything?

6 A. Yes, sir. I received a phone call from the ProTec
7 Security Company about an alarm, burglar alarm, at the
8 store, and specifically it was a shattered window.

9 Q. A shattered window?

10 A. Yes, sir.

11 Q. So y'all had a --

12 A. Sensor.

13 Q. Yeah. Y'all had a contract with this company; is
14 that right?

15 A. Yes.

16 Q. And they were alerting you about a broken window?

17 A. Yes, sir.

18 Q. Describe how that came about, please, sir.

19 A. We received a call and they said that -- we have
20 sensors in the store that detect shattered glass and it
21 was a shattered glass alarm that triggered at the store
22 and if we would like to notify the police and if I was
23 in the store at the time. I said I was not at the store
24 and, yes, to notify the police and we'll check it out.

25 Q. Okay. What did you do after you got that

1 notification?

2 A. Well, like I said, my family lives close by, so me
3 and my brother first went to the scene at the store,
4 which the police was already there, and we went out
5 there with our keys to help them get in the store to
6 check everything out.

7 Q. Okay. So you were present with your brother.
8 What's your brother's first name?

9 A. Hardik Patel.

10 Q. You were present with him --

11 A. Yes.

12 Q. -- when y'all got to the store; is that right?

13 A. He's the owner and manager. I was the assistant
14 manager at the time.

15 Q. Okay. And what is your position today?

16 A. I'm the manager right now.

17 Q. Okay. But it's a family business; is that right?

18 A. Yes, sir, a family business.

19 Q. When you got to the store, what did you observe?

20 A. Well, I observed that there were lots of police cars
21 and a broken window on the side of the building and it
22 looked all too familiar because it had just happened two
23 weeks ago the very same way.

24 **MS. WIYGUL:** Objection, Your Honor.

25 **THE COURT:** Okay. I didn't quite hear his answer,

1 so if you would help me, Ms. Wiygul, in ruling on your
2 objection. What was he saying? I couldn't --

3 **MS. WIYGUL:** He's discussing a break-in that
4 occurred at this store at some point in the past.

5 **THE COURT:** Okay. Any relevancy of a prior --

6 **MR. MOWRY:** No, sir. I would ask that that be
7 stricken. That's fine.

8 **THE COURT:** This is stricken from the record and
9 consequently the objection is sustained.

10 **MS. WIYGUL:** Thank you, Your Honor.

11 BY MR. MOWRY:

12 Q. Let's talk about this particular break-in. What did
13 you observe when you got there?

14 A. I observed a shattered window on the side of the
15 building towards the diesel pumps and lots of police
16 officers.

17 Q. Okay. Let me hand you what's been marked or entered
18 into evidence already as State's Exhibit Number 5. Do
19 you recognize that?

20 A. Yes, sir.

21 Q. What is that, please, sir?

22 A. That's the side window that was broken that night.

23 Q. Okay. And, Mr. Patel, I'm gonna hand you this laser
24 pointer. Would you point out where the window was that
25 was broken?

1 A. That particular window.

2 Q. Okay. And just for the sake of the jury, this was
3 not taken at the same time as the break-in; is that
4 right?

5 A. No, this is a very recent picture.

6 Q. Okay. So the window is repaired in this picture;
7 is that right?

8 A. Yes, sir.

9 Q. That is not what you saw that night, was it?

10 A. No.

11 Q. What did you see?

12 A. It was lots of broken glass and pushed over
13 merchandise all over the floor of the store and outside.

14 Q. Let me hand you what's been marked as State's
15 Exhibit Number 3. Do you recognize that?

16 A. Yes, sir. That is the broken window and the mess
17 created by --

18 Q. And that is the same window that you had described
19 just a moment ago; is that right?

20 A. Yes, sir.

21 Q. Mr. Patel, let me hand you a few photographs -- a
22 couple of photographs. These are State's exhibits --
23 have been marked for identification as State's Exhibits
24 27 and 28, and ask you if you can identify those,
25 please, sir?

1 A. This is the picture from behind the counter where
2 they landed once they entered through that window. This
3 one is also of the same area.

4 Q. Okay. Is this after the -- I guess, after the fact?

5 A. After the fact, yes.

6 Q. So y'all -- when you closed at 10:00 at night, you
7 did not leave the store --

8 A. No.

9 Q. -- in this condition?

10 **THE COURT:** Let me just caution the witness. Make
11 sure you don't talk over the Solicitor. Make sure he
12 is finished with his question before you provide your
13 response, sir. Thank you.

14 **MR. MOWRY:** And that's in large part my fault as
15 well, Your Honor. I apologize. Your Honor, I would
16 offer these as State's Exhibits 27 and 28 at this time.

17 **MS. WIYGUL:** Without objection.

18 **THE COURT:** Okay. Without objection, 27 and 28 for
19 the State into evidence.

20 (State's Exhibit Numbers 27 and 28, photographs,
21 were admitted into evidence.)

22 BY MR. MOWRY:

23 Q. Mr. Patel, can you describe what this shows? This
24 is State's Exhibit Number 27.

25 A. This is the behind the counter area. The red that

1 you see around it is the closet, the metal closets, that
2 had cartons of cigarettes in them. And I believe that's
3 the mess on the floor where they entered. There were
4 lots of cigars on this side. They were knocked over
5 when they stepped in.

6 Q. Let me show you State's Exhibit Number 28.

7 A. This is also a picture of the same area with the
8 merchandise on the floor and the behind the counter
9 area.

10 Q. Okay. Now you talked about a notice from the
11 security company. What kind of security did you have at
12 the scene?

13 A. It's the ProTec Security Company. It has motion
14 sensors, shattered glass sensors, and we have panic
15 buttons and everything installed throughout the property
16 and we have sixteen surveillance cameras in our store.

17 Q. Okay. So you have -- you have the capability of
18 video; is that right?

19 A. Yes, sir.

20 Q. And was there, in fact, a video made of the incident
21 we're discussing here?

22 A. Yes, sir.

23 Q. Let me hand you what's been marked as State's
24 Exhibit 31. Do you recognize that?

25 A. Yes, sir. This is the DVD that I personally made

1 for the officers that day.

2 Q. Okay. So this is a DVD that you burned?

3 A. Yes, sir.

4 Q. And what is it of?

5 A. It is of the several angles and cameras that
6 captured the -- the crime that was committed that night.

7 Q. Who did you turn this over to?

8 A. To chief detective Tyrone -- I'm sorry.

9 **MR. MOWRY:** Your Honor, I would offer this as a
10 State's exhibit at this time.

11 **THE COURT:** Okay. And what says the defense?

12 **MS. WIYGUL:** Your Honor, could I clarify that this
13 is Mr. Patel's handwriting on this CD or DVD?

14 **THE WITNESS:** That is not.

15 **THE COURT:** Do you want to ask the witness that,
16 Solicitor?

17 **MR. MOWRY:** I will, Your Honor.

18 BY MR. MOWRY:

19 Q. Is this your handwriting on here, the BP burglary?

20 A. That is not my handwriting.

21 Q. Okay. And all the numbers there, the 2011-11077 --

22 A. No, sir.

23 Q. -- that's not your handwriting either?

24 A. No, sir.

25 **MS. WIYGUL:** Your Honor, I believe it can come in

1 through the proper witness, but I would object at this
2 time.

3 **THE COURT:** Well, if he knows that that DVD is what
4 he -- he made a DVD according to his testimony and I
5 would have to assume that Solicitor would not show him
6 a DVD that was not made by him, so the nature of your
7 objection, Ms. Wiygul, is what?

8 **MS. WIYGUL:** Your Honor, lack of foundation. I
9 believe that he has not stated with sufficiency how he
10 knows that's the DVD that he burned and handed over to
11 Detective Goggins. I believe that's something that
12 Detective Goggins could testify to, but we're not there
13 yet.

14 **THE COURT:** Okay. Let me see the lawyers for just
15 a moment, please.

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

17 BY MR. MOWRY:

18 Q. Mr. Patel, did you observe the video that we talked
19 about, the State's Exhibit, for identification, Number
20 31?

21 A. Yes, sir, I have.

22 Q. And do you -- have you seen still shots that were
23 made -- frames that were made from the video?

24 A. I observed everything that was on my computer that
25 was recorded. I made copies of the file and still have

1 them saved on the computer at my house.

2 Q. Let me hand you a number of items. This is State's
3 Exhibit Number 10, Number 11 and Number 12, as well as
4 9, 8, and 7. Do you recognize those photographs?

5 A. Yes, sir, I do.

6 Q. What are those, please, sir?

7 A. Those are -- except one, all of them are pictures
8 of the inside of the store from behind the counter where
9 also we leave the lights on so everything is visible.

10 **MS. WIYGUL:** Your Honor, could I ask that he,
11 please, clarify exhibit by exhibit which pictures he's
12 looking at to avoid confusion?

13 **THE COURT:** Okay. Have him identify each exhibit
14 by number.

15 A. Exhibit 10 is inside of the store behind the
16 counter. Exhibit 11 is inside the store behind the
17 counter. Exhibit 12 is inside the store behind the
18 counter.

19 Q. Let me ask you about these. These are from the
20 video you observed, those three?

21 A. Yes, sir.

22 Q. Are there individuals that are shown in the -- the
23 various pictures that you've just numbered?

24 A. That is -- those are the individuals that were
25 showing up in the video.

1 Q. Okay. How many are there?

2 A. Two.

3 Q. How are they clad? What are they wearing?

4 A. They're wearing long-sleeved shirts, long pants and
5 masks.

6 Q. All right.

7 **MR. MOWRY:** So those are 10, 11 and 12. I would
8 offer these as State's exhibits at this time, Your
9 Honor.

10 **THE COURT:** Thank you. What says the defense?

11 **MS. WIYGUL:** Without objection.

12 **THE COURT:** Without objection, it will be 10, 11 and
13 12 for the State in evidence.

14 (State's Exhibit Numbers 10, 11 and 12, photographs,
15 were admitted into evidence.)

16 BY MR. MOWRY:

17 Q. Yes, sir?

18 A. Exhibit 7 is a video from a different angle -- a
19 still of a different angle showing the register and an
20 individual standing from inside the store behind the
21 counter.

22 **MR. MOWRY:** All right. I would offer this as a
23 State's exhibit at this time, Your Honor, Number 7.

24 **MS. WIYGUL:** Without objection.

25 **THE COURT:** All right. Number 7 for the State is in

1 evidence.

2 (State's Exhibit Number 7, a photograph, is admitted
3 in evidence.)

4 A. Exhibit 8 is also behind the counter showing the
5 lottery machine from a different camera angle and
6 Exhibit 9 is inside -- still behind the counter, a still
7 of the person near the lottery machine.

8 Q. Okay. Let me show you -- oh, I would offer --
9 pardon me, Your Honor. I would offer 7, 8 and 9 into
10 evidence, if they've not already been at this point.

11 **MS. WIYGUL:** I believe 8 and 9, Your Honor, without
12 objection.

13 **THE COURT:** Okay. Without objection, 8 and 9 for
14 the State in evidence.

15 (State's Exhibit Numbers 8 and 9, photographs, were
16 admitted into evidence.)

17 BY MR. MOWRY:

18 Q. All right. Mr. Patel, I want to show you these
19 individually, if I may. This is State's Exhibit
20 Number 10. Can you describe that for us, please, sir?

21 A. That's behind the counter and I believe this
22 gentleman has a boulder or a big rock in his hands and
23 he's walking towards the office and where the other
24 gentleman is standing that's where they entered through
25 the side window.

1 Q. Okay. I'm going to hand you this laser pointer.
2 If you would just use the red button there.

3 A. Okay. Here is the window on the side which was
4 broken in, which they entered through. This gentleman,
5 when I watched the video, he had picked up the boulder
6 that he threw in the window and he's carrying it toward
7 the back corner office and that gentleman proceeded to
8 open all the closets where the cigarettes are and throw
9 them into the black trash bag that he brought with him.

10 Q. When you talk about all the closets, you're talking
11 about the cabinets around the cash register area?

12 A. Yes, sir. The red cabinets which you see down
13 there.

14 Q. Very good. Let me show you State's Exhibit 12.
15 What is that, please, sir?

16 A. That is a still shot from the same camera angle
17 behind the counter. They knocked over lots of things
18 that are over here on the floor as you can see and the
19 individual is still carrying the rock towards the
20 office.

21 Q. Okay. And, lastly, Number 11.

22 A. I believe this is the still after he had thrown the
23 boulder into the office, got the cigarettes and some
24 change and cash out of the office and filled up the
25 trash bag that he brought with him, and he's going

1 towards the -- looking for the exit.

2 Q. You said he must have brought the trash bag with
3 him. Why do you think that he must have brought it with
4 him?

5 A. Because we don't have those color or size of trash
6 bags in my store.

7 Q. Okay.

8 A. And, I'm sorry, the Exhibit 6 right here?

9 Q. Yes.

10 A. It's showing the two individuals outside the store
11 before they threw the boulder through the window with
12 the trash bags in their hand.

13 Q. Okay. This is another security video -- or a still
14 shot of it from outside the store?

15 A. Yes, right above the window that was broken into.

16 **MR. MOWRY:** This is State's Number 6, Your Honor,
17 and I'd ask that it be admitted into evidence.

18 **MS. WIYGUL:** Without objection.

19 **THE COURT:** Without objection, Number 6 for the
20 State into evidence.

21 (State's Exhibit Number 6, a photograph, was
22 admitted into evidence.)

23 A. You can see they came up from behind the store
24 according to all the videos and they have the trash bags
25 in their hands and right here was the window that they

1 smashed through.

2 Q. And State's Exhibit Number 7. You can't see this
3 very well.

4 A. Exhibit 7 is a camera right above -- right above the
5 cash register and this is the cash register and this is
6 all the stuff in the window that was knocked over when
7 they entered through here, through this window on the
8 side.

9 Q. Okay. And State's Exhibit Number 9.

10 A. This is a different camera pointing also at the
11 cash register, the lottery machine, and the gentleman
12 here has opened the closets or the cabinets at the
13 bottom and taken out cartons of cigarettes and is
14 putting them in the black trash bags.

15 Q. How many cartons of cigarettes did y'all have in
16 those cabinets?

17 A. Approximately 80.

18 Q. Okay. How many were there when you arrived -- when
19 you arrived on the scene that night?

20 A. When I arrived on the scene, there were none taken.
21 A lot of stuff was knocked over, but the cartons weren't
22 missing.

23 Q. Now you talked about the boulder being used to break
24 out another window. Can you tell us about that?

25 A. Yes, sir. When they went through the first window

1 and both of them entered into the store, one of the
2 individuals picked up that same boulder, took it to the
3 back corner office, which was also locked, and they --
4 there's a one-way window there with a mirror outside and
5 we can see from inside, and he smashed -- he threw the
6 boulder through that window as well and climbed into the
7 office and took the stuff from there.

8 Q. Okay. Did you see this rock or this boulder as you
9 described it?

10 A. Yes, it was laying in the office floor.

11 **MR. MOWRY:** Your Honor, I would ask that this item
12 be marked for identification at this point.

13 (State's Exhibit Number 32 was marked for
14 identification.)

15 BY MR. MOWRY:

16 Q. All right. Let me hand you what's been marked as
17 State's Exhibit Number 32 for identification. Does this
18 look familiar?

19 A. Yes, sir, it does.

20 Q. What's that, please, sir?

21 A. That is the boulder that was found inside the office
22 on the floor --

23 Q. Okay.

24 A. -- that the individuals brought with them.

25 Q. So you said -- the one-way mirror that you could

1 see through from the office side, but not through from
2 the store side, was it intact when you got there?

3 A. No, it was not. It had been destroyed.

4 Q. Let me show you what's been marked as State's
5 Exhibit Number 26 for identification. Do you recognize
6 that?

7 A. Yes, that is a picture of the window to the office
8 that's been smashed up and with the officer inside.

9 **MR. MOWRY:** I'd offer this as a State's exhibit at
10 this time, Your Honor, Number 26.

11 **MS. WIYGUL:** 26 without objection.

12 **THE COURT:** Okay. Without objection, Number 26 for
13 the State into evidence.

14 **MR. MOWRY:** Thank you, Your Honor.

15 (State's Exhibit Number 26, a photograph, was
16 admitted into evidence.)

17 BY MR. MOWRY:

18 Q. All right. What does that represent, please, sir?

19 A. That is the corner office we have, that is the door,
20 and here's the window that was a one-way mirror. And
21 the individual threw the rock through here, climbed up
22 on the counter of the side with the lottery machine here
23 and climbed into the office.

24 Q. How close is that to the counter we had seen earlier
25 where they had made the entry?

1 A. Probably about 20 feet.

2 Q. Okay. So very close by. On the same end of the
3 store?

4 A. Yes, the same corner side of the store.

5 Q. Let me hand you -- I'm sorry. Let me hand you
6 these items. These are State's 22, 23, 24 and 25 for
7 identification. Do you recognize that?

8 A. Exhibit 22 is picture of inside the office where
9 the cabinet has been opened and money stolen and also
10 the boulder that is sitting right there on the floor
11 of the office. Exhibit 23 is a picture of the chair
12 inside the office with the broken glass all over the
13 table and the floor. Exhibit 24 shows the boulder
14 clearly on the floor with shattered glass all around
15 it. And Exhibit 25 shows the closet and the money that
16 was dropped from the office.

17 **MR. MOWRY:** And I'd offer these into evidence at
18 this time, Your Honor.

19 **THE COURT:** Defense?

20 **MS. WIYGUL:** Your Honor, no objection as to 22, 23,
21 24 and 25.

22 **THE COURT:** Okay. Without objection, Exhibits 22,
23 23, 24 and 25 for the State into evidence.

24 (State's Exhibit Numbers 22 through 25, photographs,
25 were admitted into evidence.)

1 BY MR. MOWRY:

2 Q. This is Number 22. Can you describe what that is,
3 please, sir?

4 A. That is a cabinet we have inside the office where
5 we keep all the changes; quarter, penny, nickel rolls
6 and also ten dollar bills, one dollar bills, five dollar
7 bills.

8 Q. About how much money did you have there?

9 A. I would say about \$2,000 in change.

10 Q. How much money was there when you got there?

11 A. I'd say less than \$300 in change was on the floor.

12 Q. Okay. And this is Number 23. What is that, please,
13 sir?

14 A. That is the desk that we have in the office which
15 the individual had to step over to climb into the office
16 because here is the window that was broken. That's the
17 office chair, a black trash bag, I guess.

18 Q. And what is -- I don't dare step -- but there in the
19 middle of the desk basically, right there?

20 A. That is broken window glass.

21 Q. Okay. And is there also broken glass on the floor
22 behind the chair or near the chair?

23 A. There is broken glass on the floor. It is
24 everywhere in the office because it was a very large
25 window, at least nine-foot across.

1 Q. And let me show you State's Exhibit Number 24.

2 A. That is the boulder that was thrown through the
3 window with broken glass and shards of glass all around
4 it.

5 Q. So that is a photograph of what has been marked for
6 identification as State's Exhibit 32; is that right?
7 The rock?

8 A. Oh, yes, sir. That is the rock.

9 Q. And, finally, State's Exhibit 25 out of this group?

10 A. Also a picture of the closet inside the office that
11 contained all the cash and change that's been pulled out
12 of there and, you know, on the floor.

13 Q. Okay. Mr. Patel, I want to hand you now what has
14 been marked as 29 and 30. Can you identify those?

15 A. Exhibit 29 is the -- the cabinet that we have
16 behind the counter next to the register that had the
17 cartons of cigarettes and you see an empty drawer till
18 that we keep prepared for the next day with a certain
19 amount of money in there.

20 Q. Approximately how much money?

21 A. \$500 exactly.

22 **THE COURT:** How much? I didn't hear the answer.

23 **THE WITNESS:** \$500 exactly.

24 **MS. WIYGUL:** Your Honor, I would object to that. He
25 has not stated that he knows there was \$500 in there at

1 that time.

2 **THE COURT:** Okay. Ask him what he knows concerning
3 the money that was at the counter.

4 BY MR. MOWRY:

5 Q. Mr. Patel, you know the practices for your business;
6 is that right?

7 A. Yes, sir.

8 Q. Were you the one that did the close that evening?

9 A. Yes, sir, I did.

10 Q. And was that money there then when you closed the
11 store at 10:00?

12 A. Yes, sir, it was. We do not keep the tills inside
13 the drawers because that's where everybody looks for it,
14 but we put it inside the cabinet and we prepare it for
15 the next day.

16 Q. Okay. So approximately \$500 there; is that right?

17 A. Yes. Exhibit 30 is showing the window that was
18 broken in from outside.

19 Q. Okay. And what is that item in the middle of the
20 frame?

21 A. It's the black -- large black trash bag. It seems
22 to be full with the cartons of cigarettes.

23 **MR. MOWRY:** Okay. This is 29 and 30, Your Honor.
24 I would offer these as State's exhibits at this time.

25 **MS. WIYGUL:** Without objection, Your Honor.

1 **THE COURT:** Without objection, 29 and 30 for the
2 State into evidence.

3 (State's Exhibit Numbers 29 and 30, photographs,
4 were admitted into evidence.)

5 BY MR. MOWRY:

6 Q. Mr. Patel, again, would you describe what that is?
7 I believe that is Number 29.

8 A. That is a picture of the cabinet behind the counter.
9 We had cartons of cigarettes and the till that was
10 prepared for the next morning with cash. You can still
11 see the change in there, but the bills are gone.

12 Q. So it's approximately \$500 that was in there?

13 A. Yes, sir.

14 Q. Okay. And, lastly, Number 30.

15 A. This is behind the counter, this is the window that
16 was broken and they entered through here, and this is
17 the trash bag full of the cartons of cigarettes that was
18 discovered with glass all over the place.

19 Q. Mr. Patel, you stated that there were about 80
20 cartons of cigarettes that were taken; is that right --

21 A. Yes, sir.

22 Q. -- in the bags? Do you have an approximate value
23 of those 800 or, excuse me, 80 cartons of cigarettes?

24 A. Approximately each carton would cost around 40 to
25 \$45.

1 Q. Okay. So multiplied times 80 would be, what,
2 \$3,200?

3 A. 3,200 plus.

4 Q. Okay. And then you also talked about money that was
5 taken that night from --

6 A. From the office and from the till that was shown.

7 Q. Do you have an approximate amount of money that was
8 taken that night?

9 A. Around \$2,000.

10 Q. All right. So altogether in excess or around
11 \$5,000; is that right?

12 A. \$5,000 or more.

13 Q. In any event, well over \$2,000?

14 A. Yes, and that's stolen. The damage that was caused
15 was also substantial.

16 Q. Right. Now, Mr. Patel, did y'all lose the
17 cigarettes that night? Were they gone?

18 A. No, I believe the police officers found the bags
19 that they dropped while running.

20 Q. Okay. Let me hand you this series of photographs.
21 This goes 21 -- excuse me, let me started from the other
22 end -- 15, 16, 17, 18, 19, 20 and 21, and ask you if you
23 can identify those, please, sir?

24 A. Exhibit 15 is showing the cartons of cigarettes that
25 were recovered by the police officers at the scene and

1 laid out on the counter to account for them. Exhibit 16
2 is showing the same thing behind the counter where they
3 dropped the stolen goods, the bag. Exhibit 17 is the
4 back of the store. I believe the second trash bag that
5 was full of cartons they laid out on the seating tables
6 area. Exhibit 18 is behind the counter showing the
7 remaining change that was on the floor in the office and
8 the cartons of cigarettes. Exhibit 19, cartons of
9 cigarettes laid out to account for them. Exhibit 20 is
10 also picture of the cartons of cigarettes that were
11 recovered from the second trash bag laid out on the
12 seating tables in the back. And Exhibit 21 is also
13 showing the cartons of cigarettes.

14 **MR. MOWRY:** Thank you, sir. I'd offer these as
15 State's exhibits at this time, Your Honor.

16 **MS. WIYGUL:** No objection to State's Exhibits 15
17 through 21.

18 **THE COURT:** Okay. For the State into evidence.

19 (State's Exhibit Numbers 15 through 21, photographs,
20 were admitted into evidence.)

21 BY MR. MOWRY:

22 Q. Let me show you this way.

23 A. This is the behind the counter area. That is the
24 cartons of cigarettes that were laid out after they were
25 recovered by the police officers.

1 **MR. MOWRY:** Okay. I'm sorry, Your Honor. I'm a
2 little technically challenged. I apologize to the
3 Court.

4 A. That's also behind the counter where they laid
5 out all the cartons of cigarettes. This is a box of
6 remaining change found on the floor of the office. This
7 is the second bag that was recovered that they laid out
8 on the seating chairs I have in the back of the store
9 and they laid out the cartons on that.

10 Q. Okay. So the previous two were from one bag and
11 now we're starting another bag; is that correct?

12 A. Yes, sir. This is from the second bag as well
13 next to the seating tables there. That's laid out on
14 the seating table area from the second bag that was
15 recovered, the cigarette cartons. That is also from
16 the second bag, the cartons of cigarettes that were
17 recovered.

18 Q. And Number 18?

19 A. That's from the first bag. This is the counter
20 space behind the counter with the change and the
21 cigarette cartons.

22 Q. Thank you, sir.

23 **MR. MOWRY:** If I could beg the Court's indulgence
24 for just a moment.

25 **THE COURT:** Sure.

1 BY MR. MOWRY:

2 Q. One last thing, Mr. Patel. The store that we're
3 talking about here, is that located in Laurens County?

4 A. Yes, sir.

5 MR. MOWRY: All right. That's all I have, Your
6 Honor.

7 THE COURT: All right. Cross-examination,
8 Ms. Wiygul?

9 MS. WIYGUL: Yes, Your Honor. Let me just see if I
10 can lift this boulder here.

11 CROSS-EXAMINATION

12 BY MS. WIYGUL:

13 Q. Mr. Patel, could you, please, show me in these
14 pictures where the safe was located in the store?

15 A. There is no safe.

16 Q. There's no safe in the store?

17 A. No.

18 Q. Okay. You said this was a family-owned company,
19 correct?

20 A. Yes, ma'am.

21 Q. Okay. And your family's owned it for six years?

22 A. Yes.

23 Q. Sir, who's James Perry?

24 A. That is a previous owner of the store from over six
25 years ago.

1 Q. Would it surprise you to know that he was the
2 registered agent for this company as late as 2012?

3 A. That is surprising, yes.

4 **MS. WIYGUL:** Your Honor, I'd ask the Court to take
5 judicial notice that the Secretary of State lists a
6 James Perry as the registered agent.

7 **MR. MOWRY:** Your Honor, I would question the
8 relevance of this frankly.

9 **THE COURT:** Well, this is cross-examination. I'll
10 allow her to pursue these lines. Insofar as taking
11 judicial notice, is there any objection from the State?

12 **MR. MOWRY:** No, sir.

13 **THE COURT:** Okay. The Court takes judicial notice
14 of the Secretary of State's documents -- or records
15 rather.

16 BY MS. WIYGUL:

17 Q. Sir, you said this was a family-owned company,
18 correct?

19 A. Uh-huh.

20 Q. What's the name of the company?

21 A. AAHARVID, LLC.

22 Q. Say it again, please.

23 A. It's spelled A-A-H-A-R-V-I-D, LLC.

24 Q. So it's your testimony that the name of the company
25 is not SIYAH or S-I-Y-A-H, LLC?

1 A. No, that is my brother's company.

2 Q. That's your brother's company?

3 A. Yes, ma'am.

4 Q. Sir, what's the street address of the BP store that
5 we're discussing?

6 A. [REDACTED] Highway 72 East, Clinton, South Carolina,
7 32325.

8 Q. And does your brother own another company at 18397
9 Highway 72 East?

10 A. That is my home address.

11 Q. That's your home address?

12 A. Yes.

13 Q. Sir, is it your testimony that your family has more
14 than one business in operation?

15 A. Yes.

16 Q. Okay. What business do you run out of home -- or
17 does your brother run out of his home?

18 A. He -- I believe he registered for his corporation
19 and he gave that home address.

20 Q. But he meant the BP?

21 A. No, he has his own store in Camden, South Carolina.
22 That's what the SIYAH, LLC is from.

23 Q. Okay. So if this listed that company as located in
24 Clinton on Highway 72, that would be incorrect?

25 A. That's my home address, yes.

1 Q. Sir, are you involved with that company?

2 A. I am not.

3 Q. Okay. Are you involved with this company?

4 A. No, I'm not.

5 Q. You're not involved with the BP company?

6 A. I'm the manager at the store. I'm not involved in
7 ownership.

8 Q. Are you one of the owners of the company?

9 A. I am not.

10 Q. So it's not a family company. They just hire family
11 members; is that right?

12 A. It's owned by my family and I've worked there for
13 years.

14 Q. Okay. But you don't have any legal stake in the
15 company?

16 A. Not in the ownership, no.

17 Q. Okay. When the alarm company notified someone that
18 there had been a glass breakage, did they call you or
19 did they call your brother?

20 A. Well, there's actually five phone numbers on record
21 with them. Whoever they call, whoever answers first,
22 they talk to.

23 Q. Thank you, sir.

24 A. If the first person doesn't answer, they call the
25 next person.

1 Q. Thank you, sir. On the night in question, on
2 November 11th of 2011, did they call you or did they
3 call your brother?

4 A. They called me.

5 Q. They called you at what phone number?

6 A. [REDACTED].

7 **THE COURT:** Slow down with that number, please, sir.
8 State it again.

9 A. [REDACTED].

10 Q. And, sir, how long have you lived in South Carolina?

11 A. I'd say the past five years.

12 Q. Okay. Is there a reason why you have a North
13 Carolina area code?

14 A. Yes. We lived in Charlotte before we moved to South
15 Carolina. I lived in Charlotte for a few years, I went
16 to college there as well, so I -- everybody I know has
17 that number, so I didn't want to change that.

18 Q. You just kept the phone?

19 A. Yes.

20 Q. Okay. And your brother actually has a 704 number
21 also, correct?

22 A. Yes.

23 Q. Okay. Do you work at your brother's other store at
24 all?

25 A. No, I don't.

1 Q. You don't?

2 A. No.

3 Q. So this store employs family members, but he doesn't
4 let you work at the other store?

5 A. It's an hour and a half away from here.

6 Q. That's not what I asked, sir. Do you work at the
7 other store?

8 A. No, I do not.

9 Q. Has your brother asked you to work at the other
10 store?

11 A. No.

12 Q. Okay. On the night in question, on November 11th,
13 did your brother speak with the officers?

14 A. Yes.

15 Q. Did your brother open the door to the store?

16 A. Yes.

17 Q. Did your brother count the inventory?

18 A. Me and my brother did it together.

19 Q. You and your brother both counted the inventory?

20 A. Yes.

21 Q. Did you reduce that inventory to writing?

22 A. Yes, I believe so.

23 Q. Okay. Did you provide that to the police?

24 A. Yes, we did.

25 Q. Okay. And you signed it with your signature and

1 your brother's signature?

2 A. I'm not sure if I signed it or not.

3 Q. Okay. Did your brother sign it?

4 A. I'm not sure of that either.

5 Q. Okay. Who did you give it to?

6 A. The chief officer of the investigation.

7 Q. Officer Goggins?

8 A. Yes.

9 Q. Okay. Was this typed, this list?

10 A. Handwritten.

11 Q. Okay. Was it dated?

12 A. I'm not sure.

13 Q. Did you or anyone submit a claim to insurance after
14 this incident?

15 A. Yes, of course.

16 Q. Okay. Did you provide a copy of that insurance
17 claim to the officers?

18 A. I'm not sure.

19 Q. Okay. Who would have filled out that insurance
20 claim?

21 A. It would be my brother at the time.

22 Q. Your brother would have done it?

23 A. Yes.

24 Q. So you wouldn't have any knowledge of that?

25 A. Of the insurance claim?

1 Q. Correct.

2 A. No.

3 Q. Okay. Whenever you were going through and looking
4 at the pictures and trying to recall the amounts, we
5 heard a lot of approximately's and around's, and I
6 understand the damage was also substantial. Would
7 reviewing this list that you and your brother made of
8 the inventory versus what was recovered help to refresh
9 your memory as to the exact amounts?

10 A. I can't tell you right now. I don't understand your
11 question actually.

12 Q. Do you know specifically how much money was taken
13 that night and not recovered?

14 A. I know approximately how much money was taken.

15 Q. Do you know exactly how much money was taken to the
16 dollar?

17 A. No, ma'am.

18 Q. Do you know exactly how many cigarettes were taken?

19 A. Yes.

20 Q. Okay. How many cartons were taken?

21 A. I believe 81.

22 Q. Okay. You believe 81, but earlier your testimony
23 was 80, and I'm not trying to trip you up, sir. If you
24 don't -- I can't remember what I was doing in 2011.

25 **MR. MOWRY:** Your Honor --

1 **THE COURT:** Wait a minute.

2 **MR. MOWRY:** If it please the Court, I've got to
3 object. She is testifying now and I believe he said
4 about 80 at any rate, so.

5 **THE COURT:** He said about 80 and then he has said
6 81. Okay. You may proceed.

7 BY MS. WIYGUL:

8 Q. So we've heard 80, about 80, we've heard 81. Is
9 that definite? There were exactly 81 cartons in that
10 store or you're just not real sure?

11 A. I'm not real sure.

12 Q. Okay. And you stated that there was around \$2,000
13 taken out of the office, correct?

14 A. The office and the till outside together.

15 Q. Oh. So it was \$2,000 including the \$500 that was in
16 the till?

17 A. Yes.

18 Q. Okay. Do you know how much change was left in the
19 till and on the office floor?

20 A. About \$30 worth.

21 Q. Okay.

22 A. I'm sorry, not \$30. \$300 worth. My bad.

23 Q. Okay. But you're not sure of that exact amount,
24 correct?

25 A. Correct.

1 Q. Whenever everything had just happened and you and
2 your brother, Hardik, was there counting everything out
3 and figuring out what had been taken and what had been
4 recovered, is that when you made the list?

5 A. Yes.

6 Q. Would seeing that list help you get the specific
7 amount?

8 A. I'm not sure. It's been three years.

9 Q. Okay. Okay. Sir, when were you contacted by the
10 State to appear in court today?

11 A. I believe I found out about two days ago.

12 Q. Two days ago?

13 A. Uh-huh.

14 Q. Okay. Did you inform the State at that time that
15 your brother wouldn't be able to be here?

16 A. Yes.

17 Q. Two days ago?

18 A. It was -- it was yesterday or the day before.

19 Q. Was it on a Sunday or a Monday?

20 A. Monday.

21 Q. Okay. So you found out yesterday that you'd have to
22 be here?

23 A. Okay, yesterday. I'm sorry. I just got married
24 last week and everything is a blur.

25 Q. Congratulations. That's not a problem. Did you

1 know that you would be the one that would have to come
2 testify for this --

3 A. Yes.

4 Q. -- prior to yesterday?

5 A. Well, no, because my brother wasn't available, I had
6 to come.

7 Q. Okay. You had to come. Did someone tell you you
8 had to come?

9 A. No, I told myself I had to come because I was there
10 at the scene the night it happened and I personally
11 don't appreciate my personal property being destroyed.

12 Q. All right. What personal property of yours was
13 taken?

14 A. That is a family business, as was mentioned, and
15 that is our property. We work hard at that business.

16 Q. You just consider it your personal property,
17 correct?

18 A. Yes.

19 Q. Okay. But it's not your personal property, is it?
20 It belongs to the business, right?

21 A. Yes.

22 Q. And you don't have any legal ownership in the
23 business, right?

24 A. No.

25 Q. Okay. Sir, did you speak with Detective Goggins on

1 the night of the incident?

2 A. Yes.

3 Q. Did you speak with an Officer Marshall or any other
4 officers that were there?

5 A. I don't recall the names. I recall the chief
6 detective.

7 Q. Okay. When you talked to him then, what -- was he
8 just asking you questions about what happened?

9 A. Well, I wasn't there whenever it happened. He asked
10 me if I could look at the surveillance and get the video
11 or DVD or pictures or everything to him.

12 Q. Okay. Who walked Detective Goggins through the
13 scene; you or your brother?

14 A. I don't recall.

15 **MS. WIYGUL:** Okay. I have no further questions.
16 Thank you, sir.

17 **THE COURT:** Any redirect of this witness?

18 **MR. MOWRY:** Just a little bit, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. MOWRY:

21 Q. When you talk about personal property, it's family
22 property, right?

23 A. Yes.

24 Q. Your family owns the business?

25 A. Yes.

1 Q. The business owned the cartons of cigarettes that
2 were taken?

3 A. Yes.

4 Q. Your business owns the building that was damaged --

5 A. Yes.

6 Q. -- isn't that right? Let me show you these items
7 and ask you if you recognize those at all?

8 **MS. WIYGUL:** Your Honor, could I see what --

9 **MR. MOWRY:** She has a copy of them, Your Honor.

10 **THE COURT:** Just show her what you're showing the
11 witness.

12 **MS. WIYGUL:** Is that associated with this case?

13 **MR. MOWRY:** Uh-huh.

14 **THE COURT:** You may proceed.

15 **MR. MOWRY:** I'll do it this way, Your Honor. If
16 I could have this marked as a State's exhibit, just one
17 exhibit, please. No, I guess I better do it separately.
18 Pardon me.

19 (State's Exhibit Numbers 33 and 34 were marked for
20 identification.)

21 BY MR. MOWRY:

22 Q. Ms. Wiygul asked you about compiling inventories of
23 the cigarettes that were recovered. Do you recall that?

24 A. Yes, sir.

25 Q. She asked you about whether a list was made; do you

1 recall that?

2 A. Yes.

3 Q. You said you weren't sure whether or not you had
4 written up a list. Let me hand you what have been
5 marked as State's Exhibits 34 and 33 for identification.
6 Do you recognize those?

7 A. Yes.

8 Q. What are those, please, sir?

9 A. These are listed cartons of cigarettes that were
10 taken from the store and later recovered.

11 Q. Okay. Did you compile these lists yourself?

12 A. It was me and my brother together.

13 Q. Okay. Was anybody else involved? Was Officer
14 Goggins involved?

15 A. No.

16 Q. Okay. Are you sure about that?

17 A. Yes.

18 Q. Okay.

19 A. I mean, he was involved as far as recovering the
20 stuff and laying it out for us to count, but not beyond
21 that.

22 Q. Okay. Do you recall who wrote out the inventory
23 here?

24 A. I don't recall.

25 **MR. MOWRY:** Okay. That's all I have.

1 **THE COURT:** Any recross?

2 **MS. WIYGUL:** No, Your Honor.

3 **THE COURT:** Did you say no recross?

4 **MS. WIYGUL:** No recross.

5 **THE COURT:** Okay. You can step down, sir. Thank
6 you for your testimony.

7 **THE WITNESS:** Thank you.

8 (Witness excused.)

9 **MR. MOWRY:** Your Honor, I would ask that Mr. Patel
10 be released from his subpoena at this time.

11 **THE COURT:** Okay. Any objections?

12 **MS. WIYGUL:** No, Your Honor.

13 **THE COURT:** All right. You're free to go or you
14 can remain with us.

15 **MR. MOWRY:** And, Your Honor, quite frankly, this
16 may be a good time to break for lunch.

17 **THE COURT:** I think it would be. Ladies and
18 gentlemen of the jury, I think it would be a good time
19 to take our lunch break. It's about ten till one. I'm
20 going to ask that you promptly be back in the jury room
21 at 2:15 and remind you, once again, do not discuss this
22 case among yourself or anyone that you come into contact
23 with over the lunch break and we'll see you back at
24 2:15. Make sure you keep your jury button on and have a
25 good lunch.

1 (Whereupon, the jury was excused for lunch.)

2 **THE COURT:** All right. We'll be in recess until
3 2:15.

4 **MS. WIYGUL:** Thank you, Your Honor.

5 (Whereupon, a luncheon recess taken.)

6 **BAILIFF:** All rise. Come to order.

7 **THE COURT:** Please be seated. Okay. Back on the
8 record. Let me, from the State, just kind of get a feel
9 for this afternoon, what you've got kind of planned as
10 far as your case.

11 **MR. MOWRY:** I believe, depending on how things work,
12 we should be able to finish this afternoon, Your Honor.

13 **THE COURT:** Okay.

14 **MR. MOWRY:** We should be able to rest. We have the
15 co-defendant Nixon, we have the SLED dog tracker, and
16 then we have Detective Goggins, and that's gonna be all
17 she wrote.

18 **THE COURT:** Okay. All right. That's fine.

19 **MR. MOWRY:** Your Honor, I just wanted to broach
20 this subject with you. We generally don't plead the
21 fact that a burglar has prior convictions, which would
22 lead to aggravating circumstances.

23 **THE COURT:** Right.

24 **MR. MOWRY:** We have four prior convictions of the
25 Defendant. I don't know how we want to deal with that.

1 We have pled the nighttime, but if the jury doesn't buy
2 into that I don't know exactly -- I'm assuming that they
3 will agree that there was a burglary in the nighttime.

4 **MS. WIYGUL:** Your Honor, we're willing to stipulate
5 to the jury that whatever burglary occurred, occurred at
6 the -- during nighttime.

7 **THE COURT:** Okay.

8 **MR. MOWRY:** Okay.

9 **THE COURT:** All right. So then we don't need to get
10 into the prior convictions to make it fit, okay?

11 **MR. MOWRY:** All right, sir.

12 **THE COURT:** All right. So you believe that we'll
13 go up to at least five? The reason why I'm asking,
14 I've got a 4:00 appointment that there is absolutely
15 no problem with me cancelling, and I would much rather
16 get the State's case finished today, if that is a
17 possibility, so --

18 **MR. MOWRY:** Yes, sir. I'll be candid. I think
19 Mr. Nixon's testimony is probably gonna be the
20 lengthiest. I don't think the SLED dog tracker will
21 take that long and then we're just gonna be tying up
22 everything with Detective Goggins and then playing the
23 surveillance video, which is not that long.

24 **THE COURT:** Okay.

25 **MR. MOWRY:** The segment we're playing is only

1 44 seconds long.

2 **THE COURT:** All right. Now is Nixon the next
3 witness in line?

4 **MR. MOWRY:** Yes, sir.

5 **THE COURT:** Are we not gonna need to do some
6 in-camera examination of Mr. Nixon because we have the
7 issue -- or the potential issue of prior bad acts?
8 Wasn't that my impression, that we were gonna have to
9 get into that?

10 **MR. MOWRY:** That's possible, Your Honor. We can --
11 we can attempt to avoid it.

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

13 **MR. MOWRY:** And I've told him not to go into any of
14 that.

15 **THE COURT:** Okay. All right. So you're not then --

16 **MR. MOWRY:** I tell you what, and here's the quandary
17 that I have. Mr. Nixon has been convicted of six
18 burglaries. I don't know if Your Honor is inclined to
19 go along with Judge Griffith's rules. He does not allow
20 the individual recitation of the impeachable offenses.
21 He just simply allows that the person has been convicted
22 of a felony or has a felony record and that's it.

23 **THE COURT:** Right.

24 **MR. MOWRY:** If we can limit it to that, then I'm not
25 gonna worry about it.

1 **THE COURT:** Well, let's hold that thought for just
2 a second and let's go back to Ms. Wiygul's pre-trial
3 motion that she wanted me to direct all State's
4 witnesses to stick to the November 11th incident, which
5 would be the date of this particular offense here.

6 **MR. MOWRY:** Yes, sir.

7 **THE COURT:** And, Solicitor, you brought up the fact
8 that you have Mr. Nixon as a witness, a co-defendant,
9 and that you were planning to get into some area of
10 other offenses, similar offenses, to show that there
11 was some sort of common scheme or plan and then I made
12 the comment, well, it looks like we've got a Lyle
13 situation and let's just deal with that when the time
14 comes up. The other State's witnesses, I think, were
15 instructed to stick to November 11th.

16 **MR. MOWRY:** Yes, sir.

17 **THE COURT:** So is it the State's intention of still
18 bringing up other burglaries with Mr. Nixon's testimony?

19 **MR. MOWRY:** I -- I really would rather not, Your
20 Honor, but if Ms. Wiygul is going to attempt to drag out
21 how many charges he's been convicted of, then I would
22 feel compelled to do just that because he was -- all of
23 these convictions stem from his actions in conjunction
24 with Maurice Anthony Odom in one way or another.

25 **THE COURT:** Okay. All right. And now my memory

1 is coming back to me even though that was just this
2 morning. It was the State's plan only to get into a
3 prior bad act issue or situation dependent upon what
4 Ms. Wiygul did on cross-examination of Mr. Nixon.

5 **MR. MOWRY:** Yes, sir.

6 **THE COURT:** Okay. All right. And then we still
7 have to deal with what can be brought up concerning
8 Mr. Nixon's own prior record for impeachment purposes.
9 Now with all that said, Ms. Wiygul.

10 **MS. WIYGUL:** Your Honor, I believe the issue is
11 that I plan to bring up some pending charges. I believe
12 that's the main concern of the prosecutor as well as the
13 specific convictions. There were six convictions for
14 burglary second degree --

15 **MR. MOWRY:** He was also charged -- I'm sorry.

16 **MS. WIYGUL:** -- to which he pled and a significant
17 number of charges were dismissed.

18 **MR. MOWRY:** He was also charged with about five or
19 six cases about two years after the fact. All of these
20 charges or cases occurred in the same time frame and so
21 the latter charges simply were never served on him until
22 two years later.

23 **THE COURT:** All right.

24 **MS. WIYGUL:** And, Your Honor, my response to that
25 would be that it absolutely goes to Mr. Nixon's

1 credibility.

2 **THE COURT:** Okay. Well, let's first deal with
3 the offenses that he's been convicted of that would
4 constitute impeachable offenses. What I do allow is
5 the date and the nature of the offense, but limit it to
6 that, when he was convicted and if it was, you know,
7 burglary and whatever the offense was, limit it to that
8 with respect to impeaching his credibility.

9 **MS. WIYGUL:** Your Honor, I would also wish to bring
10 out what the sentence was.

11 **THE COURT:** No, just the date and the offense
12 convicted of. I'll not allow any evidence concerning
13 sentence.

14 **MS. WIYGUL:** May I speak to protect the record,
15 Your Honor?

16 **THE COURT:** Now if you want to -- if you want to
17 proffer that at some point in time to protect the
18 record, you know, I'll allow you to do that --

19 **MS. WIYGUL:** Yes, Your Honor.

20 **THE COURT:** -- and we can just -- you know, we can
21 do that at any time because you've already stated your
22 position that you wanted the sentence into evidence with
23 respect to the impeachment.

24 **MS. WIYGUL:** I also wish to bring up the issue that
25 he was released on a PR bond in April and pled to these

1 offenses in May.

2 **THE COURT:** Okay. I will not allow sentence or any
3 bonding issues. But, again, you can proffer that just
4 whenever we have an opportunity to do that.

5 **MR. MOWRY:** And I would ask that she be restrained
6 from bringing up any pending charges. I would submit
7 that those are not impeachable offenses since there are
8 no convictions involved with pending charges.

9 **MS. WIYGUL:** Your Honor, the pending charges are
10 absolutely not impeachable; however, for credibility
11 purposes and to see what this young man has to benefit
12 by saying what he's saying it's incredibly important for
13 the jury to have that information.

14 **THE COURT:** Well, I mean, when you impeach -- when
15 you impeach, you're going to credibility. What are you
16 wanting, Ms. Wiygul, is to bring out charges that he
17 has not been convicted of and the rule specifically
18 requires that there be convictions for that -- to
19 impeach a witness's credibility.

20 **MS. WIYGUL:** Will the Court permit me to bring out
21 the fact that there are pending charges in Laurens
22 County that were not --

23 **MR. MOWRY:** Had those been pending -- sorry.

24 **THE COURT:** Hold that thought, Solicitor.

25 **MS. WIYGUL:** -- that were not served until after he

1 was released from jail?

2 **THE COURT:** Again, to impeach his credibility, there
3 must be convictions in place.

4 **MS. WIYGUL:** For prior convictions, Your Honor,
5 but we're not looking at it for that purpose. We're
6 looking at it for the purpose of what is this young man
7 hoping for. Well, he's hoping that they will dismiss
8 those charges and I think the jury has a right to know
9 that versus this is a young man with a clean record with
10 nothing hanging over his head, he's just here out of the
11 goodness of his heart. There's a big difference between
12 I've got one, two, three, four, five, six, seven, eight,
13 nine pending -- or eight pending charges in this county
14 versus I don't have any pending charges and I'm just
15 here because I only want to tell the truth.

16 **THE COURT:** Solicitor?

17 **MR. MOWRY:** Sir?

18 **THE COURT:** Do you want to respond to that? Because
19 I cut you off.

20 **MR. MOWRY:** Your Honor, again, I agree with your
21 earlier assessment that for impeachment purposes --
22 well, let me back it up. These charges should have been
23 brought back in 2011 when he got arrested. They are all
24 stemming from the same time, that law enforcement was
25 aware of it, but for whatever reason they never got

1 served, they should have been and, quite frankly, if we
2 had had those charges at that time, all of those would
3 have rolled in on the same situation, the one mass
4 guilty plea that we had back in 2012. We had people
5 from Lee, I believe, Kershaw, Newberry and Laurens in
6 this courtroom pleading guilty on all those charges
7 trying to wrap everything up.

8 **MS. WIYGUL:** And, Your Honor, just briefly, these
9 charges, four of them, are from this incident date.
10 The warrant numbers intermingle with Mr. Odom's.
11 There's no way they would have had a problem serving
12 those warrants if they'd wanted to.

13 **THE COURT:** Well -- and I don't know if I
14 necessarily need to get into that. What I need to
15 determine is, is there anything affecting his testimony
16 -- you know, sometimes when there are agreements between
17 the State and a particular witness, you know, can that
18 be brought out to bear some bearing on credibility?
19 And apart from this general, standard, boilerplate
20 impeachment of prior convictions, leave that to the
21 side, is there some motive I think Ms. Wiygul is wanting
22 to be able to get into, and I've got to determine
23 whether she can or not, is there some motive or some
24 sort of benefit that he's gonna receive for him
25 testifying against this Defendant?

1 **MS. WIYGUL:** Correct, Your Honor.

2 **THE COURT:** So that's what I've got to determine.
3 Do y'all have any case law or anything on that that
4 would be of some aid to the Court in making that
5 determination?

6 **MR. MOWRY:** Well, I was not anticipating having to
7 bring that up, so I've not researched that issue at all,
8 Your Honor.

9 **THE COURT:** I understand. I understand, but I
10 think -- I mean, I don't want to -- and, again,
11 impeachment for prior convictions, I think that's been
12 resolved, I'm gonna allow the conviction date and the
13 actual offense he was convicted of period, but these
14 other -- you know, these other charges, if there is hope
15 of dismissal or hope of a recommended reduced sentence
16 or whatever, is that allowable to show that there's a
17 motive for his testimony? That's what we're gonna have
18 to sift out and make that determination.

19 **MR. MOWRY:** Your Honor, I would just withdraw any
20 objections. We'll just stipulate to the fact that there
21 are charges pending.

22 **THE COURT:** Okay. All right. So then -- then you
23 can examine this witness, you know, you've been
24 promised, you know, leniency on those charges, dismissal
25 of those charges, whatever he may say.

1 **MS. WIYGUL:** And will the Court permit me to bring
2 up the fact that some of the charges are from this
3 incident date; that he has not actually pled guilty to
4 this incident?

5 **THE COURT:** All right. Let me just get the position
6 of the State. You were talking with Solicitor Scott.
7 You may not have heard Ms. Wiygul. She's asking not
8 only is there a stipulation that there are pending
9 charges in Laurens County against this gentleman, but
10 wanting to bring out the alleged offense date, which is
11 the same date as what we've got here in this case.

12 **MS. WIYGUL:** Correct, it's the same date and alleged
13 victim.

14 **THE COURT:** That's what she's asking, so what would
15 be your response?

16 **MR. MOWRY:** I'm sorry. I'm not quite understanding.

17 **MS. WIYGUL:** I can clarify, Your Honor. Do you
18 have any objection to me bringing out that some of the
19 warrants pending are from this incident?

20 **MR. MOWRY:** That's not gonna be an issue. I mean,
21 he's going to say that there were two burglars there;
22 I'm one of them, he's the other.

23 **THE COURT:** All right.

24 **MS. WIYGUL:** Correct, but I'd like the jury to know
25 that he has not entered a guilty plea to those charges

1 at this time.

2 **MR. MOWRY:** Okay.

3 **THE COURT:** All right. Okay. What I want to make
4 sure, because I've got to be the one to tell this jury
5 what you guys have stipulated to, so how about take a
6 second and one of y'all write it out and I want to make
7 sure that both sides are on the same page.

8 **MS. WIYGUL:** Your Honor, in an effort to avoid
9 confusion later on, would the stipulation include that
10 there were multiple counties involved in his pleas, that
11 the charges --

12 **MR. MOWRY:** Your Honor, if we're gonna get into
13 that, I want to get into the fact that it was all with
14 this Defendant. If she's gonna push that issue, then I
15 think we're talking about a common scheme or plan. So
16 if that is her wish, that's fine, but I should be
17 allowed to also say this Defendant has a ton of charges
18 from a whole bunch of different counties.

19 **THE COURT:** Yeah, yeah.

20 **MS. WIYGUL:** And, Your Honor, just --

21 **THE COURT:** Again, I can't tell y'all what to
22 stipulate to, but I think maybe if you want to go to
23 that extent, then it may be opening up something that
24 you don't want to have opened up is kind of the way it
25 appears to me.

1 **MS. WIYGUL:** Yes, Your Honor.

2 **MR. MOWRY:** And I've instructed the Defendant {sic}
3 not to go into the kind of discussions that he had with
4 the Defendant where the Defendant told him details about
5 his scheme, how he would take the cigarettes to New York
6 and sell them up there. If we're gonna go into that,
7 then we're talking common scheme or plan.

8 **MS. WIYGUL:** Your Honor?

9 **THE COURT:** Yes.

10 **MS. WIYGUL:** It was my understanding that the
11 agreement we had was that we could go into the dates
12 that he pled and what Mr. Nixon pled to, which is six
13 counts of burglary second degree. He pled on May 17th
14 of 2012.

15 **THE COURT:** Right, date of the conviction and the
16 actual offense, but limit it to that. You wanted to
17 have sentencing information, which I did not allow. You
18 wanted to have some bonding information concerning those
19 charges, which I did not allow, okay?

20 **MS. WIYGUL:** Correct, sir. And then as to the
21 pending charges, it was my understanding that the State
22 was willing to agree to the fact that he had eight
23 pending charges in Laurens County, some of which were
24 from this incident.

25 **THE COURT:** That was my understanding.

1 **MS. WIYGUL:** That, I believe, is not their
2 understanding.

3 **MR. MOWRY:** It was my understanding that it was
4 just on the charge related to this offense, Your Honor,
5 that we were gonna be talking. If we're gonna be
6 getting into all of those, I would like to be able to
7 ask him who was involved with you on all of those
8 different cases.

9 **THE COURT:** Okay. All right. So your understanding
10 of what you stipulated to, Solicitor, was that this
11 charge concerning November 11th of 2011, the BP on
12 Highway 27, that is a pending charge concerning Nixon?

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

14 **THE COURT:** That you're only stipulating to this one
15 charge?

16 **MR. MOWRY:** Yes, sir.

17 **THE COURT:** Okay. Well, we just had some
18 misunderstanding. Then what I want to do, if there
19 is no stipulation, then I need to determine then what
20 Ms. Wiygul can ask him concerning motive and that sort
21 of thing for testimony and then whatever happens there
22 then, of course, then you'll do whatever you feel like
23 you need to do concerning prior bad acts, if that's
24 something you want to get into. So everybody be at ease
25 for just a little bit.

1 (Recess taken.)

2 **THE COURT:** Okay. We're back on the record and I
3 have reviewed Rule 608 of the Rules of Evidence and
4 also State versus Sims, that's 348 SC 16, and it appears
5 that Ms. Wiygul would be able to cross-examine Mr. Mixon
6 concerning the existence of these pending charges and
7 whether or not there is any expectation of leniency or
8 favorable treatment or whatever. And so under State
9 versus Sims and Rule 608, I don't think you can go into
10 the specifics of the pending charges, but nonetheless
11 that there does exist some pending charges and see what
12 he says concerning his expectation. It would go to the
13 issue of his bias or motive or prejudice for testifying,
14 and so I think you would be allowed to do that.

15 **MS. WIYGUL:** Thank you, Your Honor. And just to
16 avoid stepping on any toes, would I be permitted to
17 ask about what date he was charged with those offenses,
18 actually arrested, versus what the incident was?

19 **THE COURT:** I don't -- I don't think -- I don't
20 think that would be allowed. That would be going to the
21 specifics. State versus Sims does not specifically say
22 how far you can go, but from reading between the lines I
23 think just the existence of those pending charges and
24 how it relates to his testimony would be what would be
25 allowed, okay?

1 **MS. WIYGUL:** So the charge and the date he was
2 charged?

3 **THE COURT:** Yeah, I think the date, but no more
4 beyond that.

5 **MS. WIYGUL:** Thank you, Your Honor.

6 **THE COURT:** Now what that does as far as the State
7 wanting to get into prior bad acts as it relates to the
8 Defendant, we'll just have to deal with that if that
9 becomes an issue.

10 **MR. MOWRY:** My question to him at that time would
11 be who were you involved with in all of these cases.

12 **MS. WIYGUL:** At which point, Your Honor, I would
13 move for a mistrial because that would put Mr. Odom's
14 character directly at issue.

15 **THE COURT:** Well, here's what we'd have to do at
16 that point, and that is kind of the thinking, for
17 redirect we would need to then go to an in-camera
18 hearing because I've got to make sure the findings under
19 State versus Lyle and the progeny of cases after Lyle to
20 determine whether or not as it relates to the Defendant
21 whether or not I'll allow prior bad acts. So if that's
22 your intent, which is fine, but before you start your
23 redirect, then we're gonna have to go do an in-camera
24 hearing so I can hear exactly what is being asked and
25 answered for me to make a record on whether or not I'll

1 allow that in, okay?

2 **MS. WIYGUL:** Thank you, Your Honor.

3 **MR. MOWRY:** Let me ask you this, Your Honor. If
4 I bring this out in direct, will she be allowed to
5 cross-examine him and beat him over the head with it?

6 **MS. WIYGUL:** Your Honor, I believe I'm free to ask
7 anything on cross that's brought out in direct.

8 **MR. MOWRY:** In State v. Lynn, if he admits to the
9 fact that he has convictions and he admits to the fact
10 that he has the charges, that's essentially it.

11 **THE COURT:** What's the cite on State versus Lynn?

12 **MR. MOWRY:** I do not have the cite, Your Honor.
13 That is the name of the case though. I believe it's
14 L-Y-N-N.

15 **MS. WIYGUL:** Your Honor, I'd be willing to stipulate
16 if he specified six burglaries second degree and puts
17 the dates that those convictions were entered, then I
18 don't mind leaving it alone on cross.

19 **MR. MOWRY:** In that case, Your Honor, we're in good
20 shape because the fact that he does have the convictions
21 I don't think there was ever any question to that coming
22 in.

23 **THE COURT:** No, I don't --

24 **MS. WIYGUL:** I don't think that has anything to do
25 with the issue.

1 **THE COURT:** I don't think -- the issue that we've
2 been dealing with the last fifteen, twenty minutes I
3 think is the existence of pending charges. Now, again,
4 the convictions, that's resolved. I've already ruled
5 that --

6 **MR. MOWRY:** Yes, sir.

7 **THE COURT:** -- you can impeach his credibility with
8 the offense he was convicted of and the date of the
9 conviction. That's already -- that's already a done
10 deal as far as I'm concerned. What we're dealing with
11 is the existence of these pending charges and how it
12 relates to his testimony, whether or not there exists
13 bias or motive or prejudice to influence his testimony
14 here today, and what I've ruled based upon 608 and
15 State versus Sims is that she can question him on the
16 existence of these pending charges and the date of the
17 charge and then question him whether or not that's
18 influencing his testimony or not, whether or not there
19 exists bias or motive or prejudice. And then once
20 that's done, as I understand it, the State intends to
21 get into some bad act evidence as relates to the
22 Defendant and my only point is when we get to that point
23 we're gonna need to stop and have an in-camera hearing
24 for me to make a record under State versus Lyle whether
25 or not it comes in or not.

1 **MR. MOWRY:** All right. Thank you, Your Honor.

2 **THE COURT:** Are we good?

3 **MR. MOWRY:** Yes.

4 **MS. WIYGUL:** Yes, Your Honor.

5 **MR. MOWRY:** Can you give me about two minutes, Your
6 Honor?

7 **THE COURT:** Sure.

8 (Recess taken.)

9 **THE COURT:** Okay. Everybody good?

10 **MR. MOWRY:** Yes, sir.

11 **MS. WIYGUL:** Yes, Your Honor.

12 **THE COURT:** All right. Mr. Byers, bring the jury
13 out, please.

14 (Whereupon, the jury returns to the courtroom.)

15 **BAILIFF:** All present, Your Honor.

16 **THE COURT:** Thank you very much, Mr. Byers. Ladies
17 and gentlemen of the jury, thank you for your patience.
18 And we're still in the State's case and, Solicitor
19 Mowry, I'll turn the record over to you, sir.

20 **MR. MOWRY:** Thank you very much, Your Honor. We
21 call Christopher Mixon to the stand.

22 **THE COURT:** Where is Mr. Mixon?

23 **MR. MOWRY:** He is right -- I'm sorry.

24 (State's Exhibit Numbers 35, 36 and 37 were marked
25 for identification.)

1 **THE COURT:** All right. Madam clerk, will you swear
2 this gentleman in, please.

3 CHRISTOPHER MIXON,
4 having been duly sworn, testified as follows:

5 **THE COURT:** Come around and what I want you to do
6 is sit very close to the microphone and speak up loud so
7 we all can hear you. Okay, sir?

8 **THE WITNESS:** Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. MOWRY:

11 Q. You are Christopher Mixon?

12 A. Yes, sir.

13 Q. Mr. Mixon, where do you live?

14 A. I live in Barnwell, South Carolina.

15 Q. Barnwell?

16 A. Yes, sir.

17 Q. How old are you?

18 A. 23.

19 Q. All right. What are you doing right now? Are you
20 in school right now?

21 A. No, sir.

22 Q. Have you been in school recently?

23 A. Yes, sir.

24 Q. Where were you going to school?

25 A. I was at Denmark Technical College.

1 Q. Denmark Academy, a community college down in
2 Denmark, South Carolina; is that right?

3 A. Yes, sir.

4 Q. Why are you not in school now?

5 A. Because I had got locked up.

6 Q. You had got locked up?

7 A. (No verbal response.)

8 Q. Okay. And you were locked up on these charges; is
9 that right?

10 A. Yes, sir.

11 Q. Mr. Nixon, you have actually six burglary
12 convictions from this time frame; do you not?

13 A. Yes, sir.

14 Q. And you've served time for that; is that right?

15 A. Yes, sir.

16 Q. Okay. You also have some pending charges still
17 against you; is that right?

18 A. Yes, sir.

19 Q. How is that affecting your testimony here today?
20 Are you testifying because of those pending charges or
21 what?

22 A. No, sir, I've already did my time.

23 Q. You already did your time?

24 A. (No verbal response.)

25 Q. What is your intention today, sir? What are you

1 here to tell?

2 A. What happened on the 11th.

3 **THE COURT:** Sir, you're gonna need to speak up,
4 speak clearly, so I can hear you.

5 Q. Speak right into the microphone, Christopher.

6 A. What happened on the 11th.

7 Q. Have you and I had a discussion about what you were
8 gonna testify to? We talked about your testimony; is
9 that right?

10 A. Yes, sir.

11 Q. What did I tell you to testify to?

12 A. You told me to be honest about, um, what happened.

13 Q. All right. And is that what you're gonna do?

14 A. Yes, sir.

15 Q. All right. Do you know Maurice Anthony Odom?

16 A. Yes, sir.

17 Q. How well do you know him?

18 A. Well, good enough.

19 Q. Okay. Had he had a relationship with a relative of
20 yours?

21 A. Yes, sir.

22 Q. Okay. How long had you known him just
23 approximately?

24 A. For about four years.

25 Q. Okay. Sometime back around the time of this

1 incident, were you having some money issues?

2 A. Yes, sir.

3 Q. Did you approach Maurice Odom about these money
4 issues?

5 A. Yes, sir.

6 Q. What did you decide to do together with him? What
7 did you decide to do?

8 A. Go in a store.

9 Q. Go into a store. All right. And do what?

10 A. Get tobacco products.

11 Q. Get tobacco products. All right. Now you're from
12 Barnwell; is that right?

13 A. Yes, sir.

14 Q. Were you up in Laurens County back on the early
15 morning of November 11th of 2011?

16 A. Yes, sir.

17 Q. Who was with you?

18 A. Me and Odom.

19 Q. Say it again.

20 A. Me and Odom.

21 Q. You and Odom?

22 A. Yes, sir.

23 Q. You're talking about the Defendant, Maurice Anthony
24 Odom?

25 A. Yes, sir.

1 Q. Mr. Mixon, I want you to look over at the gentleman
2 in the red shirt there at the defense table. Is that
3 Maurice Anthony Odom?

4 A. Yes, sir.

5 **MR. MOWRY:** Okay. Your Honor, for the record, he
6 has pointed out the Defendant in this case.

7 **THE COURT:** So noted.

8 BY MR. MOWRY:

9 Q. How did y'all get up into Laurens County from
10 Barnwell?

11 A. We had drove.

12 Q. You had drove? You were riding in a car; is that
13 right?

14 A. Yes, sir.

15 Q. Who was driving?

16 A. Mr. Odom.

17 Q. All right. Do you have a driver's license?

18 A. No, sir.

19 Q. Do you know how to drive?

20 A. No, sir.

21 Q. Okay. Let me show you these two pictures that have
22 been marked as State's Exhibits 13 and 14 for
23 identification. Do you recognize that car?

24 A. Yes, sir.

25 Q. Whose car is that?

1 A. Mr. Odom's.

2 Q. Is that the car you were in that night?

3 A. Yes, sir.

4 Q. Do you know what kind of car that is?

5 A. A Chrysler.

6 Q. Okay.

7 **MR. MOWRY:** Your Honor, I would -- excuse me. I
8 shouldn't have published these before I requested they
9 be admitted. I would offer these as State's Exhibit 13
10 and 14.

11 **MS. WIYGUL:** I have no objection.

12 **THE COURT:** All right. Without objection, it will
13 be 13 and 14 into evidence for the State.

14 (State's Exhibit Numbers 13 and 14, photographs,
15 were admitted into evidence.)

16 BY MR. MOWRY:

17 Q. Mr. Nixon, do you know how y'all got up here? You
18 said you drove. Do you know what route you took?

19 A. No, sir.

20 Q. Okay. Were you paying attention to that?

21 A. No, sir.

22 Q. Okay. Sometime in the early morning hours, did
23 y'all get to the BP station on Highway 72?

24 A. Yes, sir.

25 Q. Okay. Now, Mr. Nixon, I'm gonna ask you to refer to

1 State's Exhibit Number 1, this big chart. You've seen
2 this before; have you not?

3 A. Yes, sir.

4 Q. Okay. All right. I'm gonna ask you to point on
5 that chart where y'all ended up.

6 **THE COURT:** And let's make sure that the witness is
7 familiar with handling a laser marker and that he only
8 pushes the button when he's pointing at the exhibit.

9 Q. Make sure you don't point that at anybody.

10 A. What's the question?

11 Q. Where did y'all end up that night?

12 A. (Indicating.)

13 Q. Okay. Right about where this pink dot is; is that
14 right? You're putting the red dot right on it, but this
15 pink sticker, is that where you ended up?

16 A. Yes, sir.

17 Q. Okay. Describe how y'all got there. You can take
18 it off now. Describe how y'all got there.

19 A. Excuse me, I don't understand. Can you say it
20 again?

21 Q. All right. You say you ended up here. How did you
22 get there? Describe the route y'all had taken.

23 A. We drove -- what is that --

24 Q. This is up towards Spartanburg, this is down towards
25 Columbia, if that makes any sense.

1 A. From Spartanburg.

2 Q. You came from Spartanburg?

3 A. (Nods head.)

4 Q. Okay. Then what did you do?

5 A. We made a left.

6 Q. So you came off the Interstate; is that right?

7 A. Yes, sir.

8 Q. You say you made a left. You're talking about a
9 left onto 72?

10 A. Yeah, by the store. Going towards the store.

11 Q. Okay. Made a left and came back over 26?

12 A. (Nods head.)

13 **THE COURT:** You need to answer up. Just don't nod
14 your head, okay?

15 A. Yes, sir.

16 Q. Heading towards the store. What was your purpose in
17 going to the store?

18 A. To drop off a brick.

19 Q. All right. Let me hand you or show you what's been
20 marked for identification as State's Exhibit 32. Does
21 this look like the rock you're talking about?

22 A. Yes, sir.

23 Q. Okay. Had you brought this rock with you?

24 A. May you repeat it?

25 Q. Had you brought that rock?

1 A. Yes, sir.

2 Q. You, yourself, did you bring that rock?

3 A. Oh, no, sir.

4 Q. Who brought that rock?

5 A. Mr. Odom.

6 Q. Okay. So y'all pulled up next to the store. What
7 happened then?

8 A. We dropped the rock off and we went to go park.

9 Q. Okay. You say you went to go park. Show us where
10 -- use the clicker again. Show us where you parked.

11 A. (Indicating.)

12 Q. Down here on the edge of the Interstate?

13 A. Yes, sir.

14 Q. Okay. Were you heading toward -- so you came down
15 the access ramp; is that right?

16 A. Yes, sir.

17 Q. Like you were heading towards Columbia?

18 A. Yes, sir.

19 Q. And I'm gonna put a sticker -- in fact, if you
20 wouldn't mind, just come on down here and you put the
21 sticker. I'm gonna make this one a green one.

22 (Whereupon, the witness leaves the witness stand.)

23 Q. Put the sticker approximately where your car was.

24 A. (Witness complies.)

25 Q. Okay. So about down in here? All right. Thank

1 you, sir. You can take the stand again.

2 **THE COURT:** All right. Let him respond to that
3 question when he gets back to the witness stand so he
4 can speak into the microphone.

5 **MR. MOWRY:** Yes, sir.

6 (Whereupon, the witness resumes the witness stand.)

7 BY MR. MOWRY:

8 Q. I'm referring to State's Exhibit 1, this overhead
9 chart, where you put the green sticker is approximately
10 where the car was parked; is that right?

11 A. Yes, sir.

12 Q. Okay. What did y'all do after you parked the car?

13 A. Walked to the store.

14 Q. Okay. How did you get there? Did you cross the
15 Interstate or did you go back up and cross over on the
16 bridge or what?

17 A. Crossed on the bridge.

18 Q. Okay. Do you remember what time of day this was?

19 A. It had to be like 12, 1.

20 Q. Okay. So it was late; is that right?

21 A. Yes, sir.

22 Q. Was it light or dark out?

23 A. Dark.

24 Q. Okay. What happened then?

25 A. We done walked to the store.

1 Q. Okay. What were you wearing?

2 A. Pants, a black shirt, gloves and a mask.

3 Q. Gloves and a mask. Let me hand you a couple of
4 pictures. Well, let me start out with this one. This
5 is State's Exhibit Number 10. Do you recognize that?

6 A. Yes, sir.

7 Q. Okay. Do you know who the people are in that
8 photograph?

9 A. Yes, sir.

10 Q. Okay. Who are those people?

11 A. Me and Mr. Odom.

12 Q. All right. I'm gonna put this picture up. What I
13 want you to do is use that little pointer again and you
14 tell us who is who.

15 A. Myself.

16 Q. That's you?

17 A. Yes, sir.

18 Q. All right. Who is this other person?

19 A. Mr. Odom.

20 Q. Okay. That's good. What's he got in his hands?
21 Can you see it?

22 A. It looks like a brick.

23 Q. Yeah. Does it look like the -- does it look like
24 State's Exhibit 32 that we talked about a minute ago?

25 A. Yes, sir.

1 Q. Okay. What did he use this for?

2 A. To bust the glass.

3 Q. Okay. He used it to break the glass out. Let me
4 show you State's Exhibit Number 5. Do you recognize
5 that?

6 A. Yes, sir.

7 Q. All right. What does that show?

8 A. The store.

9 Q. Which store is that?

10 A. The store right there, the BP.

11 Q. Okay. The store y'all broke into; is that right?

12 A. Yes, sir.

13 Q. Do you know the window you broke into?

14 A. Yes, sir.

15 Q. All right. Point it out using the pointer again.

16 A. (Witness complies.)

17 Q. Okay. Describe how y'all got inside the store.

18 A. We threw the brick through.

19 Q. Okay. And then what?

20 A. Then we just went in and got the cigarettes and
21 tobacco products.

22 Q. Okay. So you climbed in through the broken window;
23 is that right?

24 A. Yes, sir.

25 Q. All right. Where were you looking?

1 A. In the front.

2 Q. Okay. Right inside the window --

3 A. Yes, sir.

4 Q. -- is that right? What were you gonna use to carry
5 the cigarettes, the cartons of cigarettes, from the
6 store back to the car?

7 A. Black trash bags.

8 Q. All right. Who had provided the black trash bags?

9 A. Mr. Odom.

10 Q. Okay. Let me show you State's Exhibits 35, 36 and
11 37. These are paper shopping bags with other items
12 inside. Let me just show you this, Mr. Nixon. Do you
13 recognize that?

14 A. Yes, sir.

15 Q. What is that, please, sir?

16 A. A trash bag.

17 Q. Okay. Did you have any use for that that night?

18 A. Yes, sir.

19 Q. Okay. What were you using that for?

20 A. For tobacco products.

21 Q. Okay. You were loading up with cigarettes and other
22 tobacco products; is that right?

23 A. Yes, sir.

24 Q. Okay.

25 **MR. MOWRY:** And I would ask that these be admitted

1 into evidence at this time, Your Honor.

2 **MS. WIYGUL:** Your Honor, I would object. There's
3 nothing to differentiate those from any other black
4 trash bag in the world.

5 **MR. MOWRY:** Very well. I will simply leave them
6 for identification purposes and I'll tie it up a little
7 later, Your Honor.

8 **THE COURT:** Okay. Very good.

9 **MR. MOWRY:** One moment, Your Honor.

10 **THE COURT:** Sure.

11 BY MR. MOWRY:

12 Q. Mr. Odom {sic}, you said a couple of times it was a
13 brick, but, you know, it's not just a building brick; is
14 that right? It's this thing, State's Exhibit 32?

15 A. Yes, sir.

16 Q. Okay. Did Mr. Odom say anything about how long you
17 could stay inside the store?

18 A. Two minutes.

19 Q. Okay. What was that due to? Why so short a period
20 of time?

21 A. To get away time.

22 Q. All right. When the big rock, State's Exhibit 32,
23 went through the window, did anything happen besides the
24 glass breaking?

25 A. The police showed up.

1 Q. Well, before that, did anything -- did you hear
2 anything?

3 A. Like an alarm?

4 Q. That's what I'm getting it, yes, sir. What did you
5 hear?

6 A. A loud noise.

7 Q. Okay. And did that make you nervous?

8 A. Yes, sir.

9 Q. Okay. Describe what you did once you got inside.

10 A. I started picking up the cigarettes I saw.

11 Q. Okay. Do you know what Mr. Odom did when he got
12 inside?

13 A. No, sir.

14 Q. Okay. You weren't watching him, you were talking
15 care of your own business; is that right?

16 A. Yes, sir.

17 Q. Okay. Mr. Nixon, let me point out this picture.
18 Take a look over your shoulder.

19 **MS. WIYGUL:** Your Honor, may I ask which exhibit
20 that is?

21 **MR. MOWRY:** I'm sorry, Your Honor. This is Number
22 11.

23 **MS. WIYGUL:** Thank you.

24 **MR. MOWRY:** My bad. Sorry.

25 BY MR. MOWRY:

1 Q. Referring to State's Exhibit Number 11, Mr. Nixon,
2 who is that person in the foreground, closest to us?

3 A. Mr. Odom.

4 Q. Okay. Maurice Anthony Odom?

5 A. Yes, sir.

6 Q. What's he got in his hand?

7 A. A trash bag.

8 Q. Yeah. Who's that in the background back there bent
9 over?

10 A. Me.

11 Q. What are you doing?

12 A. Getting cigarettes.

13 Q. Okay. Who had told you to get cigarettes?

14 A. Mr. Odom.

15 Q. Mr. Nixon, you talked about the police coming. You
16 mentioned that a second ago. Describe that, please,
17 sir. How did that happen?

18 A. As I was getting the bags, I just happened to look
19 up and I saw the police outside.

20 Q. Okay. Where were you when you saw them, still
21 inside the store?

22 A. When I saw them, I was inside.

23 Q. Okay. Where was Mr. Odom when this was going on?

24 A. Inside.

25 Q. Okay. When you saw the police, what did you say or

1 did you say anything?

2 A. I didn't say anything.

3 Q. Okay. What did Mr. Odom do when the police arrived?

4 A. He left.

5 Q. All right. How did he leave?

6 A. He ran.

7 Q. Well, I mean, how did he get out of the store? You
8 said he was still inside. How did he get out?

9 A. Out of the window.

10 Q. Climbed out of the window?

11 A. Yes, sir.

12 Q. What did he do then?

13 A. Run.

14 Q. All right. Did the police officer get out of his
15 car or did he drive around to the back of the store, do
16 you remember?

17 A. I think he got out.

18 Q. Okay. What did you do when the police officer
19 arrived? When Mr. Odom got out, what did you do?

20 A. I climbed out the window as well.

21 Q. And where did you go?

22 A. I ran across the street.

23 Q. Okay. Let me put this back up.

24 **MR. MOWRY:** This is State's Exhibit Number 1 again,
25 Your Honor.

1 Q. And, Mr. Nixon, if you would pick up the pointer yet
2 again and show us the route that you took leaving the
3 store.

4 A. (Witness complies.)

5 Q. Okay. So you crossed the road. What's the --
6 what's the terrain like across the road? That's good.
7 Thank you, sir.

8 A. Excuse me, what was it?

9 Q. What is this terrain like in here? What's the land
10 like?

11 A. A bunch of trees.

12 Q. A bunch of trees. So it's forested?

13 A. Yes, sir.

14 Q. And this was early morning hours; is that right?

15 A. Yes, sir.

16 Q. Okay. How far did you go down in here?

17 A. In the middle.

18 Q. In the middle of it. Okay. Were you by yourself
19 most of the time?

20 A. Yes, sir.

21 Q. What were you trying to do?

22 A. Get away.

23 Q. All right. Where were you trying to go?

24 A. To the car.

25 Q. While you were in the woods, did you happen to

1 stumble upon Mr. Odom?

2 A. No, sir.

3 Q. Okay. When did you next see Mr. Odom?

4 A. Like two hours later.

5 Q. Okay. Where did you see Mr. Odom?

6 A. We met at the car.

7 Q. Okay. So you made your way back to the car, he made
8 his way back to the car; is that right?

9 A. Yes, sir.

10 Q. And when you got back to the car and met up with
11 Mr. Odom, what happened then?

12 A. I was by myself and a police had came to the car, so
13 I had hid in the woods.

14 Q. And you saw that happen?

15 A. Yes, sir.

16 Q. Okay. So you hid in the woods?

17 A. (Nods head.)

18 Q. On which side of the road were you, which side of
19 I-26?

20 A. (Indicating.)

21 Q. Yeah, that's fine.

22 A. (Indicating.)

23 Q. The same side as the car?

24 A. (Nods head.)

25 Q. Okay.

1 **THE COURT:** You need to respond yes or no.

2 A. Yes, sir.

3 Q. All right. So when the police came and you hid, do
4 you have any concept of how long that was, any idea?

5 A. About two hours.

6 Q. Okay. At what point did you see Mr. Odom again?

7 A. About two hours.

8 Q. Okay. He came back to the car about two hours
9 later?

10 A. (Nods head.)

11 Q. Did you just stay in the woods until he returned?

12 A. Yes, sir.

13 Q. Okay. When he came back, when you saw him, what did
14 you do?

15 A. Got in the car.

16 Q. What had he promised you for your participation in
17 this event?

18 A. Money.

19 Q. Okay. Did you have any idea how much?

20 A. A thousand.

21 Q. Okay. He had talked to you about a thousand
22 dollars; is that right?

23 A. (Nods head.)

24 Q. Is that correct, Mr. Nixon?

25 A. Yes, sir.

1 Q. All right. Thank you. Did you get anything out of
2 it?

3 A. Yes, sir.

4 Q. I mean, did you get any money from this event?

5 A. Yes, sir.

6 Q. All right. Did you get any cigarettes out of that
7 event?

8 A. No, sir.

9 Q. All right. What did you do with your cigarettes?
10 You said that you were loading them up in a bag, in one
11 of the black plastic garbage bags. What did you do with
12 the cigarettes?

13 A. Left them in the store.

14 Q. Okay. So you never got out of the store with them;
15 is that right?

16 A. No, sir.

17 Q. Okay. When Mr. Odom returned to the car, did he
18 have any cigarettes with him?

19 A. No, sir.

20 Q. All right. Once y'all both got back to the car and
21 got in the car, what did you do then?

22 A. Got in and we left.

23 Q. All right. Where did you head?

24 A. Back home.

25 Q. Okay. How long after this did you get arrested on

1 these charges?

2 A. A month.

3 Q. Okay. A couple of weeks, several weeks later?

4 A. Something like.

5 Q. Okay. Who was it that came up with this idea of
6 breaking into convenience stores or a convenience store,
7 I should say?

8 A. Mr. Odom.

9 Q. Who drove to Laurens County that night?

10 A. Mr. Odom.

11 Q. Who brought the rock?

12 A. Mr. Odom.

13 Q. Whose car was it that y'all used?

14 A. Mr. Odom.

15 Q. Who dropped the car -- dropped the rock off at the
16 store?

17 A. Mr. Odom.

18 Q. Why did he drop it at the store by the way?

19 A. I guess it was too heavy.

20 Q. Didn't want to carry it?

21 A. Yes, sir.

22 Q. Who threw the rock through the window?

23 A. Mr. Odom.

24 Q. Okay. Who collected cigarettes from the cabinets
25 all around the window?

1 A. Which window?

2 Q. The broken window.

3 A. Both of us.

4 Q. Both of us. You did too; is that right?

5 A. Yes, sir.

6 **MR. MOWRY:** Okay. Thank you, Mr. Nixon. That's
7 all I have today.

8 **THE WITNESS:** Yes, sir.

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

10 **MS. WIYGUL:** Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. WIYGUL:

13 Q. Mr. Nixon --

14 A. Yes, ma'am.

15 Q. -- you've come a long way since 2011, haven't you?

16 A. Yes, ma'am.

17 Q. You made a lot of changes since back then?

18 A. Yes, ma'am.

19 Q. You think they've been good changes?

20 A. Yes, sir. I mean, yes, ma'am.

21 Q. What's the tattoo on the side of your neck, sir?

22 A. Made for love.

23 Q. Made for love?

24 A. (Nods head.)

25 Q. Do you have any other tattoos?

1 A. Yes, ma'am.

2 Q. Could you show me them and tell me -- or show me the
3 ones that are readily accessible and tell me what they
4 mean.

5 A. You want me to start now?

6 Q. Please.

7 A. I have my sister's name, I have my grandma's name,
8 I have a cross, I have my cousin's dad that passed,
9 and then I have the galaxy with the moon, I have the
10 Yankees, a female, money bags, a rose, and I have my
11 last name on my daddy's side and I've got my mom's side
12 on this arm.

13 Q. Okay. Did you have any of those tattoos before
14 2011?

15 A. No, ma'am.

16 Q. You got all of them after?

17 A. Yes, ma'am.

18 Q. Okay. And you said that you can't drive; is that
19 right?

20 A. Yes, ma'am.

21 Q. You've never driven?

22 A. No, ma'am.

23 Q. You've never had a driver's license?

24 A. No, ma'am.

25 **MR. MOWRY:** Your Honor, we're gonna have to take

1 this up outside the presence of the jury. I'm sorry.

2 **THE COURT:** Okay. We'll take a little earlier
3 afternoon break. Madam Forelady and ladies and
4 gentlemen of the jury, we'll take about a ten or fifteen
5 minute break and get you back in. Remember not to
6 discuss this case among themselves. You're excused.

7 (Whereupon, the jury retires to the jury room.)

8 **MS. WIYGUL:** Your Honor --

9 **THE COURT:** Okay. Wait one second.

10 **MR. MOWRY:** What we're trying to determine, Your
11 Honor, is if this is an ID or if this is, in fact, a
12 driver's license. It's kind of difficult to say.

13 **THE COURT:** Okay.

14 **MS. WIYGUL:** In my discovery, I was provided --
15 and I'll be happy to hand up my copy to the Court. I
16 was provided this by the Solicitor's office and it
17 appears to me to be a driver's license. It has a
18 driver's license number. It does not say State ID.

19 **MR. MOWRY:** The identifications do, too, Your Honor.
20 A lot of people have identifications that are issued by
21 the SCDMV simply for identification purposes.

22 **MS. WIYGUL:** And, Your Honor, I would simply submit
23 to the Court that it's my understanding that those say
24 State issued ID, they don't say driver's license.

25 **MR. SCOTT:** He may have it with him. Maybe the

1 Court could ask him to produce the identification.

2 **THE COURT:** Let's see if we can handle it this way.
3 Mr. Nixon, this document that they've been showing, is
4 that you?

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

6 **THE COURT:** All right. Is this a driver's license
7 that you had at some time in the past?

8 **THE DEFENDANT:** That's my identification from 2011.

9 **THE COURT:** Okay. That's your State issued ID?

10 **THE WITNESS:** 2011.

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

12 **MS. WIYGUL:** Does he have it on him where we can
13 read it? Because it says on there driver's license. It
14 doesn't say State issued ID.

15 **THE COURT:** Do you have your ID with you?

16 **THE WITNESS:** No, sir.

17 **THE COURT:** Okay. What happened to your ID?

18 **THE WITNESS:** I had got a new one, but I had left
19 it.

20 **THE COURT:** Okay.

21 **MS. WIYGUL:** And, Your Honor, if the Court would
22 permit like a five minute recess, we can just call the
23 800 number.

24 **THE COURT:** That's what I was gonna suggest. How
25 about jointly I let you participate with the Solicitor

1 and his investigator so everybody can hear whatever the
2 person at the Department of Motor Vehicles may say.

3 **MR. MOWRY:** Thank you, Your Honor.

4 **THE COURT:** We'll be in recess for about ten
5 minutes.

6 (Recess taken.)

7 **BAILIFF:** Court come back to order.

8 **MR. MOWRY:** Your Honor, Mr. Bentley is printing off
9 a printout from the SCDMV. It says at the bottom of it
10 clearly for identification only. He's getting that out.
11 We would ask that that be made a State's exhibit. I
12 don't mind that at all.

13 **MS. WIYGUL:** Your Honor, I would not -- I don't
14 believe that's the appropriate way to have an exhibit
15 entered into Court. We did as the Court instructed. I
16 called the DMV at the 800 number. Mr. Scott listened in
17 on the call. We had them check the customer number and
18 they said it was, indeed, just an identification card.

19 **THE COURT:** Okay. So, I mean, you're gonna move on
20 to something else in your cross-examination?

21 **MS. WIYGUL:** Yes, Your Honor.

22 **THE COURT:** I mean, you can -- I guess what you can
23 do, Solicitor, is in redirect if you want to show him
24 the photocopy and say is this the copy of your ID you
25 had in 2011 and then, you know, ask it to be marked at

1 that time.

2 **MR. MOWRY:** Okay. For identification purposes only,
3 not as a driver's license.

4 **MS. WIYGUL:** Your Honor, I think that would be very
5 confusing to the jury as it was for me because it says
6 driver's license.

7 **MR. SCOTT:** I agree.

8 **MR. MOWRY:** Yeah, I don't intend to admit this,
9 Your Honor. I was wanting to do the printout that
10 Mr. Bentley is getting because it says on there for
11 identification only.

12 **THE COURT:** Well, what I would need to do is look
13 at what that is to make some ruling whether or not to
14 allow it in. Ms. Wiygul has objected to it coming in.
15 I'll have to see if it's admissible or not.

16 **MS. WIYGUL:** Correct, Your Honor. And I would
17 simply just -- to put on the record, this is the
18 document I was provided in discovery and no where on
19 that document does it state for identification purposes
20 only, so I would have adamant objections to anything
21 cleaned up coming in at this point.

22 **THE COURT:** Well, again, let me look at what they've
23 got, so --

24 **MR. SCOTT:** If I could make a suggestion. I think
25 Ms. Wiygul wants to ask the question, I don't think this

1 was ever fully answered, do you have a driver's license
2 or an ID, and he could answer either way without having
3 to admit either one of these confusing documents.

4 **THE COURT:** Right.

5 **MR. SCOTT:** Then we can just move on from there.

6 **THE COURT:** Right. We definitely need to move on.
7 There's no question about that.

8 **MS. WIYGUL:** I'd be happy to ask that question as
9 the State has asked.

10 **THE COURT:** Why don't you ask it and then we can go
11 on to something else then.

12 (Whereupon, the witness resumes the stand.)

13 **THE COURT:** I don't need to see it if it's pretty
14 much kind of agreed upon based on what Solicitor Scott
15 said and Ms. Wiygul agreed to. She's just gonna ask the
16 question and then move on.

17 **MR. MOWRY:** Thank you, Your Honor.

18 **THE COURT:** Okay. Thank you. Anything else before
19 the jury comes out?

20 **MS. WIYGUL:** No, Your Honor.

21 **MR. MOWRY:** No, sir.

22 **THE COURT:** Mr. Byers, bring the jury out, please.

23 (Whereupon, the jury returns to the courtroom.)

24 **THE COURT:** Okay. All the jurors are present.

25 Madam Forelady and ladies and gentlemen of the jury, you

1 may be kind of hot, as we are, and so we're trying to
2 see if we can get some more air, so we're doing what we
3 can. So if you're hot, we're mindful of that because we
4 are, too. Thank you very much.

5 Okay. Ms. Wiygul, I think we're still in your
6 cross-examination of this witness. You may proceed.

7 **MS. WIYGUL:** Thank you, Your Honor.

8 BY MS. WIYGUL:

9 Q. Mr. Nixon, do you have a State issued ID?

10 A. Yes, ma'am, but not with me.

11 Q. Okay. Back in 2011, you were having some problems,
12 weren't you?

13 A. Yes. Yes, ma'am.

14 Q. Were you having some problems with drugs?

15 A. No, ma'am.

16 Q. No?

17 A. No, ma'am.

18 Q. Is it your testimony that you have never used drugs?

19 A. I was not having problems with drugs.

20 Q. I'll remind you that you're under oath. Have you
21 ever used drugs?

22 A. Oh, yes, ma'am.

23 Q. Did you use them in 2011?

24 A. Yes, ma'am.

25 Q. Okay. And were you a member of a gang back then?

1 A. No, ma'am.

2 Q. You weren't a member of the gang called Boss?

3 A. No, ma'am.

4 Q. Okay. Did you have a friend named Brian?

5 A. Brian?

6 Q. Did you have a friend named Brian?

7 A. No, ma'am.

8 Q. You've never had a friend named Brian?

9 A. No, ma'am.

10 Q. Okay. Do you recall giving an interview in this
11 case?

12 A. When you ask -- I don't understand what you're
13 saying. Will you ask again, please.

14 Q. Do you remember being interviewed by the police?

15 A. Yes, ma'am.

16 Q. Okay. And do you remember what you called Maurice
17 Odom during that interview?

18 A. No, ma'am.

19 Q. You don't recall what you said his name was?

20 A. Oh, he has a bunch of names.

21 Q. Do you remember that interview?

22 A. No, ma'am.

23 Q. Okay. Did you ever charge Mr. Odom \$10 for
24 something?

25 A. No, ma'am.

1 Q. Never?

2 A. No, ma'am.

3 Q. Did you used to live with your grandmother?

4 A. Yes, ma'am.

5 Q. In Barnwell?

6 A. Yes, ma'am.

7 Q. And was that on the same street as Mr. Odom?

8 A. Yes, ma'am.

9 Q. Okay. What's the last grade you completed in
10 school?

11 A. I made it all the way to the twelfth and then I
12 dropped out.

13 Q. You didn't -- did you attend school in the tenth
14 grade?

15 A. Yes, ma'am.

16 Q. And they classified you as a tenth grader?

17 A. Yes, ma'am.

18 Q. And you attended school in the eleventh grade?

19 A. Yes, ma'am.

20 Q. And they classified you as an eleventh grader?

21 A. Yes, ma'am.

22 Q. And you attended school in the twelfth grade and
23 they classified you as a senior?

24 A. Yes, ma'am.

25 Q. Okay. Does your grandmother attend a church?

- 1 A. Yes, ma'am.
- 2 Q. How far away is it from your home?
- 3 A. It's in the country.
- 4 Q. Okay. Is it a good distance?
- 5 A. No, ma'am.
- 6 Q. Is it within walking distance of your home?
- 7 A. Oh, no, ma'am.
- 8 Q. Okay. So how did your grandmother get to church?
- 9 A. She drives.
- 10 Q. Okay. Was she ever unable to drive?
- 11 A. No, ma'am.
- 12 Q. She never had you drive her to church?
- 13 A. No, ma'am.
- 14 Q. Okay. Mr. Mowry asked you about some convictions
- 15 you had and those convictions were actually dated
- 16 May 17th of 2012; is that correct?
- 17 A. Yes, ma'am.
- 18 Q. And you were arrested on June 6th of 2013 for
- 19 burglary third degree, weren't you?
- 20 A. Say that again.
- 21 Q. You were arrested on June 6th of 2013 and charged
- 22 with burglary third degree?
- 23 A. No, ma'am.
- 24 Q. No?
- 25 A. No, ma'am.

1 Q. Okay. Were you arrested on June 6th and charged
2 with a second count of burglary third degree?

3 A. I was -- I was locked up.

4 Q. Were you charged on June 6th of 2013 with burglary
5 third degree?

6 A. Yes, ma'am.

7 Q. Okay. With two counts of it?

8 A. Yes, ma'am.

9 Q. Okay. And were you also charged on that date with
10 grand larceny, times two, and two counts of conspiracy?

11 A. Yes, ma'am.

12 Q. Okay. And those charges are still pending, aren't
13 they?

14 A. Yes, ma'am.

15 Q. All right. Now you're hoping that those charges
16 will be dismissed, aren't you?

17 A. Yes, ma'am.

18 Q. Because you want to get on with your life, don't
19 you?

20 A. Yes, ma'am.

21 Q. You're only 23; is that right?

22 A. Yes, ma'am.

23 Q. And you were only 20 when this occurred, 21?

24 A. 21.

25 Q. You were 21?

1 A. Yes, ma'am.

2 Q. And you lost years of your life, didn't you?

3 A. Yes, ma'am.

4 Q. And you don't want to lose any more, do you?

5 A. No, ma'am.

6 **MS. WIYGUL:** I don't have any further questions.

7 Thank you.

8 **THE COURT:** Any redirect?

9 **MR. MOWRY:** Just a couple, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MOWRY:

12 Q. The charges that Ms. Wiygul was referring to, when
13 did they happen? Not when you got arrested, but when
14 did they happen?

15 A. 2011.

16 Q. Back at the same time as these; is that right?

17 A. Yes, sir.

18 Q. So it's two years after the fact that you got
19 arrested; is that right?

20 A. Yes, sir.

21 Q. And when you made the statement to law enforcement,
22 what did you tell them? When you talked to law
23 enforcement when you got arrested the first time,
24 what --

25 **MS. WIYGUL:** Objection, Your Honor. He testified

1 during cross that he does not recall his interview with
2 law enforcement.

3 **THE COURT:** I believe that was his testimony, that
4 he did not recall that.

5 BY MR. MOWRY:

6 Q. Let me ask you this then. Do you remember pleading
7 guilty to the charges that we had at the time in this
8 courtroom?

9 A. Yes, sir.

10 Q. What did you do during that guilty plea? Did you
11 make a statement to the Court at that time?

12 A. I can't remember, sir.

13 Q. Okay.

14 A. You have to excuse me. My throat gets sore.

15 Q. That's fine. Let me ask you this then. Your
16 testimony today from that witness stand, are you -- are
17 you testifying today because you want to see charges go
18 away or because what you're saying is the truth?

19 A. Because it's the truth.

20 **MS. WIYGUL:** Objection, bolstering.

21 **THE COURT:** Wait a minute. We've got an objection.

22 **MS. WIYGUL:** Bolstering.

23 **THE COURT:** Okay. Let me sidebar with the lawyers.

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

25 **THE COURT:** Objection overruled.

1 BY MR. MOWRY:

2 Q. I'm going to repeat the question, Mr. Nixon. Your
3 testimony today, is it based on wanting to get the
4 charges dismissed, that whatever you have pending
5 dismissed, or is it based on what you're testifying is
6 the truth?

7 A. It's the truth, sir.

8 **MR. MOWRY:** Thank you, sir. That's all I have.

9 **THE COURT:** Any recross?

10 **MS. WIYGUL:** I don't have any more questions.

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

13 (Witness excused.)

14 **THE COURT:** Any objections to this witness being
15 excused?

16 **MR. MOWRY:** None from the State, Your Honor.

17 **MS. WIYGUL:** No, Your Honor.

18 **THE COURT:** Okay. Sir, you're welcome to remain
19 with us or you're free to leave the courthouse. Either
20 way.

21 **MR. MOWRY:** Your Honor, I'm gonna walk out --

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

23 **MR. SCOTT:** I think we're ready.

24 **THE COURT:** Madam Clerk, would you swear this
25 witness in.

1 AGENT REID CRESWELL,
2 having been duly sworn, testified as follows:

3 **THE COURT:** Your witness.

4 **MR. SCOTT:** Thank you, Judge.

5 DIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q. Mr. Creswell, where are you employed right now?

8 A. I work for the State Law Enforcement Division.

9 Q. What are your current duties?

10 A. Currently I'm the detail leader for security for the
11 lieutenant governor of South Carolina.

12 Q. So you pretty much work at the Statehouse and
13 provide security for the lieutenant governor?

14 A. Or anywhere else that he may travel.

15 Q. How long have you been with SLED overall though?

16 A. Twenty-two and a half years.

17 Q. You've had a number of different positions with
18 SLED; is that correct?

19 A. That's correct.

20 Q. Tell us about that.

21 A. I've worked at the Capitol as a capitol police
22 officer, I had done security details for two governors,
23 I've worked alcohol enforcement, vice, narcotics,
24 bloodhound tracking, and now my current assignment.

25 Q. Bloodhound tracking, how long did you do that?

1 A. Well, I was permanently assigned to the unit for
2 three years, but since that time I still fill in as
3 needed.

4 Q. You still do that?

5 A. Yes, sir. So about four and a half years now.

6 Q. All right. Let me ask you about November 11, 2011.
7 That's 11-11-2011. Do you remember that date?

8 A. Yes, sir, I do.

9 Q. Why do you -- why does that stand out to you?

10 A. The numbers for one reason. It was 11-11-11 and it
11 was my son's birthday, so I kind of remember the date.

12 Q. Okay. So you were working the bloodhound unit at
13 that time though?

14 A. I was.

15 Q. How long had you been a K-9 handler at that time?

16 A. About two years. I was assigned there in November
17 of 2009, so on 11-11-11, I would have been there right
18 at two years.

19 Q. Okay. Do you recall getting a call to come up to
20 Clinton that night?

21 A. Yes, sir, I do.

22 Q. Do you remember approximately what time you got that
23 call?

24 A. It was approximately 3:45 in the morning.

25 Q. Okay. So did you leave from SLED headquarters in

1 Columbia?

2 A. Well, the way it works is when you're on call, and
3 that happened to be a weekend, so I was -- knew I was
4 on call for the weekend. What happens is we do not
5 stay actually at SLED. We would get a call and then
6 have to get dressed, get up to SLED and load up all our
7 equipment and the dogs and then depart to wherever.

8 Q. The dogs are kept at SLED over there on Broad River?

9 A. Yes, sir. The kennel is located there at SLED.

10 Q. Do you recall what dogs you packed up that night?

11 A. I recall taking Judy. I don't recall the other dog.
12 We always take two dogs in case during a call if a dog
13 is sick or is just not -- you know, having a bad day at
14 work or something happens health-wise with the dog we
15 always have a backup, but Judy was the dog that I used
16 that night.

17 Q. Tell us about Judy. Why was Judy going for a ride
18 that night?

19 A. Well, Judy was what we call a frontline dog. She
20 was a working dog. At that time she was what we would
21 consider our number one dog and basically when you get a
22 call and you report to the kennel to load up, you can
23 load whichever dogs you want to take. We usually have
24 between six to eight working dogs at a time and I just
25 -- if I was on first call and I got there and Judy was

1 in the kennel, I always took Judy.

2 Q. What kind of breed is Judy?

3 A. Well, we say we're the bloodhound tracking team, but
4 our dogs are anywhere from bloodhounds to a bloodhound
5 mix. Judy was a Bloodhound-Bluetick hound mix.

6 Q. Okay. Why a Bluetick hound? What are they known
7 for?

8 A. Well, an actual bloodhound in South Carolina does
9 not do very well because of the heat, so we -- in our
10 program, we cross our dogs with either Redbone's or
11 Bluetick's to give them more heat endurance, and a
12 Bluetick is usually pretty vocal on the trail, so. And
13 Judy was exceptional at tracking.

14 Q. Tell me about hounds in general. Are they known for
15 their acute sense of smell or anything like that?

16 A. They are. They have an acute sense of smell. They
17 track using raft, which is basically as we walk or we're
18 sitting here right now and have skin cells that are
19 falling off us, which is called raft, and that's what
20 the dog is smelling. And also ground scent. Like if I
21 run through the woods and I disturb the ground, then
22 that's gonna cause an odor as well, so those are two
23 things that the dog is basically smelling.

24 Q. Bluetick hounds like Judy would be particularly
25 suited to pick up scents like this?

1 A. Not all of them. I mean, with any breed of dog,
2 some dogs -- it's just like you try out for the baseball
3 team in high school. Some kids make it and some kids
4 don't. Our dogs, even though they might be a Bluetick
5 hound or a bloodhound, that doesn't necessarily mean
6 that they're gonna make the program or make our
7 frontline. So for her to get to the frontline and be
8 our number one dog, she's -- there's a dog that comes
9 along every now and then and she was a very good dog.

10 Q. Okay. Now talking about Judy following scents,
11 human scent, did y'all use her for like drug detection
12 or was she solely used to track people?

13 A. She's solely used to track human scent.

14 Q. At the time of November 11, 2011, do you know how
15 long Judy had been working for SLED tracking people?

16 A. She came around 2002, 2003 as a puppy that we got
17 from Wateree Correctional Institute. The inmates out
18 there at that time were raising tracking dogs and she
19 came in as a young puppy, probably eight weeks old is
20 when we usually start training them, and she developed
21 into probably -- an on-line dog around probably 2004.

22 Q. So SLED takes these dogs at a very young age and
23 trains them up and works them for years?

24 A. Yes, sir. We basically start training between six
25 to eight weeks and it's usually around nine months to a

1 year before they actually get through the training to be
2 an on-line working dog.

3 Q. So around 2011 when you were working Judy, she
4 probably had eight, nine years' experience; is that
5 right?

6 A. That's correct.

7 Q. What about you? How many years as a dog handler had
8 you been working at that time?

9 A. Two years.

10 Q. You were, what, a senior agent at that time?

11 A. That's correct.

12 Q. What type of training did you have to undergo to be
13 a K-9 handler?

14 A. Our training basically consists of in-house. We
15 have senior guys that are on the team. At that time,
16 we had guys that had been there eight or nine years,
17 seven years. The average is about five years, but we
18 had some guys that had that much experience. The
19 training is in-house. You go out and you learn from
20 the other guys. You basically -- when you're at work,
21 you live, sleep, eat with these dogs and you learn to
22 know them just like -- when you train them just like
23 you learn to know your kids. You know certain dogs'
24 personalities, the way certain dogs behave on the trail,
25 you get to know each dog, and that's just basically

1 every day when you get to work if you don't have a call,
2 you're training dogs. That's your job every day.

3 Q. Year-around training is kind of what you describe;
4 is that accurate?

5 A. Year-around.

6 Q. Do you know approximately how many tracking
7 excursions you went on with Judy?

8 A. I would estimate around fifty.

9 **MR. SCOTT:** Judge, at this time I'm going to ask
10 to qualify Special Agent Creswell as an expert in K-9
11 handling.

12 **THE COURT:** Okay. Ms. Wiygul, any examination
13 questions of this witness related to qualifications?

14 **MS. WIYGUL:** No, Your Honor. I would object to
15 him being qualified as an expert. It seems completely
16 unnecessary. He can say where he followed the dog
17 to. His opinion would not be needed for that. He's
18 testified that his only training was in-house and
19 on-the-job training. He's also testified as to the
20 other numerous positions he's held within SLED, all
21 of which require training, none of which make him an
22 expert. I'm required to take a minimum amount of hours
23 of continuing legal education, but by no means would I
24 consider myself an expert just because I take classes
25 on it.

1 **THE COURT:** All right. Solicitor?

2 **MR. SCOTT:** Judge, I'm gonna ask him to give an
3 opinion as to the reliability of Judy. I'm gonna cite
4 a couple of cases here.

5 **THE COURT:** Okay. Well, we probably need to do
6 this outside the presence of the jury. So, Madam
7 Forelady and ladies and gentlemen of the jury, let me
8 take this particular issue up with the lawyers.
9 Hopefully we can get you back shortly and we can
10 proceed. So if you'll just retire briefly to your jury
11 room.

12 (Whereupon, the jury retires to the jury room.)

13 **THE COURT:** Okay. As I understand it, the State is
14 offering this witness as an expert in K-9 handling and
15 then the Solicitor made the comment you are going to
16 want to elicit some opinion testimony as to this
17 witness's reliability or opinion as to the reliability
18 of the dog named Judy. And before he made that comment,
19 Ms. Wiygul, you indicated that he would be able to
20 testify as to the results of his tracking that night
21 without being deemed an expert. So --

22 **MS. WIYGUL:** And, Your Honor, actually the
23 Solicitor has informed me that I am incorrect; that he
24 would not be permitted to so testify without being
25 qualified. So with the Court's permission, I'd be happy

1 to ask a couple of questions to, I guess, more fully
2 establish why I don't feel it appropriate.

3 **THE COURT:** And then determine what your position
4 is at that time. Okay. Let's go ahead and do it
5 in-camera, so I'll allow you to examine this witness
6 concerning the issue of qualifications.

7 IN-CAMERA EXAMINATION

8 BY MS. WIYGUL:

9 Q. Agent Creswell, how many hours of training do you
10 have each year in the handling of dogs, tracking dogs
11 specifically?

12 A. As I said, each workday is you come in in the
13 morning and if you're not out on a call, you train dogs.
14 So it's almost a daily event, Monday through Friday,
15 that you're training. On an average, I would say three
16 to four days a week I train dogs.

17 Q. Agent, I'm sorry, maybe I can rephrase this so it's
18 easier to understand. How many classes, certified,
19 recognized classes by certified teachers? How many
20 hours of training do you receive yearly in the handling
21 of tracking dogs? How many did you receive thus far
22 this year?

23 A. Ms. Wiygul, bloodhound tracking and man-tracking is
24 not set up as a qualification in the state of South
25 Carolina like an arson dog, a drug dog or like a bomb

1 dog.

2 Q. Have you had training with any dogs that's
3 recognized training in South Carolina?

4 A. No, ma'am.

5 Q. Have you published any articles as to dog tracking
6 or training?

7 A. No, ma'am.

8 Q. On average -- what periodicals do you read, what
9 articles regarding this subject do you read on a regular
10 basis or have a subscription to?

11 A. I don't.

12 Q. Thank you, Officer. How much of your current job
13 duties -- what percentage of your current job duties
14 involve tracking dogs?

15 A. Probably about 10 percent.

16 **MS. WIYGUL:** Thank you, Agent.

17 IN-CAMERA EXAMINATION

18 BY MR. SCOTT:

19 Q. That's current. So I would ask in 2011 how much
20 time was devoted to bloodhound tracking?

21 A. 90 percent.

22 **MR. SCOTT:** Judge, the cases I was gonna cite to
23 Your Honor --

24 **THE COURT:** Okay. Well, let me just -- okay. All
25 right. Again, I assume the State is still offering this

1 witness as an expert in K-9 handling and your position,
2 Ms. Wiygul, again after you've conducted examination?

3 **MS. WIYGUL:** Your Honor, he has no training in the
4 handling of any dogs that are recognized by the State
5 of South Carolina. By his own testimony he has not
6 published, he does not stay current with publications on
7 this issue. There's nothing there. Just because it's
8 part of his duty at work does not make him an expert in
9 it. And I would cite a recent case and, unfortunately,
10 Your Honor, I cannot think of the name.

11 **THE COURT:** Right. There was a case that came out
12 probably two years ago time frame roughly about -- I
13 think about this issue, and I don't know if this is one
14 of the cases, Solicitor, that you are going to offer to
15 the Court, but I do know one came out a couple of years
16 ago.

17 **MS. WIYGUL:** There was a case actually this year,
18 Your Honor, that came out regarding -- not about dogs,
19 Your Honor, regarding the recognition of law enforcement
20 as experts in code interpretation on the phone. That is
21 something every officer involved in narcotics work does
22 on a daily basis, they listen to those phone calls, they
23 interpret them, but they are not experts in them.

24 **THE COURT:** Okay. All right. Well, let me see what
25 cases the Solicitor has and I'm gonna try to find the

1 case that I'm thinking about and then we'll try to find
2 the one you're referring to as well. Solicitor?

3 **MR. SCOTT:** Judge, I guess the argument, first of
4 all, is under Rule 702, specialized knowledge that would
5 assist the trier of fact in this case. We would submit
6 that he is qualified. There was a similar argument in
7 the first case I'm gonna cite. That is State vs. White.
8 That is a 372 SC 364 citation. A January 16, 2007,
9 case. The argument was essentially that it did not meet
10 a scientific evidence standard. The Court concluded
11 that dog tracking evidence is admissible provided the
12 dog handler's knowledge, skill, experience and training
13 qualifies the handler in the area of dog handling and
14 dog tracking. Now Mr. Creswell stated that at that
15 time 90 percent of his efforts at SLED were devoted to
16 dog tracking. That certainly goes to his experience.
17 He had two years at the time tracking dogs with this
18 specific dog. He had -- I think he surmised fifty or so
19 expeditions with this particular dog. He described the
20 training on a daily basis. I think he received training
21 with SLED, but thereafter it's -- I mean, these dogs are
22 like your children he said as part of the dog handling
23 world. I mean, they form these bonds. They learn. The
24 dogs learn the handlers, the handlers learn their dogs
25 sort of like the back of their hands. We think all of

1 these qualify him as an expert solely to the opinion
2 that Judy would be reliable. That would be the only
3 opinion evidence would we ask.

4 Furthermore, there is an older case that kind of
5 the White case builds off of. It's an '89 case,
6 State v. Childs. That's cited at 299 SC 471. It
7 basically laid out the -- I guess the foundations to lay
8 in determining whether or not this K-9 or dog handler
9 testimony comes in.

10 **THE COURT:** All right. Well, let me -- let's just
11 everybody be at ease for just a little bit and let me --
12 let me study on this.

13 **MR. SCOTT:** We have one more cite, Judge, if you
14 don't mind. It's an '09 State vs. White. It's a
15 different citation from my '07. It's 382 SC 265.

16 **THE COURT:** Wait a minute. Give me that cite
17 again.

18 **MR. SCOTT:** Yes, sir. 382 SC 265. That's
19 right out of the 702 section of the rule book. It
20 specifically has a section on dog handling.

21 **THE COURT:** All right. The first cite was Court of
22 Appeals and then the '08 was the Supreme Court. Same
23 case.

24 **MR. SCOTT:** On the White case, Your Honor?

25 **THE COURT:** Yes. All right. Everybody be at ease

1 for just a little bit.

2 (Recess taken.)

3 **THE COURT:** Okay. We're back on the record and I'm
4 going to -- based upon the State versus White case, it
5 will be the Supreme Court opinion, the '08 opinion,
6 I'm gonna conduct additional examination concerning
7 qualifications of this witness and then we'll allow each
8 side to then have any follow-up questions concerning
9 qualification so I can be in a better position to
10 determine whether or not to deem this witness as an
11 expert in this particular area.

12 IN-CAMERA EXAMINATION

13 BY THE COURT:

14 Q. Agent Creswell, how many times have you been
15 declared an expert in the field of K-9 handling?

16 A. I have not, sir.

17 Q. Okay. All right. Have you ever been denied in a
18 trial -- been denied being declared an expert?

19 A. No, sir.

20 Q. Okay. So this is the first time you've been offered
21 to testify as an expert?

22 A. That's correct.

23 Q. Okay. All right. Now I believe it was your
24 testimony, Agent Creswell, that up to the 2011 case that
25 we're here on today, you and Judy had been together in

1 tracking about fifty separate times; is that correct?

2 A. Yes, sir.

3 Q. All right. Out of those fifty times, was that in a
4 training situation or was that actually in a real live
5 case?

6 A. That would be probably around -- if I had to put a
7 percentage, probably around 25 percent training and
8 about 75 percent on calls.

9 Q. All right. And out of those cases where there were
10 real live cases, how many times you would say you were
11 by yourself with Judy conducting the tracking and how
12 many times were you with another dog handler?

13 A. Your Honor, based on the way we do it and the way
14 it's always been done at SLED, there's always two people
15 in the woods for safety reasons, but if you run a trail
16 you switch off as actually who's handling the dog as you
17 go.

18 Q. Okay. All right. So in every situation there's
19 always two of you, correct?

20 A. Yes, sir.

21 Q. All right. And, of course, I have to make a
22 determination as to the reliability of Judy herself
23 and I believe you've already testified that she was a
24 Bloodhound-Bluetick hound mix, correct?

25 A. That's correct, sir.

1 Q. Okay. And do both of those breeds have a high sense
2 of smell for human scent?

3 A. Yes, sir, they do.

4 Q. Okay. And the times that you have worked with
5 Judy, has she been accurate or reliable in achieving the
6 results that were wanting to be achieved? And that may
7 be a poorly stated question.

8 A. Yes, sir. If we go back -- just to give a little
9 bit of an expanded answer to that question, if we go
10 back 30 years ago when the cell phone didn't exist, you
11 know, you basically caught more people in the woods
12 because they didn't have a way to get a ride to get out,
13 so we have cases where we ran a track for four to six
14 hours on somebody and then we find a bunch of foot
15 tracks by the road and we can't track any further from
16 there. So even though that's not a catch, you know, to
17 me that's a successful track and there's -- you know,
18 and then there's other cases where you're called to a
19 convenience store and you try to strike a trail and you
20 run, you know, around the back of the building and then
21 the dog stops because they had a car parked and you see
22 the car tracks, so success isn't always, you know,
23 whether you catch somebody or not.

24 Q. Right. Okay. Well, let me ask it this way. How
25 many cases are you aware of that Judy's involvement has

1 been important or instrumental in obtaining a conviction
2 of someone that you're aware of? And you may not can
3 give me exact numbers, I know you can't, but just give
4 your best shot at that.

5 A. I think in the past they had two cases up here
6 recently, but I'm not -- I'm not sure of the outcome.
7 Maybe the Solicitor's office can answer.

8 **MR. MOWRY:** Your Honor, can I be permitted? I was
9 involved in both of them.

10 **THE COURT:** Okay.

11 **MR. MOWRY:** Judy was the track dog in two cases.
12 She tracked through the water at the Little River
13 discovering clothing from -- that had been discarded
14 in a robbery. She was also the track dog in another
15 robbery of the Li'l Cricket up on North Harper Street
16 and she tracked the two individuals that had done the
17 robbery to a house where they left by car and were later
18 caught. Mr. Bentley is well familiar with that case
19 because he was one of the investigators there. The dog
20 also found a sweatshirt that one of the suspects had
21 discarded in a bush and they were on video and so the
22 sweatshirt was observable and the dog tracked all
23 through that area of town, found the sweatshirt in the
24 bush and then found the house where the defendants had
25 later caught a ride. Law enforcement got information

1 about who they were from people at that scene and they
2 were later apprehended.

3 **THE COURT:** All right.

4 **MS. WIYGUL:** Your Honor, just to follow-up, just
5 for Mr. Mowry to finish, were they both convicted?

6 **MR. MOWRY:** One was convicted, the other was not,
7 but there was no doubt that it was the clothing that had
8 been worn in the armed robbery.

9 BY THE COURT:

10 Q. Agent Creswell, outside of Laurens, are you aware
11 of any other cases where Judy has been involved and that
12 has resulted in a conviction?

13 A. No, sir, I'm not.

14 Q. And as I understand your testimony, Agent Creswell,
15 that there are some situations where outside of the
16 handler slash dog control you're just not gonna be able
17 to pick up a scent or the scent just stops at some point
18 in time, understanding that, but you gave the testimony
19 earlier on direct that Judy is SLED's number one dog,
20 correct?

21 A. At that time. She is retired now.

22 Q. Okay. All right. What basis do you have in order
23 to state that she was at the time SLED's number one dog?

24 A. Her success in tracking people. She was very
25 user-friendly. You just hang onto the lead. The first

1 case -- I'll describe the first case I ever worked with
2 her. We did an arrest warrant-type situation where
3 about four people ran from a drug deal, the dogs were
4 called in and Judy was put down. She eventually tracked
5 for a couple of hours and at the end of that track I got
6 involved, and I don't know if they had his buddies do
7 this or not, but what happened is Judy was tracking and
8 as the dog becomes -- you can kind of read the dog.
9 When they get close, they get more vocal, bark more,
10 they get more excited the closer they get to a hotter
11 scent. In this first case that I ran with her, all of a
12 sudden she just stopped and she sat down and all of us
13 were kind of looking like okay, Judy, what's going on
14 here, come on, what's going on, and she had actually sat
15 on the suspect's back. He had covered himself up with
16 pine straw.

17 Q. Okay. All right. Well, how do you define -- I
18 know you -- you gave one example there. How do you
19 define success? When you state the opinion that Judy
20 is a reliable dog, number one at the time for SLED,
21 and you say it's because of her success and her being
22 user-friendly, how do you define or how do you determine
23 Judy's success?

24 A. Well, there's -- there's really two aspects to
25 tracking and SLED puts a lot of emphasis on both the

1 dog and what we call man-tracking. So not only are we
2 just blindly following the dog, we're also man-tracking
3 and what we're looking for -- I grew up in McCormick
4 County in the woods, so I'm used to being out in the
5 woods a lot, and we're looking for push, we're looking
6 for signs, we're looking for footwear impressions, and
7 when you start seeing -- you know, when somebody runs
8 through the woods, they usually are disturbing the
9 environment. So not only are we going by the success
10 of the dog if we catch somebody, but if we're following
11 someone and the dog is barking and baying and we're
12 seeing signs, then we know that that dog is accurate
13 because we're verifying -- not only just hanging onto
14 the lead, we're verifying the signs. So, you know,
15 that's one way that they would -- that's one way we
16 verify our dogs.

17 Q. And Judy was trained to follow trails to determine
18 human scent?

19 A. That's correct.

20 Q. And in this particular situation, was she placed on
21 the trail within a reasonable time after the person was
22 alleged to have been on that trail?

23 A. Well, I believe it was in a matter of hours, but
24 reasonable for a bloodhound, you know, I've tracked
25 bloodhounds on a twenty-four hour old trail with covered

1 up evidence, so a reasonable time can be not just, you
2 know, thirty minutes. Or, you know, we train our dogs
3 on what we call a hot trail. We'll take someone and run
4 them off in the woods and then wait fifteen minutes and
5 then we train our dogs on older trails where we might
6 wait four hours or six hours before we can try to track
7 them, so reasonable would be --

8 Q. All right. Okay. In your opinion, it was within a
9 reasonable amount of time because it was several hours;
10 is that correct?

11 A. Yes, sir. Most places in the state by the time we
12 get the call and can get there it's usually about an
13 hour and a half to two hours.

14 Q. Okay.

15 **MS. WIYGUL:** And, Your Honor, I'd ask the witness
16 to answer that in a little more detail just to narrow
17 down what time did he arrive.

18 **THE COURT:** And I'm gonna allow both sides to
19 follow up on this examination.

20 BY THE COURT:

21 Q. Are you aware of any contamination to the scene
22 from the time the suspect was allegedly on the trail to
23 the time that you and Judy were on the trail? Are you
24 aware of any sort of contamination?

25 A. No, sir. I -- basically what you ask for is the

1 point last seen, kind of where they went into the woods,
2 and I always ask the question did anyone else go into
3 the woods.

4 **THE COURT:** All right. Okay. Now I'm gonna allow
5 examination and follow-up to the Court's examination.
6 I'm gonna first ask the State do you have any further
7 examination concerning the sole issue of qualifying
8 Agent Creswell as an expert in dog handling?

9 **MR. SCOTT:** No, sir. I think Your Honor asked all
10 the questions outlined in the State v. White case. I
11 guess that I would just ask --

12 IN-CAMERA EXAMINATION

13 BY MR. SCOTT:

14 Q. Agent Creswell, is there ever a time you go out
15 there and an officer tells you, you know, the suspect
16 fled into the woods over there, you take the dog out
17 there and it can't find the trail or it can't get a
18 scent? Has that ever occurred?

19 A. It does occur sometimes.

20 Q. And now what's the difference in the behavior of
21 the dog in those situations as compared to a situation
22 where they're on a hot lead? What's their behavior?
23 Is there any difference?

24 A. It would -- I guess to compare it to us it would be
25 like just walking around looking for something, you

1 know, and when they strike a trail -- what we call
2 strike a trail, training and learning our dogs, you know
3 when they strike a trail, you know that they've struck a
4 trail. Judy was very -- you'll see a head turn. Like
5 we go -- the point last seen, we don't go in there. We
6 cut in an arc. So usually when a dog strikes a trail,
7 you'll see a head turn and Judy was very vocal. She
8 would bay and she bayed when she struck a trail.

9 Q. Like a quail dog or something if they can't find a
10 scent they sort of walk around aimlessly and if they've
11 got one you can tell they're on point? Is that what
12 you're kind of describing? Like she's a woman on a
13 mission when she struck a lead?

14 A. That is correct. If I were to cut her and she
15 didn't strike anything, you know, you could re-cut and
16 keep trying to establish something, but once Judy
17 strikes a trail, you'll know it.

18 Q. Okay. There's not a doubt in your mind when she's
19 on -- you're saying striking a lead? Is that what you
20 said?

21 A. That's correct.

22 Q. I guess --

23 A. Some -- just to further, some dogs are subtle. They
24 might -- all they do is a head turn and then start going
25 in that direction, but Judy would actually -- she was a

1 vocal dog. If she struck a trail, she was baying.

2 Q. Okay. And if you go back to November 11, 2011, was
3 there any doubt in your mind that she had struck a
4 definite trail on that occasion?

5 A. There was no doubt.

6 **MR. SCOTT:** Okay. Judge, I think that's all from
7 the State.

8 **THE COURT:** All right. Ms. Wiygul, any examination
9 on qualification?

10 IN-CAMERA EXAMINATION

11 BY MS. WIYGUL:

12 Q. Agent, what time did you actually deploy Judy? What
13 time did you deploy her on the 11th of November, 2011?

14 A. It was approximately sometime probably around 5:00.

15 Q. 5:00 in the morning?

16 A. Yes, ma'am.

17 Q. And did she track over roads?

18 A. Yes, ma'am.

19 Q. Did she track over the Interstate?

20 A. She tracked over the highway across to the DOT shed,
21 but we did not -- we were not able to track any further
22 at the Interstate. You have some factors going on there
23 at the Interstate, but we were not able --

24 Q. So there was some contamination at the Interstate?

25 A. Well, you have -- you're dealing with raft, which

1 is scent, and you have cars going up and down the
2 Interstate at 80, 90 miles an hour and you give a
3 certain time period, then you're gonna start moving
4 scent.

5 Q. And that would contaminate the scent?

6 A. Not contaminate it. It would just make it to where
7 that dog -- that dog has already locked in on the scent.
8 That dog's not going to continue to track that scent
9 because it's no longer -- it's being disturbed by cars
10 going 80, 90 miles an hour.

11 Q. So that scent had been disturbed before you reached
12 I-26?

13 A. I was able to track to the edge of I-26. That's
14 where -- as far as I was able to take my tracking.

15 Q. Okay. Thank you. And just to clarify, this was
16 the opposite side of 26 from where the vehicle was
17 alleged to be marked? It was the side of 26 --

18 A. That the store was one.

19 Q. -- that the store was on?

20 A. That's correct.

21 **MS. WIYGUL:** Thank you.

22 **THE COURT:** So do you consider the Interstate where
23 cars are going up and down the Interstate to kind of do
24 away with the scent, do you consider that contamination
25 that could possibly lead a dog in the wrong or false

1 direction or do you just consider it to be a situation
2 where the scent is no longer there for the dog to pick
3 up at that particular point?

4 **THE WITNESS:** Well, if we were in a situation
5 where we believed that they had crossed the Interstate
6 -- when I arrived on-scene, I was made aware that there
7 was a vehicle that was being watched and once I was
8 told that the vehicle was now gone, then we tried to cut
9 the area to pick up the trail because we're going to
10 eliminate that somebody kept going. So you have a
11 vehicle that's gone, but what you want to do is try to
12 eliminate anything from there. So that's why in a 360
13 degree we were cutting that area again to see if the
14 dog picked up any scent again.

15 Now contamination is -- this is a hypothetical. If
16 somebody had crossed the Interstate and kept going, the
17 dog would have trouble at the Interstate just because of
18 all the wind and moving scent, but if I keep working it,
19 it's possible that dog could strike that trail and then
20 continue, which that does happen, but what you always do
21 at the end of the track is cut to see if you get any
22 more human scent.

23 **MS. WIYGUL:** But that did not happen in this case,
24 correct?

25 **THE WITNESS:** Cutting?

1 **MS. WIYGUL:** You did not locate any other scent once
2 you reached that Interstate, correct?

3 **THE WITNESS:** No, ma'am.

4 **THE COURT:** All right. Here's what I'd like to do
5 is I would like to take the balance of his direct
6 examination in-camera before I make a determination
7 whether or not to deem him an expert or not. I know
8 that's gonna kind of prolong matters some, but I just --
9 I feel more comfortable in hearing his actual testimony
10 in this case before I make the decision. When I say
11 direct, I mean his whole -- I'll certainly allow cross,
12 too, in camera.

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

14 **THE COURT:** So how much do you think, Solicitor
15 Scott, do you need for direct? Because I'm thinking
16 possibly about excusing the jury for the remainder of
17 the day, but if you don't think it's gonna be that long,
18 then we'll keep them out.

19 **MR. SCOTT:** Really just short of ten minutes
20 probably.

21 **THE COURT:** Okay. All right. Let's -- let's kind
22 of push forward.

23 **MR. MOWRY:** Your Honor, can I be permitted to step
24 out for just a second?

25 **THE COURT:** Will you allow your partner here to

1 continue?

2 **MR. MOWRY:** Oh, yes, sir.

3 **THE COURT:** Okay. Sure. Okay. We're in-camera
4 outside the presence of the jury. You may proceed,
5 Solicitor.

6 CONTINUED DIRECT EXAMINATION (IN-CAMERA)

7 BY MR. SCOTT:

8 Q. We got to where you received the call. Do you
9 recall what time you got that specifically? Do you have
10 the exact time?

11 A. Typically on our call sheet we write down when we're
12 called out.

13 Q. Do you have your call sheet with you?

14 **THE WITNESS:** Your Honor, if I may?

15 **THE COURT:** Sure. Yeah.

16 A. I have 3:48 AM.

17 Q. Okay. That's when you got there or that's when you
18 received the call?

19 A. When I received the call.

20 Q. Does the call sheet have what time you got there?

21 A. No.

22 Q. You said about five then? That would make sense if
23 you had to come from Columbia.

24 A. That's correct. It was approximately five.

25 Q. And does your call sheet have the -- let's see, the

1 time of the incident?

2 A. No, sir.

3 Q. Okay. All right. So you respond to the BP there on
4 Highway 72 and you're told -- I think you just testified
5 to the general vicinity of where the suspects were seen
6 entering the wood line; is that right?

7 A. The suspect -- the officer on the scene told me he
8 saw one suspect enter that and then after they watched
9 the video they realized that there was another suspect,
10 but they did not see that suspect flee.

11 Q. Can you see the BP here on State's Number 1?

12 A. Right there.

13 Q. Okay. And it's kind of like -- we had a problem
14 earlier it's so blown -- it's taken from such a
15 distance, but can you show me with the laser pointer
16 approximately where the -- where you sent Judy into the
17 woods?

18 A. It would be on that side of the store on the wood
19 line where that dot is.

20 Q. Okay. Maybe over here?

21 A. No, sir. More where the -- it would be -- if you're
22 facing the store, it would have been the back right.

23 Q. Right here?

24 A. Approximately in that area right there.

25 Q. Is that where you put the dog in or is that where

1 the suspect was seen entering?

2 A. That's where the suspect was seen entering.

3 Q. All right. Well, then in relation to my finger
4 there, where did you put Judy in the woods?

5 A. It would have been -- it would have been on the
6 upside over here.

7 Q. Somewhere over in this vicinity?

8 A. Yes, sir.

9 Q. All right. Explain to me when you're talking about
10 cutting in, why wouldn't you have put the dog directly
11 in where they saw the suspect enter the wood line.

12 A. Well, what you always want is you want an area where
13 you know that that's only where that one person has
14 travelled, so typically, you know, officers walk up to
15 where they were last seen, you get other human scent,
16 you're in a parking lot, so you want to get into an area
17 into the woods where, you know, you have basically a
18 clean scene.

19 Q. Okay. A neutral site where there shouldn't be any
20 scent?

21 A. Right.

22 Q. All right. Here's where they were seen entering
23 and you put Judy in here. When you're talking about
24 cutting, what is that? You said arcing around?

25 A. Yes, sir. It wouldn't have been that wide of an

1 arc. It was probably 50 feet in the woods you start
2 doing an arc.

3 Q. Okay. What happened once you put Judy in there and
4 y'all started cutting in?

5 A. About in the area where -- to the point that the
6 suspect was last seen, Judy made a head turn to the
7 left, which indicates to me that she's on something and
8 then she bayed.

9 Q. Okay. This is what -- I guess what you described
10 was a very noticeable action on the dog's behalf?

11 A. Yes, sir.

12 Q. Just a quick turn of the head or what's the head
13 turn? Describe that.

14 A. It would have -- in our terms, if I'm walking and
15 something catches my attention and I turn and looked at
16 it, that would be a head turn. In a dog, they're --
17 they have their head down looking for -- or trying to
18 find the scent and when they find it, there's a head
19 turn.

20 Q. Okay. And then so you got the dog on a lead and
21 it's pulling you, you're going where the dog goes?

22 A. The dog starts to pull, the dog's behavior changes,
23 it gets more excited.

24 Q. All right. Show with the laser pointer the general
25 area where the dog is tracking.

1 A. It went in a little further in the woods here and
2 then made almost like a 90 degree over into this head
3 of woods here and that would have been -- that head of
4 woods there was planted pines.

5 Q. All right. You testified earlier that while you're
6 following the dog's lead, you're also confirming and
7 supporting the dog's actions with your observations. Is
8 that what you described and at SLED that's kind of how
9 they train you; is that right?

10 A. That's correct.

11 Q. So while you're following the dog, you're also
12 confirming through other physical signs such as push and
13 -- what is a push on the ground? What is that?

14 A. Well, you'll see stuff like vegetation in the
15 natural environment, the leaves are oriented a certain
16 way, and once someone drags through that vegetation
17 you'll see the leaves turned upright, you'll see vines
18 pulled, you'll see pine straw disturbed and if you have
19 a good, soft surface or sandy or a good dirt surface,
20 you'll often see footwear impressions.

21 Q. So did the dog's trail coincide to where you were
22 seeing these footwear and push patterns?

23 A. We didn't have any -- I don't recall any footwear
24 on this side, but I did see some push on this side and
25 then we started seeing footwear over here.

1 Q. Okay. What is the -- not topography, but, I guess,
2 what kind of -- what is the soil like, I guess, back
3 over there?

4 A. That was kind of like a sandy clay soil. It was
5 planted pines in there and based on the footwear
6 impressions I was seeing and the behavior of the dog,
7 it appeared to me that the person was kind of lost or
8 just kind of wandering.

9 Q. Okay. What do you mean? Describe that again for
10 us.

11 A. What happens is when people are lost, they kind of
12 start circling and backtracking and the dog -- you know,
13 it's easy for a dog to track in a straight line because
14 you're just walking in a straight line, but when a dog
15 starts making all these turns you can tell that they're
16 lost or just wandering.

17 Q. Okay. And what was the dog doing? I guess they're
18 trained with treats early on, is that right, as a puppy?

19 A. No, sir. We don't -- we don't use any type of
20 food reward. We basically train on affection. When
21 we train, they chase us. When they chase us, we roll
22 around on the ground with them and love them up and
23 that's what they learn to -- or the affection they will
24 get at the end of the trail.

25 Q. Okay. So they're trying to please you for the most

1 part?

2 A. (Nods head.)

3 Q. So when they're on one of these scents and they're
4 getting excited, what is the dog doing? Is it panting,
5 is it baying? What is it doing?

6 A. Well, Judy had a trait to where if you went to stop
7 her, like if you wanted to check the track or something,
8 if you pull back on her, she would actually turn around
9 and look at you and bay like I've got it, let's go.

10 Q. Okay. I'm onto something?

11 A. Yeah, she was very vocal.

12 Q. All right. Now you're over here in this sort of
13 sandy bottom area and you say it looked like they kind
14 of got lost somewhere in here?

15 A. It was more in this table of woods here. What
16 happened is they were wandering so we began -- if you
17 have somebody that's wandering, you start cutting a 360
18 to try to cut -- to get out of that area where they're
19 wandering and start getting another direction of travel
20 and that's when we found the direction of travel back
21 toward the back gate of the DOT shed.

22 Q. Is there a fence right there?

23 A. There's a fence around the property.

24 Q. All right. Where did the trail lead from there?

25 A. Well, in this area right before this back gate is

1 where we found another set of footwear impressions.

2 Where the two footwear impressions basically came
3 together.

4 Q. Okay. You see two distinct sets of footwear
5 patterns that you saw come together?

6 A. Yes.

7 Q. Where did the dog track from there?

8 A. We had the two footwear impressions going down this
9 fence line back behind the DOT and then they began --
10 started heading -- I get confused on the Interstate
11 because it runs north and south, but it's an east/west
12 Interstate, but they were travelling eastbound on this
13 side of Interstate 26 basically parallel to the
14 Interstate.

15 Q. Okay. The track was -- it sort of dropped down
16 here; is that what you're testifying to?

17 A. That's correct.

18 Q. Parallel to I-26 here?

19 A. (Nods head.)

20 Q. Okay. Eventually where did the trail terminate?

21 A. Eventually we got in this area right here, which
22 is what I would call a creek bottom, and we had some --
23 basically what happens is a low spot, like a creek
24 bottom, is if someone stays in an area for a while the
25 scent begins to pool at the lowest point, so we had a

1 little trouble getting Judy out of the creek bottom.
2 She kept wandering. You know, I didn't know if we had
3 somebody hiding because she kept wandering in that
4 bottom like she was looking for someone, but once we
5 realized that maybe the scent had pooled in the creek
6 bottom, then we began to cut her at a 360 and that's
7 when she -- she struck a trail again up here and we were
8 able to see push going up. There's a steep bank up to
9 I-26.

10 Q. Okay. So you had other confirming signals that the
11 dog was on a track?

12 A. Yes, sir.

13 Q. Okay. And where did it ultimately terminate
14 generally?

15 A. On -- about right here because I asked at this
16 point, you know, all right, where is the -- you know,
17 the vehicle.

18 Q. All right. But it terminated on the westbound --
19 you didn't cross I-26; is that correct?

20 A. Well, not terminate. That's where kind of you get
21 into an issue with all the scent and the cars going 80,
22 90 miles an hour.

23 Q. But that's where you can say she tracked though, to
24 the westbound lane of I-26?

25 A. I know I had a track, sir, right there.

1 Q. Okay. So then you're talking about the cars going
2 by at 85 miles dissipating the scent, you can say that
3 you tracked there, but other than that you didn't track
4 across --

5 A. Well, we did. After we crossed, we basically
6 started doing a 360 in this area trying to get it out of
7 -- to get it away from this area here.

8 Q. Oh, so you did cross the --

9 A. Well, we didn't -- we didn't cross into this head
10 of woods. We were just crossing, you know, the banks
11 in here trying to cut it out. Not necessarily a big,
12 wide 360, but, you know, cutting on the side of the
13 Interstate.

14 Q. All right. I'm confused. Did the dog establish
15 scent on this side?

16 A. No. We didn't go up into here. We were just
17 basically on the shoulder of the Interstate cutting and
18 trying to get -- to track it further.

19 Q. All right. Based on your experience working Judy
20 and based upon all the bloodhound excursions you've been
21 on, would you consider that a situation where the dog
22 was on a track, was on a -- what did you call it?

23 A. A trail. Struck a trail.

24 Q. Right. Did the dog appear to be aimlessly wandering
25 around or in your opinion was it on a definite trail?

1 A. It was a definite trail.

2 Q. In your opinion, in all of your experience and
3 training and work with Judy, is Judy a reliable
4 bloodhound dog?

5 A. Yes.

6 **MR. SCOTT:** That's pretty much the extent.

7 **THE COURT:** Okay. Cross-examination, Ms. Wiygul?

8 CROSS-EXAMINATION

9 BY MS. WIYGUL:

10 Q. Agent Creswell, just to clarify, earlier I thought
11 you said you had arrived at the scene at 5:30 AM. If --

12 A. No, ma'am. I think I said approximately 5:00.

13 Q. That's what I was wanting to clarify. You've got
14 your incident report up there with you, don't you?

15 A. Yes, ma'am.

16 Q. When it says from 3:48 AM, would that be what time
17 you left Columbia?

18 A. That would be what time my phone rang at my home.
19 That's what time I was called out.

20 Q. Okay. So after that -- do you live in the Columbia
21 area?

22 A. I live in the Columbia area.

23 Q. After that you get up, presumably you bathe, dress,
24 get out the door --

25 A. Just dress.

1 Q. Dress, get out the door. I was thinking of
2 scent contamination, Agent, but you get to where you're
3 going in Columbia, you then call ahead to pick up Judy?

4 A. No, ma'am. We go to the kennels where they are
5 housed, we take our equipment from our personal
6 vehicles, load it in what we call a dog wagon and then
7 we pick our two dogs that we want to take on that call.
8 We get them from the kennel and load them into the dog
9 wagon.

10 Q. Okay. Approximately how long does that procedure
11 take from the time you get the call until the time you
12 get Judy into the vehicle?

13 A. 25 to 30 minutes from the time we're awaken until
14 we're leaving for a call.

15 Q. Okay. So that's 25 to 30 minutes and then
16 approximately how long did it take you to drive up to
17 this area?

18 A. I guess approximately 40 minutes.

19 Q. And you said you arrived around 5 AM; is that
20 correct?

21 A. Yes, ma'am. Approximately.

22 Q. And then about how long did you spend talking with
23 officers before you actually got Judy out on the trail?

24 A. Approximately five minutes.

25 Q. Okay. And those officers told you your end point,

1 didn't they? They told you there was a car right there
2 before you even started tracking, didn't they?

3 A. No, ma'am. They told me that they were watching a
4 car.

5 Q. And they told you where it was, didn't they?

6 A. No.

7 Q. They did not tell you where it was?

8 A. No.

9 Q. But they told you they had a car under surveillance?

10 A. Yes, ma'am.

11 Q. Okay. So they did not tell you the car was parked
12 on the Interstate?

13 A. They did not.

14 Q. Okay. Would it surprise you if you put that in your
15 narrative in your report that they told you there was a
16 car on -- parked on the Interstate that was unoccupied
17 that was being surveilled?

18 A. When I came up the Interstate, I saw a car and told
19 them that there was a car on the Interstate.

20 Q. Okay.

21 A. And they said that they were already surveilling
22 that car.

23 Q. So you knew where the car's location was before you
24 even --

25 A. I knew approximately where it was, but --

1 Q. -- before y'all started tracking?

2 A. Yes, ma'am.

3 Q. Okay.

4 A. I mean --

5 Q. And then you and Judy started tracking. Could you
6 tell when these two sets of footprints came together at
7 some point?

8 A. Could I tell when they came together?

9 Q. Could you tell the timing, whether the impressions
10 had been made at the same times or hours apart or
11 anything of that nature?

12 A. No, ma'am.

13 Q. Did you take any impressions of the footprints?

14 A. No, ma'am.

15 Q. Did you take any pictures of them?

16 A. No, ma'am.

17 Q. Did you take any measurements of them?

18 A. No, ma'am. I was --

19 Q. Do you know what size shoe it was?

20 A. No, ma'am.

21 Q. Do you know what kind of shoe it was?

22 A. No, ma'am. I -- I was tracking. You're on a trail
23 and you relay whatever information.

24 Q. And assume the officers will do any forensics that's
25 necessary?

1 A. Yeah, I don't do like the crime scene when I'm
2 tracking.

3 Q. Okay. And you and Judy went for approximately two
4 miles; is that correct?

5 A. If you give or if you take, you know, all the
6 wandering and cutting, probably.

7 Q. Okay. Okay. But that's not two miles apart, this
8 pink dot with the green dot?

9 A. No, ma'am.

10 Q. Okay. And it took you about an hour presumably to
11 get back to Columbia?

12 A. Approximately.

13 Q. After you were done with the tracking, did you go
14 back to the BP store to tell the officers what results
15 you had?

16 A. Yes, ma'am.

17 Q. Okay. And about how much time did you spend there?

18 A. Probably about 20 minutes.

19 Q. So, Officer -- or, Agent, if you spent an hour, two
20 hours travel time, 30 minutes getting ready with Judy
21 and your total call time was about 4.2 hours, would you
22 say you spent about two hours actually tracking?

23 A. Probably less than that.

24 Q. Less than two hours tracking?

25 A. (Nods head.)

1 Q. And did Judy pick up any scents where the car had
2 been located?

3 A. We did not get anything further than this side of
4 the Interstate, that side over there.

5 Q. Okay. So no effort was made to determine whether
6 the scents located where the car had been were the same
7 scents that Judy had been tracking?

8 A. Well, I don't go to a car and try to track. I was
9 tracking the trail to here and I tried to get it from
10 here further.

11 Q. Correct. You said that you crossed the street and
12 came over just right in this area, correct?

13 A. Right.

14 Q. Did Judy pick up any trail that she had been
15 following on the other side of the Interstate?

16 A. She did not pick up a scent on this side of the
17 Interstate.

18 Q. Okay. Would you expect her to be able to pick up
19 a scent if someone had been squatted down in the woods
20 very close to where that vehicle had been parked for
21 hours?

22 A. Well, again, as I explained earlier, we're in a
23 situation here, but on the side of the Interstate where
24 we have a lot of different factors going on, which is --
25 which is wind, time, you know, I can't say what Judy

1 would have picked up. I know that she did not pick up a
2 scent after that side of the road.

3 **MS. WIYGUL:** I have no further questions. Thank
4 you.

5 **THE COURT:** Let me just ask a couple of questions
6 and, of course, I would not do that in front of the
7 jury.

8 IN-CAMERA EXAMINATION

9 BY THE COURT:

10 Q. All right. Agent Creswell, Judy picks up a scent
11 and you follow that scent for a period of time and then
12 you determine yourself because of footprints that now
13 we're dealing with two individuals as opposed to one,
14 correct?

15 A. Yes, sir. Because I was told at the scene when I
16 arrived that they had watched the video -- they had only
17 seen one suspect flee, but they had watched the video
18 and that there was another subject in the store on
19 video.

20 Q. Right. But even if you had not been told that, at
21 some point in time while you're tracking you see the
22 existence of two sets of footprints?

23 A. That's correct.

24 Q. Okay. All right. Would that mean from that point
25 on would there be two different human scents that Judy

1 would have to be dealing with?

2 A. Well, Judy is basically locked in on the first
3 scent.

4 Q. Okay. So no other human scents would get her off
5 of that first scent that she got on?

6 A. Right, she is locked in on the scent that she picked
7 up on the other side of the road.

8 Q. Okay. All right. So then she followed that scent
9 to the edge of the Interstate, which would be the edge
10 of the westbound lane of travel, correct?

11 A. Yes, sir.

12 Q. Okay. All right. And, of course, based upon your
13 involvement in this case, your testimony is that Judy
14 was following a scent, but now whose scent that was you,
15 of course, naturally can't say whose scent that was?

16 A. No, I just go by -- the officer told me where the
17 last point seen was and basically the last place I can
18 put that person is where I verify a push or a track.
19 The last place I verified was on the bank coming up to
20 the Interstate.

21 **THE COURT:** Okay. All right. Thank you. Any
22 further follow-up in-camera examination of this witness?

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

24 **MS. WIYGUL:** None from the defense, Your Honor.

25 **THE COURT:** Let me ask one more question and, of

1 course, this probably just shows the Court's ignorance.
2 Do you ever give -- in other words, in this situation
3 allegedly there were two individuals inside the store.
4 Would it ever have been a situation where you get Judy
5 to pick up a scent that's inside the store and then
6 follow that scent in whatever direction Judy takes you?

7 **THE WITNESS:** No, sir. And because of that, we
8 talk -- you talk about not contaminating -- you know,
9 you're at a place of business where there's a lot of
10 scent, so your starting point always wants to be where
11 you can get either someone by themselves --

12 **THE COURT:** Okay. I understand. It makes sense.
13 Thank you.

14 All right. Probably in some respects this is a
15 close call, but I am going to deem Agent Creswell as an
16 expert based upon his experience and training and his
17 testimony could be an aid to the jury to determine the
18 facts in this case; however, I observe outside the
19 presence of the jury that -- and this is no reflection
20 whatsoever on this agent, but there might could be some
21 -- some good arguments to attack this part of the
22 State's case, and I make that observation just as an
23 observation only, but I do believe that Agent Creswell
24 should be declared an expert in the area of K-9 handling
25 for purposes of tracking human scent. Again, I believe

1 he has sufficient experience and training in order to be
2 deemed an expert and then there are the factors, and I
3 won't reiterate those factors, but the factors that are
4 set forth in State versus White as to reliability, which
5 is the Court's main concern. I think all of those have
6 been met and so I'm gonna allow the testimony to proceed
7 with Agent Creswell being seemed an expert.

8 I'd like to finish with him today with the jury and
9 hopefully the jury can hang in there with us a little
10 while longer, then we'll recess and then take your
11 remaining witnesses in the morning, okay?

12 **MR. MOWRY:** That would be fine, Your Honor. Thank
13 you.

14 **THE COURT:** And certainly you're protected on the
15 record, Ms. Wiygul, concerning your position in this
16 matter.

17 **MS. WIYGUL:** Thank you, Your Honor.

18 **THE COURT:** Okay. All right. Mr. Byers, if you
19 would bring the jury out, please.

20 **MS. WIYGUL:** Your Honor, actually could we take
21 just like a five-minute break?

22 **THE COURT:** Okay. Let's take a five minute break
23 and see if somebody can help you get some water. Maybe
24 I can.

25 (Recess taken.)

1 **THE COURT:** All right. Before we bring the jury
2 out, the forelady of the jury mentioned to Mr. Byers
3 wanting to know if we would be finished by Thursday
4 because she has a son that's scheduled for some surgery.
5 I certainly figure that, you know, the State's gonna be
6 finished, you know, first thing in the morning with one
7 last witness, and I'm not obligating you to anything
8 at this time and you may not even want to give an
9 indication where you're headed as far as the defense
10 case, but if you can give us some indication of whether
11 or not you intend to put up a case or not?

12 **MS. WIYGUL:** We are not a hundred percent sure yet,
13 Your Honor. If we do put up a case, it will only be
14 Mr. Odom, and I could not imagine it carrying us past
15 lunch tomorrow.

16 **THE COURT:** Okay. Good. And, again, I'm not going
17 to hold you to anything you tell me, but just to get a
18 feel.

19 **MS. WIYGUL:** Yes, Your Honor.

20 **THE COURT:** Okay. So, Mr. Byers, if you would
21 tell the forelady that, yes, we -- from all indications
22 we will not go into Thursday on the case. From all
23 indications at the present time.

24 **MS. WIYGUL:** In fact, Your Honor, I'm scheduled to
25 be in Federal court Thursday morning, so the indications

1 are pretty good.

2 **THE COURT:** Okay. All right. If you would inform
3 her of that and then as soon as you do, if you'll bring
4 the jury out.

5 (Whereupon, the jury returns to the courtroom.)

6 **BAILIFF:** All present, Your Honor.

7 **THE COURT:** Thank you. Madam Forelady and ladies
8 and gentlemen of the jury, if you'll remember in my
9 preliminary comments to you, I told you one thing that
10 trials oftentimes are slow, deliberate, tedious, and
11 that's what we have, but it's just a necessary part of
12 the whole process. Again, I appreciate your patience
13 with us. It looks like we've got about a half hour
14 more of work to do before we adjourn for the evening,
15 so hang in there with us, okay? Thank you very much.

16 Solicitor?

17 **MR. SCOTT:** Judge, at this time we would ask -- or
18 we would offer Agent Reid Creswell as an expert in K-9
19 handling for the purpose of tracking human scent.

20 **THE COURT:** Okay. And certainly your position has
21 already been noted on the record and the Court will deem
22 Agent Creswell as an expert in the area of K-9 handling.

23 Now, Madam Forelady and ladies and gentlemen of the
24 jury, I'll explain to you briefly right now, and I'll
25 explain this more further later on, but oftentimes

1 witnesses are not allowed to give opinions as to certain
2 matters. They can just generally testify as far as
3 what they've seen or heard, that sort of thing, but
4 oftentimes witnesses are qualified as an expert in a
5 particular area because of either education, training,
6 experience and they are then permitted to give opinions
7 in certain areas in their area of expertise, and I have
8 found Agent Creswell to be an expert in the area of K-9
9 handling.

10 Solicitor?

11 **MR. SCOTT:** Okay. Thank you, Judge.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q. And, Agent Creswell, approximately what time did
15 you say it was that you arrived at the BP over there on
16 Highway 72?

17 A. Approximately 5 AM.

18 Q. Okay. And what information did you have or did you
19 gain once you arrived at the scene?

20 A. I spoke with an officer and they had arrived
21 on-scene and saw one suspect flee and he pointed out to
22 me the area that he was last seen running into the wood
23 line and he also relayed to me that they had watched the
24 in-store video and had determined that there was two
25 suspects and not one, but they did not see that person

1 flee. That was the first indication that there was two
2 suspects. They did not know that. They didn't see any
3 other suspect flee, just the one.

4 Q. All right. So you only had one known entry point
5 of the wood line where one of the defendants had run; is
6 that correct?

7 A. That's correct.

8 Q. Okay. So what dog did you decide to use? You had
9 two dogs with you. Which one did you decide to take out
10 of the crate?

11 A. Judy.

12 Q. And, again, why Judy?

13 A. She was our number one dog at the time.

14 Q. All right. You've got your laser pointer. Can you
15 show generally where it was that officers told you they
16 had seen the suspect enter the wood line?

17 A. It would be -- if you're facing the store, it would
18 have been to the right side of the store. Not all the
19 way to the back corner, but kind of in that area about
20 where that pink dot you have here is.

21 Q. All right. Where my pen is, is that generally the
22 area where they were seen entering the wood line?

23 A. That's correct.

24 Q. All right. So do you put Judy into the woods right
25 there or do you put her in elsewhere?

1 A. The way we attempt to strike a trail is we don't
2 actually go to where the person was last seen because,
3 you know, an officer could have walked over there and
4 there would be scent, you know. I asked the officer did
5 anybody else go into the wood line and he told me nobody
6 had walked in, so what we do is basically cut an arch.
7 So if they would have gone in here, we would have went
8 more to the rear and then cut an arch shape into the
9 wood line.

10 Q. All right. So you're describing -- now right there
11 would have been generally where they saw the person
12 entering the wood line and you're describing somewhere
13 over here is where you would enter?

14 A. No, sir. Not that far around.

15 Q. Well, somewhere over here?

16 A. About right there.

17 Q. And is it fair to say that's just kind of let the
18 dog find the scent on its own? You're putting them in a
19 neutral area where there's no known scent just seeing if
20 they can find the scent themselves?

21 A. That's correct.

22 Q. All right. So if they enter here -- they're known
23 to enter here and you put the dog in over here and you
24 cut the arch back in that general vicinity; is that what
25 you're describing?

1 A. Well, it's not that wide. You don't -- you don't go
2 in, you know, a couple hundred yards. You're basically
3 about 25 to 30 feet inside the wood line.

4 Q. Okay. Show us the general area where Judy tracked.
5 Or was she able to eventually establish a scent?

6 A. Yes. As we were cutting her back toward the roadway
7 in that arc near -- near where the officer had said the
8 point last seen, Judy struck a trail at that point.

9 Q. How do you know she struck a trail? What did the
10 dog do?

11 A. Judy, the way I would describe it, if I'm walking
12 and I see somebody over here that gets my attention,
13 then I would make a head turn to look at it to see what
14 it is, and it's similar with bloodhounds or tracking
15 dogs. They'll have their head down trying to find the
16 scent and when they strike it, they'll give a head turn.
17 And, further, you know, some dogs are very subtle, there
18 are subtle changes when they strike a trail, but Judy
19 was very -- she was not subtle at all. She actually
20 bayed, which is basically a bark. She basically makes
21 a bay sound when she strikes a trail and she did that.

22 Q. All right. So in your experience with Judy and the
23 times you would track with her, it was clear to you she
24 had struck a trail?

25 A. That's correct. Her behavior changed. You know,

1 she immediately starts pulling in that direction and
2 starts to track.

3 Q. Well, what are you doing? Are you just blindly
4 following the dog and let it pull you everywhere or are
5 you trying to observe things yourself?

6 A. Well, at SLED there's actually two parts to
7 tracking. The dog is, of course, one of the most
8 important parts, but also we're trained in man-tracking.
9 So by man-tracking, I mean when you walk through an
10 environment -- or you're running or you're walking,
11 you're disturbing the environment. We look for footwear
12 impressions. If you leave -- if you step in the sand,
13 you'll leave footwear. If you run through brush, you're
14 gonna -- we call that push. You're going to make an
15 indentation through that brush. We look for leaves.
16 Normally leaves are oriented up toward the sun. We'll
17 find leaves that are turned bottom side up and from that
18 we know that area has been disturbed. So not only are
19 we letting the dog track, but as we trail one person is
20 holding the lead on the dog and the other person is
21 basically trying to verify what the dog is doing by
22 looking for signs. So it's a team effort.

23 Q. Okay. So were you observing signs that confirmed
24 to you that the dog was on the trail?

25 A. Well, I was -- actually had the lead on the dog,

1 but when you have the lead, you also can see signs.

2 That wasn't my primary job, but if you're -- if you're
3 handling a dog, you also will see signs.

4 Q. Okay. And were you seeing signs that confirmed to
5 you that the dog was on the trail of a human?

6 A. Yes. In this initial area where she struck a trail
7 and turned toward the roadway here, we saw signs of push
8 where somebody had gone through that vegetation.

9 Q. Is push what it sounds like? When I'm running, I'm
10 pushing off the ground and I'm churning up the dirt or
11 the pine straw bed?

12 A. It could be that, but push is more what we describe
13 as like if there's vines or you're going through some
14 type of vegetation, you move it, where you lay it down.
15 Or it's like a thicker area and you go through it, you
16 can tell something has gone through that area.

17 Q. Okay. And this dog is trained to track humans only?

18 A. That's correct.

19 Q. All right. So if a deer had been running through
20 there, would that be something the dog would --

21 A. No, when we -- we talked about trying to make the
22 team. We have dogs that as we start a training program
23 that they tend to track deer, they don't last long in
24 the program, so they will only track human scent.

25 Q. Okay. So on this side of 72 you're beginning to

1 see footwear and push -- signs of push, I guess?

2 A. No, all we saw on this side was disturbance, like
3 push and stuff. I don't recall seeing any footwear on
4 that side.

5 Q. Okay. Where did the dog track from there?

6 A. We came and crossed the road over into this set of
7 woods right here.

8 Q. Okay. What, if anything, did you observe over
9 there?

10 A. Well, we started seeing footwear impressions. One
11 set of foot tracks over there. That area was like kind
12 of a clay, sandy soil, so we were seeing footwear. It
13 was also like planted pines. It wasn't real thick in
14 there, but as we began to go in there, the dog started
15 behaving like someone was just wandering like they
16 might have been lost or just kind of hanging out at the
17 location and just wandering around and we were verifying
18 that with the foot tracks, too.

19 Q. All right. So what you observed is over here the
20 dog is following more of a definite line of some sort,
21 but once it gets in this is stretch of woods it's sort
22 of zigzagging maybe or --

23 A. Wandering.

24 Q. And to you, that told you that whoever you were
25 tracking were sort of lost or else they were wandering

1 back and forth; is that fair?

2 A. That's correct. They were either -- I wouldn't say
3 they were lost. I would say they were wandering.

4 Q. Okay.

5 A. You shouldn't get lost, you know, that close to the
6 roadway.

7 Q. Okay. Well, the dog's trail dictated they were
8 wandering?

9 A. They were wandering.

10 Q. And you confirmed that through footwear; is that
11 what you said?

12 A. That's correct. And you go from a dog tracking in
13 a straight line and they start, you know, moving off
14 kind of in all different of directions.

15 Q. Did Judy pick back up on a straight line thereafter?

16 A. Yeah. What you have to do is once they get there
17 you have to find out where they left that area, so
18 basically you cut in an arc around -- a wider arc trying
19 to find out where they came out of that area, and we --
20 with footwear impressions and track -- and Judy
21 tracking, we came into this area, which is back behind
22 the DOT Section Shed, which is across from the
23 convenience store. There's actually a fence that runs
24 on the border of this property.

25 Q. Okay. Is this the fence right here; is that what

1 you're saying?

2 A. That's correct.

3 Q. All right. What did the dog do once you got over
4 there?

5 A. Well, what we noticed in this area that's kind of
6 near the back corner here is we came across another set
7 of footwear impressions, so the two sets of footwear
8 kind of met up and then the two sets of footwear started
9 leading down the back side of this fence and Judy
10 started tracking that way as well.

11 Q. Okay. Where did you track next?

12 A. We came down through this wooded area and basically
13 started paralleling I-26.

14 Q. Okay. Tell us about this area right here. What
15 happened when you got in this little section of woods?

16 A. This was not necessarily a straight -- where you
17 just go in a straight track. It was kind of in a zigzag
18 in and out and then down in this area there's actually a
19 big creek bottom, it was a lot lower, you know, all the
20 hills came in and there's basically what we call a creek
21 bottom, and Judy tracked into the creek bottom, but kept
22 turning like she was trying to locate something in the
23 creek bottom.

24 Q. All right. As you work your way down the creek
25 bottom, you're saying it's zigzagging parallel to I-26

1 here?

2 A. Right. It wasn't like just, you know, an all out
3 straight line.

4 Q. Okay. What happened when you got down to the creek
5 bottom there?

6 A. Well --

7 Q. Let me -- tell us some of the issues that occur when
8 you reach a creek bottom or a valley or a depression in
9 the topography there.

10 A. What happens is in a creek valley, like if a
11 suspect were to stop there, that you start getting
12 pooling because the scent's going to go to the lowest
13 area. So what Judy was trying to do, and we were
14 letting her do, was to work out the track out of that
15 low area and eventually we ended up cutting her in a
16 wider arch until we struck a trail right in here.

17 Q. All right. And where did that trail lead?

18 A. It ended eventually leading up a steep embankment
19 up to Interstate 26.

20 Q. All right. And were you able to verify that -- or
21 confirm that Judy was, in fact, on the trail of a human
22 running up the side of that hill there?

23 A. Yes. The side of the hill had considerable
24 vegetation and it was evident by the dog and by visual
25 that someone had moved through that area.

1 Q. Okay. You observed yourself disturbances in the
2 soil leading up to the Interstate?

3 A. More in the vegetation than the soil.

4 Q. Okay. Ultimately where did your track end -- or as
5 far as you can tell, when did it terminate? Where did
6 you feel comfortable that the dog was on a trail and
7 where the trail ended?

8 A. Where we topped the hill right there on 26.

9 Q. Right here? Somewhere in here?

10 A. Yes, sir.

11 Q. Okay.

12 A. You start getting some environmental factors with --
13 you have cars travelling 80, 90 miles an hour down the
14 Interstate and you're trying to find the scent, so you
15 have a lot of scent being moved around, so the last
16 place I was able to verify was where Judy topped the
17 hill on 26 in that area right there.

18 Q. On this side of 26? I'm gonna call it the westbound
19 lane of I-26.

20 A. That's correct.

21 Q. Okay. How long did you track? Just generally, how
22 long do you think you were out there in the woods?

23 A. Probably approximately an hour and a half. It
24 doesn't look like a long area, but when you're trying to
25 work out these issues, it takes time.

1 Q. Okay. Now in your experience as a bloodhound
2 handler or K-9 handler and your experience with SLED
3 and, let's say, specifically with Judy, is it your
4 opinion that that dog was on a trail on that night,
5 November 11, 2011?

6 A. Yes, sir, she was.

7 Q. And you feel confident the dog was on the trail the
8 entire time?

9 A. Yes, sir. I mean, you have -- you have periods
10 where you have to work out areas. That's all a part of
11 tracking. I mean, you have -- you know, when it's not
12 just a straight line, you have areas that you have to
13 work out to get to a trail further out of that area and
14 so was she on it, you know, a hundred percent of the
15 time? No. She has to work. Just like we are verifying
16 looking for tracks, she has to keep working, too. She's
17 constantly working.

18 Q. All right. Based on your opinion, is Judy a
19 reliable bloodhound dog as far as tracking humans?

20 A. Yes, she is.

21 Q. And you say she's the best or was the best at SLED
22 before she retired?

23 A. She was. She was the dog that I picked every time
24 I went on a call if she was available.

25 Q. Okay. And it's your testimony that the dog did

1 strike a reliable trail that led generally from this
2 area of the BP across 72 through these woods and
3 ultimately somewhere generally right here on this side
4 of I-26?

5 A. That's correct.

6 **MR. SCOTT:** Thank you, Agent Creswell. Answer any
7 questions Ms. Wiygul has for you.

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

9 **MS. WIYGUL:** Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. WIYGUL:

12 Q. Agent Creswell, you stated that Judy kind of was
13 looking around when she hit that creek bottom; is that
14 correct?

15 A. That's correct.

16 Q. And do you feel like she lost the trail at that
17 point and then picked it back up?

18 A. No, ma'am. I feel like she was overwhelmed with
19 scent because all of it had pooled into the bottom of
20 that creek.

21 Q. Okay. But she couldn't identify which trail she was
22 supposed to be following?

23 A. Right. Right.

24 Q. Okay.

25 A. And people, you -- people wander. Just like in the

1 area over here that we verified with footwear, people
2 wander. You'd like for every track to be in a straight
3 line, but people don't -- people don't just run in --
4 or walk or run in a straight line. So the dog -- just
5 like we have to work it out for footwear and what we're
6 looking for, the dog has to work it out, too, and that's
7 something that we train in all the time.

8 Q. And, Agent, you said there was some footwear, and
9 I'm assuming by that you mean shoe impressions, in some
10 type of soil?

11 A. That's correct.

12 Q. Okay. Could you use your pointer and kind of tell
13 me where to the best of your memory you recall seeing
14 the first footprint or set of footprints?

15 A. In this area up here.

16 Q. This area right over here?

17 A. I'm not very steady there.

18 Q. So that's a footprint? That's okay.

19 A. That's right.

20 Q. That's a footprint?

21 A. (Nods head.)

22 Q. Do you recall about how many footprints you saw in
23 this area?

24 A. I mean, there was a lot of footwear. The soil was
25 conducive to, you know, you being able to see it there.

1 Q. I apologize. Could you identify from the trail that
2 Judy was following whether the person that left that
3 trail had been leaving foot impressions?

4 A. Like I said, we verify. We use signs to verify that
5 the dog is on -- is correct and on the trail.

6 Q. Okay.

7 A. And I was able -- she was tracking. I knew that a
8 human had been through there because they had left a
9 footwear impression in the soil.

10 Q. Okay. That's what I was wondering. And then after
11 here, where was the next -- kind of where did these
12 footprints go?

13 A. They came over here and that's where the other set
14 -- that's where we noticed the -- actually the two sets
15 of footwear impressions together.

16 Q. And you say we. Was it you and another handler
17 that was out there or were any of the Clinton Police
18 Department with you?

19 A. At SLED we always -- there's always two trackers
20 and then there was another officer who was with us, but
21 he was just there as -- he was just there with us. He
22 wasn't --

23 Q. Was he with the Clinton Police Department?

24 A. I don't recall.

25 Q. Was he on the scene here and went with you?

1 A. Yes, ma'am.

2 Q. Okay. Now -- and you said at this point another set
3 of prints pops up, so that's right there, right?

4 A. Yes, ma'am.

5 Q. Okay. So then we've got two sets of prints now and
6 where did these two sets of prints go? Is that when it
7 went meandering around?

8 A. It initially went down this fence line here.

9 Q. And we're still following the two sets?

10 A. That's correct.

11 Q. And then where did it go?

12 A. Well, after this area, I don't recall any other
13 like distinct footwear. You might see what I call a
14 kick where there might be some ground disturbance, but
15 the last foot impression that I recall was in that area
16 right there.

17 Q. Okay. Now you don't carry a camera or anything out
18 there with you, do you?

19 A. No, ma'am, I don't.

20 Q. They don't give you a GoPro to wear on your head
21 so you can retrace your trail and see what the dog did
22 later?

23 A. No, ma'am.

24 Q. Okay. And you don't -- you're in the woods. You're
25 not pulling out your phone and videotaping as you go?

1 A. No, ma'am. It's -- I'm hanging onto the lead of a
2 dog.

3 Q. Okay. Okay. So did you -- you did not take any
4 pictures of these footprint impressions, correct?

5 A. That's correct, Ms. Wiygul.

6 Q. And you didn't take any measurements of them?

7 A. No, ma'am.

8 Q. And -- let's see. So you wouldn't have any idea
9 what size the shoe was?

10 A. I mean, I could look at a shoe and tell whether it
11 was a child or an adult or --

12 Q. But you wouldn't have any idea what size it was?

13 A. As far as getting out my measurement and saying
14 okay, this guy's a ten and a half, no, ma'am.

15 Q. Okay.

16 A. Adult male -- or adult. They were large, you know.

17 Q. They were bigger shoes?

18 A. Right, bigger shoes.

19 Q. Okay. So in the woods there's you, there's Judy,
20 there's the second handler from SLED that's presumably
21 looking for the same stuff you're looking for, and
22 there's some officer that followed you from the scene;
23 is that correct?

24 A. That's correct.

25 Q. Okay. Now when you came to the scene, you came from

1 Columbia, right?

2 A. That's correct.

3 Q. So you came up this way?

4 A. That's correct.

5 Q. Did you see anything right about where that green
6 dot is on your way in?

7 A. I saw a car on the westbound side.

8 Q. Did you notify anyone?

9 A. I told them that there was a car and they said they
10 were surveilling that car at the time.

11 Q. And when you say them, you mean the Clinton Police
12 Department; is that correct?

13 A. Yes, ma'am.

14 Q. Okay.

15 A. There was -- I believe there were officers from
16 Laurens County and Clinton PD. I don't know who was --

17 Q. Correct. Correct. You wouldn't have any --

18 A. Right.

19 Q. Okay. After Judy lost this trail or -- or it
20 terminated in some fashion once you hit 26, did you walk
21 her across the street to where the car had been?

22 A. It was -- we didn't come out exactly where this is.
23 We are more down this way.

24 Q. You came out down here?

25 A. Yes, ma'am.

1 Q. Okay. Were there anymore footprints down here?

2 A. No, ma'am. I don't recall any. Just the push
3 going up the bank.

4 Q. Okay. And somewhere someone came up this bank?

5 A. Yes, ma'am.

6 Q. Okay. And then was the vehicle still there?

7 A. No, ma'am.

8 Q. Okay. Did you walk Judy over to where you had seen
9 the vehicle on your way in?

10 A. We cut in that area a 360 is how we --

11 Q. If you could --

12 A. Anytime you terminate a trail, you want to try to --
13 you're always trying to get the trail further and even
14 though we had the environmental factors with wind and
15 the cars and all, we cut her in basically what we call
16 a 360 arc.

17 Q. Okay. Did she pick up the trail anywhere over here
18 in these trees near where this car was?

19 A. We didn't. All we did was cut the edges of the
20 Interstate. We didn't go --

21 Q. So you didn't walk her to where the car was?

22 A. No, ma'am. We tried to cut out here in this area.

23 Q. That's no problem, Agent. All right. So by that
24 point the car was gone. Now did you see anything where
25 the vehicle had been?

1 A. The vehicle that I was referring to, there was a
2 pool of water.

3 Q. Okay. And was that the vehicle that had been here
4 earlier?

5 A. The vehicle that I saw going in was on this side of
6 the Interstate.

7 Q. On this side?

8 A. Yes.

9 Q. So you never saw a car over here?

10 A. I don't recall seeing a car over there when I
11 arrived on the scene.

12 Q. Okay. So to the best of your knowledge, there was
13 no vehicle in the eastbound lane of I-26 when you
14 arrived?

15 A. I didn't observe one.

16 Q. Okay.

17 A. But I was getting off my exit there, so I saw -- I
18 saw the one on my side. I did not observe a particular
19 car sitting over there.

20 Q. In your report when you note that there was a
21 parked car on the side of the Interstate that was under
22 surveillance by the Clinton Police Department, that
23 wasn't this one?

24 A. No, ma'am. I took it to be the one that I saw
25 parked.

1 **MS. WIYGUL:** Okay. Thank you. I have no further
2 questions.

3 **THE COURT:** Anything on redirect?

4 **MR. SCOTT:** I just -- I might need Ms. Wiygul's
5 help.

6 REDIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q. What are the two -- what are these two new labels
9 here -- or three new labels? This is where --

10 A. Yes, sir. The first footwear, the second set of
11 stickers is where the footwear impressions basically
12 came together, and then the third set of stickers there
13 is where the footwear impressions went down the back of
14 the fence.

15 Q. Okay. These -- it's pretty obvious, but they
16 indicate that there's two sets of footprints seen
17 together?

18 A. That's correct.

19 Q. And you probably couldn't testify whether they were
20 travelling together at the same time or else had crossed
21 paths at different times, could you?

22 A. I can't testify to that.

23 Q. Okay. And you arrived on the scene at approximately
24 5 AM; is that correct?

25 A. Approximately.

1 Q. And you saw a -- about where was the car parked that
2 you had seen?

3 A. Probably in this area here.

4 Q. Right down here somewhere?

5 A. Yes, sir.

6 Q. Okay. And this automobile up here you never saw?

7 A. I don't recall seeing an automobile there.

8 Q. Did you ever see -- was it there whenever you came
9 out of the woods on I-26?

10 A. It was not.

11 Q. All right. This car over here that you saw in the
12 west -- somewhere near the westbound lane parked, do you
13 remember what kind of car it was?

14 A. I don't. I mean, we're like getting close to
15 getting out on a call, you know, we've been travelling
16 wide open and we're getting ready to break it down and
17 get out on the call. I just noticed a car sitting there
18 and I passed it on that there was a car sitting off the
19 Interstate.

20 Q. Okay. Did you see anybody in it?

21 A. When I went by, it looked like it was not occupied.

22 Q. Okay. Now this is 5 AM and you're coming up in this
23 area. You would have gotten off on this and you would
24 not have seen this again -- you didn't see the car on
25 the eastbound lane where the green dot is?

1 A. No, sir. I would have been probably looking to get
2 off my exit there.

3 Q. Okay. But your testimony, again, would just be
4 tracking in this general vicinity paralleling I-26 and
5 ultimately terminating somewhere in here?

6 A. That's correct.

7 **MR. SCOTT:** Thank you.

8 **THE COURT:** Recross?

9 **MS. WIYGUL:** No, Your Honor.

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

12 **THE WITNESS:** Thank you, Your Honor.

13 (Witness excused.)

14 **THE COURT:** Okay. Madam Forelady and ladies and
15 gentlemen of the jury, you've worked very hard today,
16 and I appreciate that, and we're going to adjourn for
17 the evening. I want you back at 9:15 in the morning
18 and we'll proceed forward. And I remind you, once
19 again, don't talk about this case amongst yourselves
20 or family or friends or anybody that you come into
21 contact with, and we'll see you back here at 9:15 in
22 the morning. Have a great evening.

23 (Whereupon, the jury exits the courtroom at
24 5:46 PM.)

25 **THE COURT:** Okay. We'll be in recess until 9:15 in

1 the morning.

2 **MR. MOWRY:** Thank you, Your Honor.

3 **MS. WIYGUL:** Thank you, Your Honor.

4 **THE COURT:** Thank you. Y'all have a good evening.

5 (Proceedings were concluded for June 10, 2014, at
6 5:46 PM.)

7 (The following proceedings were held on June 11,
8 2014.)

9 (State's Exhibit Number 38 was marked for
10 identification.)

11 **BAILIFF:** Let's rise and come to order.

12 **THE COURT:** Anything on the record before we bring
13 the jury out?

14 **MR. MOWRY:** No, sir. Nothing from the State.

15 **MS. WIYGUL:** Nothing from the defense.

16 **THE COURT:** All right. Mr. Bolt, bring the jury
17 out, please, sir.

18 (Whereupon, the jury returns to the courtroom at
19 9:27 AM.)

20 **BAILIFF:** All present, Your Honor.

21 **THE COURT:** Thank you, Mr. Bolt. Good morning. I
22 hope everyone's doing well and had a restful evening and
23 ready to get back to work.

24 Solicitor, I think we're still in the State's case.

25 **MR. MOWRY:** Thank you, Your Honor. We would call

1 Detective Tyrone Goggins to the stand.

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

3 DETECTIVE TYRONE GOGGINS,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MOWRY:

7 Q. Would you state your name for the record, please,
8 sir?

9 A. Tyrone Goggins.

10 Q. Mr. Goggins, by whom are you employed?

11 A. Clinton City Department of Public Safety.

12 Q. And what is your position with the Department of
13 Public Safety?

14 A. Investigator.

15 Q. You are a police officer; is that right?

16 A. Right.

17 Q. Essentially a detective in other agencies?

18 A. That's right.

19 Q. How long have you been employed as a police officer?

20 A. Sixteen years.

21 Q. And how long have you been an investigator?

22 A. For twelve years.

23 Q. Is all --

24 A. At least twelve.

25 Q. Oh, I'm sorry. Is all of that time with the City of

1 Clinton?

2 A. That's right.

3 Q. Were you employed in the capacity as an investigator
4 back on November 11th of 2011?

5 A. I was.

6 Q. What was your status that week? Were you on-call?

7 A. I was on-call for that week.

8 Q. Describe what that entails, please, sir.

9 A. If something major happens with -- involving within
10 the city limits of Clinton, my road patrol will call me
11 if they need an investigator on the scene.

12 Q. And in the early morning hours of November the 11th
13 of 2011, 11-11-11, did you receive such a call?

14 A. I did receive a call.

15 Q. What were you informed?

16 A. I was informed that there was a break-in in the city
17 limits of Clinton, which is my jurisdiction, and it was
18 at the BP gas station on Highway 72 in the city limits.

19 Q. Okay. And I'm gonna put the chart up that we've --
20 this aerial photograph that we've referred to before,
21 State's Exhibit Number 1. We've got a pink dot there.
22 Is that the BP station?

23 A. That's right.

24 Q. And is that in the city limits of Clinton?

25 A. That's in the city limits of Clinton.

1 Q. And is that in Laurens County?

2 A. It is.

3 Q. Thank you, sir. About what time did you receive the
4 call?

5 A. The alarm -- through my investigation, the alarm
6 took place around 2:43 in the morning. I probably --
7 I received that call right around 3:00, 3:00 in the
8 morning.

9 Q. So about 15 minutes later?

10 A. Right.

11 Q. A little over 15 minutes later. What did you do as
12 a result of that call?

13 A. I instructed the road patrol lieutenant to make
14 sure that they had a vehicle riding the Interstate and
15 Highway 72 to see if any vehicles were parked on the
16 Interstate at 72.

17 Q. You'd gotten word that a -- a description that a
18 person had fled on foot; is that right?

19 A. That's right.

20 Q. So you were having them look for vehicles that had
21 been parked nearby?

22 A. Right.

23 Q. Were both the east and the westbound lanes of I-26
24 surveilled, I guess, for lack of a better term? Were
25 they checked out?

1 A. Yes.

2 Q. What report did you get, if any, about a vehicle?

3 A. There was a black Chrysler parked in the eastbound
4 lane towards Columbia.

5 Q. Was there any vehicle in the westbound lane?

6 A. No, there wasn't.

7 Q. What did you do as a result of that information?

8 A. Well, first of all, I was prepared because I was
9 on-call. My residence is less than five minutes from
10 that location, clothes already prepared, so it took me
11 approximately 15, 20 minutes to arrive on the scene.
12 The first thing I did was I rode to the location, which
13 was the BP, and I talked to the --

14 Q. So you arrived there within 20 minutes of the call,
15 so that would have been around 3:20?

16 A. That's correct.

17 Q. All right, sir.

18 A. I talked with at that time Lieutenant Ledda. He
19 was the supervisor over the road patrol. He's now the
20 chief of Laurens City Police Department. I briefed with
21 him to determine what they had going on. I immediately
22 left from that location and I myself rode to the I-26
23 and witnessed the black Chrysler parked on the side of
24 the Interstate.

25 Q. Okay. I'm going to show you on the overhead

1 State's Exhibits 13 and 14, these photographs. Are
2 those pictures that you recognize, the subject of those
3 pictures?

4 A. Yes.

5 Q. What are those, please, sir?

6 A. That's a black in color four-door 300 Chrysler.

7 Q. Okay. Did you get a tag number and that kind of
8 information on the vehicle?

9 A. We did.

10 Q. How did you go about obtaining that, please, sir?

11 A. Officer Knapp was the officer riding the Interstate
12 prior to me arriving on the scene. He wrote -- he
13 pulled behind this vehicle and he ran that tag through
14 our South Carolina NCIC system. I went to that
15 location. Knapp was still out with -- actually not
16 knowing at the time that that vehicle was involved,
17 while posted there Officer Knapp placed his fingerprints
18 on the glass of that car in case we had to get
19 fingerprints as a way to identify if this was the same
20 vehicle as well. I walked around that vehicle, I
21 checked the vehicle to make sure, and it was locked,
22 and I touched the hood of that vehicle above the motor,
23 which was warm. That indicated to us that that vehicle
24 hadn't long been parked at that location.

25 Q. Okay. I'm gonna hand you what's been marked as

1 State's Exhibit 38 for identification. Do you recognize
2 that?

3 A. I do.

4 Q. What is that, please, sir?

5 A. This is a printout from our NCIC system in the
6 police department. It's dated for November 11, 2011.
7 It shows a time on here when that vehicle tag was ran.
8 It doesn't indicate the officer's name, but it was ran
9 at 3:40 that morning and it was printed off for me at
10 5:43 that morning. At the bottom, there's a number C3
11 and that was my patrol -- my officer number.

12 Q. Okay. Now you talked about the NCIC. What does
13 that stand for, please?

14 A. It's a national intelligence system, which --

15 Q. National Crime Information Computer?

16 A. -- where law enforcement share access to that.

17 Q. Uh-huh. So it's a clearinghouse for information for
18 law enforcement; is that correct?

19 A. Right.

20 **MR. MOWRY:** Your Honor, I would offer this into
21 evidence at this time, State's Exhibit Number 38 for
22 identification.

23 **THE COURT:** What says the defense?

24 **MS. WIYGUL:** Your Honor, I have no objection.

25 **THE COURT:** Okay. Without objection, it will be 38

1 into evidence for the State.

2 (State's Exhibit Number 38, an NCIC printout, was
3 admitted into evidence.)

4 BY MR. MOWRY:

5 Q. All right. Give us the details of that statement,
6 if you would, Detective Goggins.

7 A. This printout, again, was printed on 11-11-2011 at
8 5:43. It was ran, that means entered into the NCIC
9 system, on the same date of 11-11-2011 at 3:40 AM.

10 Q. So less than an hour after the break-in that
11 occurred at 2:43?

12 A. Right.

13 Q. Okay.

14 A. It states it's a North Carolina vehicle registration
15 system. It has a plate number [REDACTED].

16 Q. Did that correspond with the vehicle that you saw on
17 the eastbound lane of I-26 that morning?

18 A. Yes.

19 Q. Okay.

20 A. It lists a VIN number for that vehicle also and the
21 type and the year of that vehicle. Model and the year.

22 A 2005 Chrysler. It's listed as registered to Maurice
23 Anthony Odom at [REDACTED] Wilshire Boulevard in Wilmington,
24 North Carolina.

25 Q. In Wilmington, North Carolina?

1 A. Wilmington, North Carolina.

2 Q. I don't know if this is gonna show up or not, but
3 we're gonna give it a shot here. So a 2005 Chrysler
4 registered to Maurice Anthony Odom; is that right?

5 A. That's right.

6 Q. With an address in Wilmington, North Carolina; is
7 that correct?

8 A. That's correct.

9 Q. Okay. And this was run less than an hour after the
10 break-in and then printed out later that morning; is
11 that correct?

12 A. That's correct.

13 Q. All right, sir. When you were at the vehicle --
14 and, again, let me put the chart up. When Mr. Mixon was
15 testifying yesterday, we put a green dot there. Does
16 that approximate where you saw the car?

17 A. That's the approximate location of the car. I -- I
18 distinctly remember that it came off the exit ramp and
19 just a little further up on the right-hand side.

20 Q. Okay. So just off the access ramp right onto the
21 main road or right on the shoulder of the main road; is
22 that right?

23 A. That's exactly right.

24 Q. What did you instruct Officer Knapp to do?

25 A. To watch that vehicle, that was his post, on

1 perimeter.

2 Q. Okay. What did you do after you spoke with Officer
3 Knapp?

4 A. I went back to the incident location, to the BP, and
5 what I did, I rode the Interstate to verify that there
6 was not anymore vehicles parked on the Interstate nor
7 was there any vehicles parked on Highway 72.

8 Q. Okay. How did you go about doing that? You were --
9 your car was already headed towards Columbia; is that
10 right?

11 A. Right.

12 Q. You didn't drive back up the access ramp, did you?

13 A. I did. It wasn't many cars out there on that road
14 that particular day and was close to it. I did. I had
15 both of my blue lights on, but I did. I rode back up
16 to the ramp there. I actually was able to see on both
17 sides of the bridge as well and rode Highway 72.

18 Q. Okay. Did you ride the Interstate at all?

19 A. I rode on the eastbound lane of the -- I'm sorry,
20 the westbound lane of the Interstate. The off ramp,
21 it was kind of difficult, I think, with that curve to
22 actually see past there, so I rode there and come back
23 up on the other side.

24 Q. Let me hand you this instead of pointing, if we
25 could.

1 A. Here.

2 Q. Okay.

3 A. I rode here and had to actually come back.

4 Q. All right. Did you go down this way at all?

5 A. I was able to -- I was able to see a long distance
6 down 26 here from the bridge.

7 Q. Okay. And did you have a spotlight on your vehicle?

8 A. I did not.

9 Q. How were you able to see down the Interstate?

10 A. It was clear. There was nothing in the area.

11 Q. What's the lighting condition like at that point?

12 A. It was -- it was dark, but you're able to see.
13 You're able to visually see on the Interstate. There's
14 no trees, no bushes or anything of that nature.

15 Q. And were you able to see down beyond this -- the
16 green dot, this vehicle here?

17 A. Yes.

18 Q. Did you see any vehicles in the -- in the westbound
19 lane at that time?

20 A. There was no vehicles in the westbound lane.

21 Q. What was the only vehicle you saw when you got
22 there?

23 A. A black -- that black Chrysler that was registered
24 to Maurice Odom.

25 Q. Thank you, sir. In your experience, do people

1 sometimes stop for various reasons?

2 **MS. WIYGUL:** Objection, Your Honor. Calls for
3 speculation.

4 **MR. MOWRY:** Your Honor, I'm asking him about his
5 experience. She doesn't even know what question I was
6 gonna ask.

7 **MS. WIYGUL:** Your Honor, he's asking for an opinion
8 and this witness has not been qualified as an expert.

9 **MR. MOWRY:** I'm not asking as an expert, Your Honor.
10 I'm asking about his experience.

11 **THE COURT:** Let's -- don't answer the question
12 yet, Officer. State the question because I think the
13 objection maybe cut you in the middle of the question.
14 So ask the question and then let me make a ruling on it.

15 **MR. MOWRY:** My question was gonna be in your
16 experience as a police officer, do you find that people
17 stop on the Interstate for a variety of reasons.

18 **THE COURT:** Okay. I'll overrule the objection. You
19 can answer the question, Officer.

20 **THE WITNESS:** Yes.

21 BY MR. MOWRY:

22 Q. Such as?

23 A. People pull over if they're tired, to sleep; if
24 they're not sure what exit that they would take, to make
25 sure they're getting off on the right exit; or need to

1 contend with car problems, they may break down. That's
2 about it.

3 Q. But on the early morning hours of November 11th,
4 2011, did you see any other vehicles parked on I-26
5 east or westbound than the 2005 Chrysler you've already
6 described?

7 A. There was not another vehicle parked.

8 Q. Okay, sir. After you had left Officer Knapp on his
9 post keeping an eye on the 2005 Chrysler registered to
10 the Defendant, what did you do then?

11 A. I went back to the BP station.

12 Q. Okay. And I should have included doing your little
13 tour of the Interstate.

14 A. Right.

15 Q. You went back to the BP station. What was your
16 purpose in going back to the BP station?

17 A. To find -- to see if we could find any evidence
18 that would help us with the case. The owners was
19 contacted to arrive. I had contacted the SLED tracking
20 team because I was informed that the -- an officer had
21 pulled up at the location and an individual had jumped
22 out of the window and bush-bonded in the wooded area.

23 Q. Now what's the term you just used?

24 A. Bush bond.

25 Q. Bush bond?

1 A. Yes, sir.

2 Q. What does that refer to?

3 A. If a subject's trying to evade arrest. Usually on
4 a traffic stop of a vehicle, you'll get someone jump
5 out and they'll run trying to evade arrest from law
6 enforcement, and that's a term that we use called bush
7 bond.

8 Q. Okay. And did you, in fact, call and request a
9 SLED dog team to come and try to track the individual?

10 A. That's correct.

11 Q. Okay. Did you know at that time that there was more
12 than one person?

13 A. No, we didn't.

14 Q. Okay. You said that you had met with the owners.
15 Did you meet with Ramesh Patel?

16 A. Ramesh was there.

17 Q. Did you meet with Hardik Patel?

18 A. Hardik was there.

19 Q. Okay. What did you do with them at the scene?

20 A. I had them to obtain the video. We wanted to view
21 the surveillance video of that location.

22 Q. And did Ramesh Patel procure a copy of the
23 surveillance video for you?

24 A. He did.

25 Q. And let me hand you what's been marked for

1 identification as State's Exhibit 31. Do you recognize
2 that?

3 A. I do. This is a DVD that was given to me by
4 Mr. Patel. This is my handwriting on there. It states
5 burglary and it has the Case Number 2011-11077 and the
6 date of November 11, 2011.

7 Q. So this is your handwriting and this has been in
8 your possession ever since?

9 A. That's right.

10 **MR. MOWRY:** Okay. I would offer this as a State's
11 exhibit at this time, Your Honor.

12 **THE COURT:** And what says the defense?

13 **MS. WIYGUL:** Without objection.

14 **THE COURT:** All right. Without objection, Number 31
15 is in evidence for the State.

16 (State's Exhibit Number 31, a DVD, was admitted into
17 evidence.)

18 BY MR. MOWRY:

19 Q. Describe what else you did after you obtained the
20 DVD.

21 A. Collectively we entered the store. First of all,
22 it's for officer safety. It was brought to my attention
23 that the sheriff's deputy thought he heard someone else
24 inside there, so they cleared the business to make sure
25 there was not another subject in the inside of the

1 building.

2 Q. What do you mean clearing the business?

3 A. They checked in the inside to make sure no one else
4 was hiding inside the business.

5 Q. Primarily for y'all's own protection?

6 A. Right.

7 Q. Yes, sir. What else did you do?

8 A. We viewed the video and we determined at that time
9 it was two individuals inside of the store.

10 Q. So this was when you -- when you viewed the
11 surveillance video, that was the first time you realized
12 there was two people instead of one?

13 A. That's right.

14 Q. All right. You never had seen the second individual
15 at all?

16 A. No.

17 Q. Okay, sir. What happened then?

18 A. We looked at the totality of the business, it was
19 a lot of damage inside of the store, to see whether
20 there was any evidence that we needed to preserve inside
21 of the store as well.

22 Q. Such as?

23 A. The rock, for instance, and they had black trash
24 bags inside of there. And we also looked for blood to
25 see if anyone -- because the window was broken, if

1 anyone had cut their self, we were looking for blood as
2 well.

3 Q. Okay.

4 **MR. MOWRY:** I beg the Court's indulgence for just a
5 moment, Your Honor.

6 **THE COURT:** Certainly.

7 BY MR. MOWRY:

8 Q. Detective, I want to walk you through these briefly.
9 I want to show you State's Exhibit Number 2. What is
10 that, please, sir?

11 A. That's a picture of the BP station on Highway 72.

12 Q. Is that how it looks more or less today?

13 A. Yes.

14 Q. And may well look with the rain today. I'm not
15 sure. Did it look that way back in November of 2011?

16 A. Yes.

17 Q. Okay. What does this depict? This is State's
18 Exhibit -- I'm sorry. State's Exhibit Number 5.

19 A. That's a side and partial front of the business as
20 well.

21 Q. Okay. Right in the middle there is a window. Is
22 there anything significant about that?

23 A. Yes, that window is -- doesn't seem to be busted on
24 this picture, but that's the point of entry during the
25 burglary.

1 Q. Okay. And you talked about the window being broken.
2 Let me show you State's Exhibit Number 3. What does
3 that indicate?

4 A. That shows the busted window.

5 Q. And when was that picture taken?

6 A. That was taken on the incident date of November 11,
7 2011.

8 Q. There's a number up at the top. Is that the case
9 number for this particular matter for Clinton City?

10 A. Right.

11 Q. When you got inside, did you take pictures also to
12 record the condition of the store?

13 A. Yes.

14 Q. All right, sir. Let me show you State's Exhibit
15 Number 27. What does that show?

16 A. That's a picture behind the cash register. The
17 counter to the right here would be the window of the
18 point of entry that was busted out. That shows
19 merchandise all over the floor.

20 Q. Okay. And also State's Exhibit 28?

21 A. That's also behind the register as well with a
22 picture of merchandise shown on the floor.

23 Q. All right. Now at that point when you were behind
24 the counter, the checkout counter, did you know what had
25 been used to break the window?

1 A. No.

2 Q. All right. Let me show you State's Exhibit
3 Number 26. Do you recognize that?

4 A. Yes. That's a window that -- that's from the office
5 inside of the store.

6 Q. Okay. And when you got inside -- did you go inside
7 the office? Let me ask you that.

8 A. I did.

9 Q. You did. Let me show you State's Exhibit Number 24
10 and ask you if you recognize that?

11 A. Yes.

12 Q. What is that, please, sir?

13 A. That's a boulder-type rock that was located on the
14 floor inside the office.

15 Q. Okay. I'm gonna show you what's been marked for
16 identification as State's Exhibit Number 32. Do you
17 recognize that?

18 A. Yes.

19 Q. What is that, please, sir?

20 A. That's the rock that I took into evidence from that
21 location.

22 Q. And you've had that in your possession ever since
23 that date; is that right?

24 A. Yes.

25 **MR. MOWRY:** I would offer this into evidence at this

1 time, Your Honor.

2 **THE COURT:** And what says the defense?

3 **MS. WIYGUL:** Without objection.

4 **THE COURT:** All right. Without objection, Number 32
5 is in evidence for the State.

6 (State's Exhibit Number 32, a large rock, was
7 admitted into evidence.)

8 BY MR. MOWRY:

9 Q. Let me show you what's been marked as State's
10 Exhibit Number 23. Do you recognize that?

11 A. Yes, sir. That's a trash bag that was found located
12 in the office inside the store.

13 Q. And let me also show you State's Exhibit Number 30.
14 Do you recognize that?

15 A. That's a trash bag that was filled with cigarettes,
16 cartons of cigarettes, and it was located in front of
17 the window that was busted out in the store.

18 Q. Okay. And you say it was filled with cartons of
19 cigarettes; is that right?

20 A. Yes.

21 Q. I'm gonna hand you what have been marked for
22 identification as State's Exhibits 35, 36 and 37, and
23 ask you if you can identify those, please, sir?

24 A. It's a Glad trash bag, one which was recovered at
25 the scene, two of them that was filled with cartons of

1 cigarettes, and one that was empty.

2 Q. Okay. But all three of these were recovered from
3 the scene?

4 A. I collected all three of these bags.

5 Q. Okay. Two of them had cigarettes in them?

6 A. Right.

7 Q. Okay, sir. But they are empty now?

8 A. Yes, sir.

9 Q. And you took them into your possession and you have
10 had them in your custody or the custody of the Clinton
11 City Police Department since then; is that right?

12 A. That's right.

13 **MR. MOWRY:** Your Honor, at this time I would offer
14 these as State's exhibits.

15 **THE COURT:** Okay. What says the defense?

16 **MS. WIYGUL:** Your Honor, I would just ask that
17 Detective Goggins clarify which exhibit did not have
18 cigarettes recovered from it --

19 **THE COURT:** Well, I think --

20 **MS. WIYGUL:** -- as it's --

21 **THE COURT:** I think you can cover that in
22 cross-examination.

23 **MS. WIYGUL:** Your Honor, he's discussing these
24 exhibits. He's the one that's had control of --

25 **MR. MOWRY:** Your Honor, this is as far as I'm gonna

1 go with them. I would submit that that is fodder for
2 cross-examination, but not for the admissibility of
3 these items.

4 **MS. WIYGUL:** I have no objection as to the
5 admissibility.

6 **THE COURT:** Okay. All right. 35, 36 and 37 into
7 evidence for the State.

8 (State's Exhibit Numbers 35 through 37, trash bags,
9 were admitted into evidence.)

10 BY MR. MOWRY:

11 Q. Now by the time you had discovered the bags and done
12 the walkthrough, had SLED arrived yet? Had the SLED dog
13 team arrived yet?

14 A. No.

15 Q. Okay. In the meantime, what did you do about the
16 cigarettes that you had found in these bags?

17 A. The cigarettes, myself and Officer Marshall, we at
18 some time pulled the cigarettes out of the bags to take
19 an inventory of them.

20 Q. And how did you go about taking an inventory of
21 them?

22 A. We separated the bags at different locations, we
23 pulled the cartons of cigarettes out of the bags and
24 separated them by the brand name of the cigarettes, and
25 you have 100's and regular's, so we separated by the

1 type of cigarettes.

2 Q. Okay. So you separated these by bag and then you
3 separated within the bag by brand; is that right?

4 A. That's right.

5 Q. And did you photograph these cigarettes as well?

6 A. Yes.

7 Q. And I'm going to lay out a variety of photographs.
8 This is State's Exhibit Numbers 21, 20, 19, 18. That's
9 about all that can fit on there right now. Are these
10 the photographs you took?

11 A. Yes, sir.

12 Q. Okay. I'm also gonna show you three other
13 exhibits, 15, 16 and 17, in the correct numerical order
14 this time, and are these photographs that you took of
15 the cigarettes?

16 A. Yes, sir.

17 Q. Okay. Did you take the actual cartons of cigarettes
18 into evidence?

19 A. No, we didn't.

20 Q. Okay. What did you do with them?

21 A. We left them at the business.

22 Q. Okay. So you returned those items to the business;
23 is that right?

24 A. That's right.

25 Q. I'm gonna hand you what's been marked for

1 identification as State's Exhibits 33 and 34, and ask
2 you if you recognize those?

3 A. Yes, sir, I do.

4 Q. What are those, please, sir?

5 A. These are my notes for the inventory of the
6 cigarettes.

7 Q. Okay. Did you prepare both of those copies?

8 A. No, I -- I wrote this one.

9 Q. That's State's Exhibit Number 34 you wrote?

10 A. Yes, as Marshall counted out to me. Officer
11 Marshall. Officer Marshall wrote the Exhibit Number 33
12 as I counted the cigarettes out to him.

13 Q. Okay. Who else was involved in this inventory?

14 A. The owners may have assisted in collecting the
15 inventory and did their count as well after we did, but
16 myself and Officer Marshall did those two lists.

17 **MR. MOWRY:** Your Honor, I would offer these as
18 State's exhibits at this time.

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

20 **MS. WIYGUL:** Your Honor, I would object to the
21 introduction of these documents as an earlier witness,
22 Mr. Patel, testified that he and his brother wrote
23 these.

24 **MR. MOWRY:** I believe he -- and that's gonna be
25 a question for the jury, Your Honor, because my

1 recollection is that he didn't remember who wrote it.

2 He was involved with the inventory.

3 **THE COURT:** Okay. I'm gonna allow them into
4 evidence. It will be 34 --

5 **MR. MOWRY:** 33 and 34, Your Honor.

6 **THE COURT:** -- 33 and 34 into evidence on behalf of
7 the State.

8 (State's Exhibit Numbers 33 and 34, inventories,
9 were admitted into evidence.)

10 BY MR. MOWRY:

11 Q. When you did the inventory and collected the bags,
12 you had already seen the DVD or the surveillance video?

13 A. Yes.

14 Q. What did the surveillance video tell you as far as
15 looking for other kinds of maybe trace evidence or that
16 sort of thing?

17 A. Watching the video it showed the two individuals
18 that entered that location. They was fully covered.
19 Face covered and their hands was covered as well.

20 Q. So they were wearing gloves?

21 A. Right.

22 Q. Did you attempt to get any fingerprints at that
23 time?

24 A. No, we didn't attempt to get fingerprints off the
25 bags after talking about it and we had discovered that

1 they was well covered and had gloves on that the
2 likelihood of getting any prints from those bags being
3 that they had gloves on or DNA because their bodies was
4 well covered was nil or unlikely -- not likely to reveal
5 anything.

6 Q. Okay. So in your experience, attempting to get
7 fingerprints off of the bags, attempting to get DNA off
8 the bags would have been futile; is that right?

9 A. That's right.

10 Q. Okay. Let me ask you, did you attempt to get
11 fingerprints off the rock?

12 A. No, the rock is a rough surface and it practically
13 has to be a smooth surface to obtain the moisture from
14 your fingerprints to be able to lift a fingerprint off
15 the rock.

16 Q. Okay. So this would not have been a surface that
17 was conducive for fingerprints; is that right?

18 A. No, sir.

19 Q. Okay. About what time -- had the SLED dogs arrived
20 by then, by the time you had finished the inventory?

21 A. Yes. I don't think we completed the inventory
22 totally before the SLED dogs arrived.

23 Q. Okay. Talk about that then. When the SLED dogs
24 arrived, what did you do?

25 A. Briefed with the -- with the dog handlers. I

1 pointed them to one of our officers, Moye, that works
2 with Laurens County Sheriff's Department. He was the
3 first on the scene and saw the first individual jump out
4 of the window and bush-bonded through the wooded area.
5 I did that because they could have a point of entry to
6 detect some type of scent from the subject that fled.

7 Q. Okay. And did they take off in pursuit?

8 A. Yes.

9 Q. Okay. What did you do while the dog was tracking?
10 Because the testimony was that that took almost two
11 hours. What did you do in the meantime?

12 A. I was on the scene moving from different areas,
13 listening to the radio communication from the tracking
14 team. I moved the perimeter around if they moved from
15 certain areas to another to make sure it was covered if
16 the suspects had -- say if they had come out of the
17 woods.

18 Q. Okay. What did you do when you found that the SLED
19 dog was at the edge of I-26 and there wasn't anywhere
20 else to go?

21 A. Prior to them getting to I-26, they crossed over
22 Highway 72 and was heading behind a building on
23 Highway 72, which is parallel to the Interstate. At
24 that time, I got on the radio and asked the officer did
25 they still have a visual of the vehicle that was parked

1 down on I-26.

2 Q. And was that Officer Knapp?

3 A. Yes.

4 Q. And you had left him there, what, two hours before?

5 A. That's right.

6 Q. And what was his response to you?

7 A. His response was I'm heading back to the vehicle
8 now.

9 Q. So he had left his post; is that right?

10 A. Yes.

11 Q. All right. And what was the status of the 2005
12 Chrysler?

13 A. When he arrived back, that 2005 Chrysler had left
14 the scene.

15 Q. Is Officer Knapp still employed with the Clinton
16 City Police Department?

17 A. No, he's not.

18 Q. Okay. You were in the courtroom yesterday when the
19 SLED dog team was -- or the dog handler was testifying;
20 is that right?

21 A. Yes.

22 Q. And you heard the location approximately where the
23 -- referring to State's Exhibit Number 1, you heard the
24 location where the dogs came out of the -- I'll get it
25 right eventually -- where they came out of the woods; is

1 that right?

2 A. Yes, sir.

3 Q. How does that relate to the location of the 2005
4 Chrysler?

5 A. Same proximity to where the Chrysler was parked at.

6 Q. Okay. So let me just review, Detective. At this
7 point, you had a break-in, a burglary, you had a video
8 that showed two individuals and you had a car that was
9 parked nearby registered to Maurice Anthony Odom; is
10 that right?

11 A. That's right.

12 Q. Did you have any concrete suspects at that time?

13 A. No, we didn't.

14 Q. Okay. Based on the information that you had, where
15 did your investigation take you?

16 A. What we did is ran a South Carolina search of the
17 name registered on that vehicle and discovered that a
18 Maurice Odom stayed in Barnwell, South Carolina.

19 **MS. WIYGUL:** Your Honor, I would object to this
20 line of discussion. There's been -- there's already
21 been testimony that Mr. Odom stayed in Barnwell and we
22 would stipulate to that fact.

23 **THE COURT:** Okay. Well, I don't know what the
24 Solicitor's wanting to do. He's got a piece of paper in
25 his hand and he went over to your desk and showed it to

1 you, so I don't know what his intentions are.

2 **MR. MOWRY:** My intention is to have the officer
3 identify this and seek to admit it into evidence, Your
4 Honor.

5 **MS. WIYGUL:** And, Your Honor, I would object on the
6 grounds of relevancy.

7 **THE COURT:** Well, let me see what it is.

8 **MR. MOWRY:** (Handing.)

9 **THE COURT:** And, Ms. Wiygul, the nature of your
10 objection is what now?

11 **MS. WIYGUL:** Relevancy, Your Honor. They've entered
12 the document that showed Mr. Odom owned the vehicle in
13 question --

14 **MR. MOWRY:** And also, Your Honor --

15 **MS. WIYGUL:** -- and this is simply not relevant.

16 **THE COURT:** Wait a minute. Please don't speak
17 over --

18 **MR. MOWRY:** I'm sorry, Your Honor. I thought she
19 was finished.

20 **MS. WIYGUL:** This is simply not relevant.

21 **MR. MOWRY:** Your Honor, the printout that has
22 been admitted of State's Exhibit Number 38 shows an
23 address of Apartment [REDACTED], [REDACTED] Wilshire Boulevard, in
24 Wilmington, North Carolina, for Mr. Maurice Anthony
25 Odom, and I will attempt to elicit from the detective

1 that he never went to that address in Wilmington, that
2 he went to Barnwell instead, and I wanted to show why he
3 went there.

4 **THE COURT:** Okay. Well, if this was some
5 information that this officer relied on in his
6 investigation and ultimate arrest of Mr. Odom, then
7 it would be relevant.

8 **MS. WIYGUL:** And, Your Honor, I'd have no objection
9 to the officer's testimony as to that fact, as to the
10 information contained in the document, but the document
11 itself is not relevant to this case.

12 **MR. MOWRY:** Your Honor, this is how he determined
13 to go to Barnwell, South Carolina, by running that
14 record. That's how he found the information.

15 **MS. WIYGUL:** And, Your Honor, via best evidence
16 rule, he's here. He can testify about his
17 investigation. The document is not necessary, it's
18 just cumulative.

19 **THE COURT:** Okay. All right. I'm gonna allow it.
20 I'll overrule the objection.

21 **MR. MOWRY:** Thank you, Your Honor.

22 (State's Exhibit Number 39, DMV record, was marked
23 for identification and admitted into evidence.)

24 BY MR. MOWRY:

25 Q. I'm gonna hand you what's been now marked as State's

1 Exhibit Number 39. Do you recognize that?

2 A. Yes, sir. This is a three-year driver record,
3 driver's license, for Maurice Anthony Odom. It lists
4 an address of , South
5 Carolina.

6 Q. Not Wilmington, North Carolina; is that right?

7 A. That's right.

8 Q. Based on that information, what did you do?

9 A. Based on this information, I also ran a history of
10 the -- of other people that may be staying at this same
11 residence.

12 Q. Okay. As far as that document is concerned, what
13 did you do?

14 A. Maurice Odom, we found that he wasn't staying in
15 North Carolina, and based on this we went to Barnwell
16 with the intentions of talking to Maurice.

17 Q. And your purpose was to find out why his car was
18 there; is that right?

19 A. Right.

20 Q. Did anybody else go with you?

21 A. Yes.

22 Q. Who went with you?

23 A. An investigator with the Newberry County Sheriff's
24 Department, Robert Dennis.

25 Q. Okay. When y'all arrived there, did you consult

1 with law enforcement from that jurisdiction, from
2 Barnwell?

3 A. Yes. Yes, we did. Barnwell police.

4 Q. And did they accompany you to the address that was
5 found on that form?

6 A. Yes.

7 Q. Okay. Did you see Maurice Anthony Odom that day?

8 A. No, not at this address.

9 Q. Not at that address. Did you see Christopher Mixon
10 that day?

11 A. Yes.

12 Q. At that point when you arrived in Barnwell, did you
13 have any knowledge of who Christopher Mixon was?

14 A. No.

15 Q. Okay. When you went to Mr. Odom's residence, did
16 you see Mr. Mixon there or in that vicinity?

17 A. Yes.

18 Q. Was there a comment that was made by one of the
19 Barnwell officers?

20 A. Yes, it was a patrol officer there on the scene that
21 knew who Mr. Mixon, Christopher Mixon, was and he was
22 aware that there was arrest warrants for Christopher
23 Mixon.

24 Q. And was Mr. Mixon taken into custody?

25 A. Yes, he was.

1 Q. Did you at that time talk with Christopher Nixon?

2 A. Yes.

3 Q. Before talking with him, did you advise him of his
4 Miranda rights?

5 A. Yes, we did.

6 (State's Exhibit Number 40 was marked for
7 identification.)

8 BY MR. MOWRY:

9 Q. I'm gonna hand you what's now been marked as State's
10 Exhibit Number 40, and ask you if you can identify that?

11 A. This says Clinton City Department of Public Safety.
12 At the time, Stacy Drakeford was the director. His
13 name's at the top. It's Miranda warnings of Christopher
14 Nixon, which he waived, and agreed to talk to us.

15 Q. Okay. Miranda warnings are -- I'm sure the jury
16 is familiar with them. They're the rights you give
17 before --

18 A. Right.

19 Q. -- taking a statement or interviewing a suspect?

20 **MS. WIYGUL:** Your Honor, I'm gonna object at this
21 point to any further discussion of this document without
22 it being entered into evidence.

23 **THE COURT:** Okay.

24 **MR. MOWRY:** I'm just talking about what -- all
25 right. Then I'll offer it for evidence, Your Honor.

1 **THE COURT:** Okay.

2 **MS. WIYGUL:** And we would object, Your Honor. In
3 his testimony yesterday, Mr. Mixon clearly stated he had
4 no memory of meeting with the officers in November of
5 2011.

6 **THE COURT:** Let me -- let the lawyers come up here
7 for just a moment, please.

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

9 **THE COURT:** Okay. I'm gonna allow the Miranda form
10 into evidence as Exhibit 40 for the State.

11 **MR. MOWRY:** Thank you, Your Honor.

12 (State's Exhibit Number 40, Advisement of Rights,
13 was admitted into evidence.)

14 BY MR. MOWRY:

15 Q. Let me hand you what's now been marked as State's
16 Exhibit Number 40. Do you recognize that?

17 A. I do.

18 Q. All right. What is that, sir?

19 A. This is Miranda, which is the rights form. What we
20 did is advised the individual of their rights in writing
21 and this is signed by Chris Mixon and Robert Dennis and
22 this is my handwriting. I filled this form out at the
23 top.

24 Q. Okay. So you wrote the handwriting up at the top?

25 A. Yes.

1 Q. You were present when all of this went on; is that
2 right?

3 A. Right. And this is Chris -- Christopher Mixon's
4 initials beside each sentence that I read to him and he
5 put his initials saying that he understood.

6 Q. Okay. And that's his signature down at the bottom?

7 A. Yes, it is.

8 Q. And you saw him make that?

9 A. Yes.

10 Q. And whose signature is that below?

11 A. That's the investigator with the Newberry County
12 Sheriff's Department, Robert Dennis.

13 Q. Okay. And just for the jury's information, what is
14 the address for Christopher Mixon?

15 A. .

16 Q. . How does that compare
17 to the address for Maurice Anthony Odom on State's
18 Exhibit 39?

19 A. South Carolina.

20 Q. And did you talk with -- I'm not gonna ask you the
21 substance of it, but did you talk with Christopher Mixon
22 at that time?

23 A. We did.

24 Q. How long did you speak with him?

25 A. Maybe an hour and a half.

1 Q. Okay. And once you had talked to him for an hour
2 and a half, what did you do?

3 A. I obtained arrest warrants for Christopher Mixon
4 and Maurice Odom for the burglary of the BP station
5 in Clinton, South Carolina, and grand larceny and
6 conspiracy to commit burglary.

7 Q. You were in the courtroom yesterday when Ms. Wiygul
8 was asking Christopher Mixon if he had belonged to a
9 gang named Boss; is that right?

10 A. Yes.

11 Q. Are you aware of any reference to anything referring
12 to Boss as far as this case is concerned?

13 A. Yes, I am.

14 Q. And what is that reference, please, sir?

15 A. That's what several individuals called Maurice Odom.

16 Q. So that was Maurice Anthony Odom's nickname; is that
17 right?

18 A. Yes.

19 **MR. MOWRY:** If I could get one moment, Your Honor.

20 **THE COURT:** Sure.

21 BY MR. MOWRY:

22 Q. I want to go back just for a moment, please, sir,
23 to State's Exhibits 13 and 14. I'll lighten that up
24 just a little bit or darken that one. I'm finally
25 starting to figure this out, Your Honor. And that,

1 again, depicts what?

2 A. That's a picture of a black Chrysler.

3 Q. Okay. Is that the same black Chrysler that is
4 referenced in State's Exhibit Number 38, the DMV
5 printout?

6 A. Yes.

7 Q. Okay. And who does that belong to?

8 A. Maurice Odom.

9 Q. Where were these pictures taken?

10 A. In Barnwell.

11 Q. And do you recall the date?

12 A. Yes, on November 18th of 2011.

13 Q. Was that the same date that you and Detective Dennis
14 had gone to Barnwell?

15 A. Yes.

16 Q. Was that the same date that you had spoken with
17 Christopher Mixon?

18 A. Yes.

19 Q. Was that the same date that you determined that
20 you were going to get arrest warrants for both him and
21 Maurice Anthony Odom in this case?

22 A. Yes.

23 Q. Was the tag number -- I know we don't have a picture
24 of it here, but did you reference the printout and make
25 sure that that was the same tag number?

1 A. That's right.

2 Q. What was the result of checking that?

3 A. The same tag number that was on the vehicle that was
4 parked on I-26 eastbound on November 11th.

5 Q. Are you satisfied that was the same car?

6 A. Yes, sir.

7 **MR. MOWRY:** Your Honor, at this time I would ask to
8 publish certain parts of State's Exhibit Number 31 to
9 the jury.

10 **THE COURT:** Okay. You may proceed.

11 **MS. WIYGUL:** Your Honor, may I relocate before it --

12 **THE COURT:** You relocate to wherever you feel like
13 you need to be.

14 **MS. WIYGUL:** Thank you. Your Honor, it -- it may be
15 easier for some of the jurors at this end to see if they
16 kind of -- I'm not sure if they can see it, the far end
17 here. They may want to shift down.

18 **THE COURT:** Okay. If any member of the jury needs
19 to move around in order to be able to see the TV screen,
20 then feel free to do that.

21 **MR. MOWRY:** Your Honor, and just for the record,
22 there's several different perspectives on the -- from
23 different cameras on this. We just want to publish two
24 of them to the jury. And, clearly, the jury, if they
25 wish, can look at all of them, but we just wanted to

1 publish two.

2 **THE COURT:** Okay.

3 (Whereupon, the surveillance DVD was played for the
4 Court and jury.)

5 **MR. MOWRY:** Your Honor, could I just consult with
6 the court reporter to make sure we've got every exhibit
7 into evidence?

8 **THE COURT:** Certainly.

9 (Off the record discussion.)

10 **MR. MOWRY:** In that case, Your Honor, all the
11 exhibits have been admitted into evidence and the State
12 rests at this time.

13 **THE COURT:** Okay. Cross-examination?

14 **MR. MOWRY:** I actually shouldn't have rested. I'm
15 sorry.

16 CROSS-EXAMINATION

17 BY MS. WIYGUL:

18 Q. Mr. Goggins, you were in radio contact with the SLED
19 officer during the dog tracking thing, correct?

20 A. Yes, we had an officer that was present with the
21 tracking team.

22 Q. And you said you sent Officer Moyer with them; is
23 that correct?

24 A. No, ma'am.

25 Q. Oh, I apologize. What officer went with the

1 tracking team?

2 A. Marshall.

3 Q. Marshall?

4 A. Yes.

5 Q. And he's with the Clinton Police Department,
6 correct?

7 A. That's right.

8 Q. So were you in radio contact with Special Agent
9 Creswell or with Officer Marshall?

10 A. Marshall.

11 Q. Okay.

12 A. They was together, but --

13 Q. Did Officer Marshall have a camera in his possession
14 at the time?

15 A. No.

16 Q. Did he have a tape measurer in his possession?

17 A. No.

18 Q. What was the purpose of him accompanying the
19 tracking team?

20 A. Any time you're tracking with the dog tracking
21 team, you're tracking suspects in unknown circumstances.
22 One thing first is officer safety. They're going to a
23 wooded area, it's dark. They only have flashlights for
24 visibility. It's unknown whether the suspect has a gun,
25 a weapon, limited visual, so you want as much manpower

1 as you can possibly send in there with them just in case
2 they're being ambushed, somebody's hiding behind a tree
3 with a firearm.

4 Q. Did Officer Marshall produce a report in this case
5 documenting the footprints that were located during the
6 tracking?

7 A. No.

8 Q. You're the lead investigator in this case, correct?

9 A. That's right.

10 Q. You stated that they did not test for fingerprints
11 or DNA from the bags because the suspects had gloves on
12 in the store, correct?

13 A. Yes. I collected the bags, I collected the rock
14 and -- with the intentions to get them processed for
15 latent prints or DNA. After continually viewing the
16 video, it was determined that the subjects had on
17 gloves, they dressed in long-sleeved shirts and long
18 pants. The likelihood to get fingerprints from that bag
19 or from -- DNA from them would be nil.

20 Q. The suspects brought those bags with them, didn't
21 they?

22 A. Yes, according to the owners of the store that they
23 didn't have those type of bags inside the store.

24 Q. And you stated that you made the decision not have
25 the rock tested for DNA also, correct?

1 A. The rock wasn't tested for DNA nor latent prints.

2 Q. And the rock was brought with them also, correct?

3 A. Yes.

4 Q. You had a camera on you, didn't you?

5 A. I did.

6 Q. Okay. But your officers aren't provided with
7 cameras?

8 A. The shift lieutenant is usually provided with a
9 camera. I wish we could equip all our officers. We
10 just don't have the resources to provide a camera for
11 every officer.

12 Q. Do your officers have cell phones?

13 A. Some of them do have those. The shift lieutenant
14 is provided with a cell phone from the Department.
15 Other than that, it would have to be their personal
16 cell phone.

17 Q. Would you agree with me that most cell phones in
18 today's day and age have camera capability?

19 A. I would agree with you on that, yes.

20 Q. How long had Officer Knapp been with the Clinton
21 Police Department at the time of this incident?

22 A. This is an approximate guess of mine. I don't have
23 his records in front of me, but I would probably imagine
24 maybe a year, year and a half, two years.

25 Q. Was he written up specifically for this incident for

1 his failure to follow instructions?

2 A. No, he was -- I had a talk with him, but he wasn't
3 written up for that.

4 Q. How long after this incident did he leave the
5 Department?

6 A. Again, I don't have a -- I don't have his departure
7 dates. Just an approximate, that was 2011 and it's 2014
8 now. Maybe 2012, 2013.

9 Q. Okay. So his leaving the Department was not
10 as a direct result of him failing to follow your
11 instructions?

12 A. No. Not a direct, no.

13 Q. Did he leave the department voluntarily or
14 involuntarily?

15 **MR. MOWRY:** Your Honor, I am gonna question
16 relevance on this.

17 **THE COURT:** Well, it's cross-examination. I'll
18 allow her some latitude on it. Go ahead.

19 BY MS. WIYGUL:

20 Q. Did he leave the Department voluntarily or
21 involuntarily?

22 A. I'm not exactly sure whether it was involuntarily
23 or voluntary. It was a personnel matter that was under
24 investigation.

25 Q. Did you provide copies of any paperwork to the

1 prosecutor's office in this case to inform them that you
2 had an officer working on this case that had left under
3 those circumstances?

4 A. No.

5 Q. Is it common for you to disobey traffic signs to
6 avoid driving a mile?

7 A. I'm sorry, I didn't --

8 Q. Is it common for you to disobey traffic laws to
9 avoid driving a short distance?

10 A. I think you may have misunderstood me. On here I
11 stated that I -- if I can explain. I did exit that mile
12 that you was talking about. The distance where I went
13 backwards back on the entrance ramp to the Interstate is
14 on the other side, is on the east side, and that's right
15 approximately where the dot is on the east side entrance
16 to -- back up that same entrance ramp.

17 Q. Uh-huh.

18 A. And to answer a couple of your questions, it's not
19 a common practice to disobey traffic laws, but once
20 you're in an investigation or you are acting as a law
21 enforcement officer, we do it all the time. We have to
22 obey the speed -- go above the speed limit to capture a
23 vehicle that is speeding. That's a common thing. It
24 depends on the circumstance and in this circumstance my
25 blue lights was on when I exited back up that entrance

1 ramp.

2 Q. Officer, were you present for Special Agent
3 Creswell's testimony?

4 A. I was.

5 Q. And did you hear him discussing that second vehicle
6 that he saw on I-26?

7 A. I did.

8 Q. Did you check on that car?

9 A. That vehicle was not present when I went to the
10 Interstate.

11 Q. That's not what I asked, sir. Did you check on
12 that car? Did you run the plates? Did you see who it
13 belonged to? Did you take any action regarding the
14 vehicle that SLED reported to you?

15 A. I couldn't check on that car because it wasn't
16 present.

17 Q. Sir, can you tell me what this document is?

18 A. That's a Clinton Department of Public Safety Mission
19 Statement.

20 Q. Is that your guiding force? Is that the mission of
21 your Department?

22 A. Yes.

23 Q. And is a portion of that statement of values, "We
24 maintain the highest levels of integrity and
25 professionalism in all actions"?

1 **MR. MOWRY:** Your Honor, she is -- and I object.
2 She is quoting from something that is not in evidence.

3 **THE COURT:** Okay. All right. Let's -- let's do
4 this. Let's take a short morning break. Ladies and
5 gentlemen of the jury, I'm gonna ask you to go back
6 to the jury room and, again, remind you not to begin
7 discussing this case amongst yourselves and we'll get
8 you back out shortly, okay?

9 (Whereupon, the jury retires to the jury room.)

10 **THE COURT:** Okay. It's a -- this document is some
11 mission statement from the Department of Public Safety?

12 **MS. WIYGUL:** It's the mission statement and
13 statement of values available to the public on their
14 website, Your Honor.

15 **THE COURT:** Okay. All right. And where are you
16 going with this? Just so I can kind of have a feel to
17 handle the Solicitor's objection.

18 **MS. WIYGUL:** I just want to be able to question the
19 detective if he feels like he followed their statement
20 of values during this investigation.

21 **THE COURT:** Well, it might be better, and this may
22 resolve the objection, instead of quoting from it, ask
23 him a question or questions about the document and then
24 if he -- I'm not suggesting he's not -- gonna misstate
25 anything, but if he does, then, of course, you can point

1 out where in the document you believe that he has and
2 maybe let's handle it in that fashion.

3 **MS. WIYGUL:** Yes, Your Honor.

4 **THE COURT:** Since we're taking a break, let's go
5 ahead and utilize this break ten or fifteen minutes.

6 **MR. MOWRY:** Thank you, Your Honor.

7 **MS. WIYGUL:** Could I put my objection on the record
8 as to Mr. Nixon's Miranda statement?

9 **THE COURT:** Certainly. Go ahead.

10 **MS. WIYGUL:** And I would simply add that I believe
11 it's bolstering and that that objection was made
12 in-camera and overruled from the bench.

13 **THE COURT:** Okay. So noted.

14 **MS. WIYGUL:** Thank you, Your Honor.

15 **THE COURT:** Okay. We'll be in recess for about ten
16 or fifteen minutes.

17 (Recess taken.)

18 **BAILIFF:** All rise. Have a seat.

19 **THE COURT:** Thank you very much. Let's bring the
20 jury out, Mr. Bolt.

21 (Whereupon, the jury returns to the courtroom.)

22 **BAILIFF:** All jurors present, Your Honor.

23 **THE COURT:** Thank you, Mr. Bolt. Ms. Wiygul, I
24 believe you are in the middle of your cross-examination.
25 You may proceed, ma'am.

1 **MS. WIYGUL:** Thank you, Your Honor.

2 BY MS. WIYGUL:

3 Q. Officer, are you familiar -- or, Investigator, are
4 you familiar with your mission statement?

5 A. I have the mission statement in front of me that you
6 provided. Within the last, I'd say, seven, eight years
7 we've had different directors there. Since they come,
8 it changes. So probably not word for word, but I do
9 have this copy you have here.

10 Q. Could you tell me whether one of the values that's
11 listed as a statement of values for the Clinton
12 Department of Public Safety is to maintain the highest
13 level of integrity and professionalism in all actions?

14 A. Are you referring to the first bullet on this?

15 Q. The third bullet.

16 A. The third bullet. Should I read this out?

17 Q. I'm just asking if that's one of the statement of
18 values for the police department for which you've worked
19 for the past sixteen plus years?

20 A. This bullet pertaining to -- what it reads is "We
21 treat members of the public with respect and dignity.
22 We maintain the highest levels of integrity and
23 professionalism in all of actions. We will treat all
24 those who we serve in a compassionate, sensitive,
25 courteous, and professional manner, regardless of sex,

1 race, lifestyle or reason for public safety contact.
2 There can be no question or suspicion among the
3 citizenry regarding Department ethics. Professionalism
4 requires impeccable conduct, careful protection of all
5 citizens' rights, and the maintenance of high levels of
6 accountability from all members of the Department."

7 Q. And that last sentence you read, that's
8 professionalism that requires those characteristics,
9 correct?

10 A. Yes. Impeccable conduct.

11 Q. Sir, do you consider yourself a professional?

12 A. Without question.

13 Q. Have you -- you mentioned an alleged nickname that
14 somebody told you Mr. Odom went by. Have you also heard
15 him identified as Peanut?

16 A. It was several names that --

17 Q. Have you ever heard Mr. Odom identified by the
18 nickname Peanut?

19 A. I can't recall.

20 Q. Did you make any attempt to find out who lived at
21 the North Carolina address listed on the registration
22 for the Chrysler 300?

23 A. No, we didn't.

24 Q. So you wouldn't know if that address belonged to
25 Mr. Odom's mother?

1 A. No. Oh, as a matter of fact, I think once we was
2 in Barnwell, if I'm not mistaken, his mother was staying
3 in Barnwell as well.

4 Q. But you don't know, do you?

5 A. I couldn't tell you 100 percent, no.

6 Q. Investigator, as the lead investigator in this case,
7 did you prepare this incident report?

8 A. No, I did not.

9 Q. Did you review it?

10 A. I did.

11 Q. Did you have any input into this incident report?

12 A. No.

13 Q. Investigator, could you identify this document?

14 A. This is an attachment also to the incident report
15 of 2011-11077 that's indicated as a property listing.

16 Q. And what does that indicate as the total value of
17 the property taken in this incident?

18 A. \$510.

19 Q. Who prepared this incident report?

20 A. Jeremy Marshall.

21 Q. But Mr. Marshall's not here today, is he?

22 A. No, he's not.

23 Q. Is he still with the Clinton Police Department?

24 A. He is. He's still with the police department, yes,
25 ma'am.

1 Q. Can you explain to us where this \$510 amount came
2 from?

3 A. As of my knowledge of understanding that, at the
4 time there wasn't a complete inventory completed of the
5 property that was stolen or cash that was taken from
6 there. I think at that time there was also some change
7 that was near -- on the outside near the register and it
8 may have been a total of \$510 or approximately that
9 amount. He didn't have an exact figure until after the
10 inventory was completed.

11 Q. Officer -- I'm sorry. Investigator, I'm handing you
12 what's been marked as State's Exhibits 33 and 34.

13 A. Yes.

14 Q. When was that list of inventory made by yourself and
15 Officer Marshall?

16 A. This inventory consists of the cigarettes.

17 Q. Was that inventory made at the scene?

18 A. This inventory was made at the scene. It consists
19 of the cigarettes that was taken and put in the boxes
20 and recovered.

21 Q. Officer, would the cigarette cartons be considered
22 part of the property in this incident?

23 A. It would be.

24 Q. Let me just clarify. The yellow sheets, the
25 handwritten lists of the property, was made by yourself

1 and Officer Marshall at the scene, correct?

2 A. Yes, of the cigarettes, yes, ma'am.

3 Q. Where was the incident report printed at?

4 A. At the Clinton Department of Public Safety.

5 Q. So the incident report was not produced until after
6 you left the scene, correct?

7 A. That's right.

8 Q. Investigator, you stated that you went down to
9 Barnwell with Robert Dennis on November 18th, is that
10 correct, of 2011?

11 A. That is correct.

12 Q. And while you were down there, you actually went
13 with Officer Dennis while a search warrant was performed
14 on Mr. Odom's property, didn't you?

15 A. That is correct.

16 Q. They searched all of his property and his vehicles,
17 didn't they?

18 A. I was aware they searched his residence. I wasn't
19 present when they searched his vehicle, but I do believe
20 that they did search his vehicle.

21 Q. And nothing was taken, was it?

22 A. That is correct.

23 Q. You rode down with Officer Dennis, correct?

24 A. That's correct.

25 Q. You rode back with Officer Dennis, correct?

1 A. That is correct.

2 Q. Officer Dennis told you they did not seize anything
3 from Mr. Odom's property --

4 **MR. MOWRY:** Your Honor, that would be hearsay.

5 **MS. WIYGUL:** Your Honor, he's the lead investigator
6 of this case. He's been testifying as to what other
7 officers told him throughout the trial.

8 **MR. MOWRY:** Your Honor, that would be hearsay upon
9 hearsay.

10 **THE COURT:** I'll sustain the objection.

11 BY MS. WIYGUL:

12 Q. As the lead investigator in this case, was it your
13 understanding that nothing was found at Mr. Odom's home
14 or on any of his property or vehicles that implicated
15 him in this incident?

16 A. That's right. That date was November the 18th, the
17 incident took place November 11th. Seven days past the
18 incident.

19 Q. Investigator, you never saw who was in that Chrysler
20 300 up in Clinton, did you?

21 A. No.

22 **MS. WIYGUL:** I don't have any further questions.
23 Thank you.

24 **THE COURT:** Any redirect by the State?

25 **MR. MOWRY:** Your Honor, there is one matter, if I

1 could approach with Ms. Wiygul.

2 **THE COURT:** Sure.

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

4 REDIRECT EXAMINATION

5 BY MR. MOWRY:

6 Q. Just a few questions. I just want to clear up the
7 valuation. Ms. Wiygul asked you about certain items on
8 an inventory that Officer Marshall did. The red -- I
9 think it was a red change box and/or money box or bag
10 of change or whatever it was, that was taken; is that
11 right? That was not recovered?

12 A. That's right.

13 Q. So that was inventoried on your sheets; is that
14 correct?

15 A. Yes.

16 Q. The cigarettes were recovered; is that right?

17 A. Yes.

18 Q. And we have the inventories of all of these cartons
19 and all the numbers represent what?

20 A. The numbers represent the number of cartons of that
21 brand.

22 Q. All these cartons are 40 or \$45 a carton; is that
23 right?

24 A. That's what I understand.

25 Q. Okay. So as far as the cigarettes and the money and

1 everything else, are we talking a valuation of well over
2 \$2,000?

3 A. Definitely.

4 Q. Okay. Ms. Wiygul also asked you about photographs
5 and tape measurers and things like that. Let me ask
6 you about the morning after the break-in, that same day,
7 but during daylight, did you and officers go back to the
8 scene and attempt to trace the track of the dogs?

9 A. The lieutenant and his patrol went back to the scene
10 to attempt to locate where the tracking team had went to
11 to see whether or not there was any property discarded,
12 dropped or shoe prints that was available for an imprint
13 or that type.

14 Q. To get a plaster cast; is that right?

15 A. Right.

16 Q. Can you do that on just any kind of shoe print?

17 A. No, sir.

18 Q. And were you able to obtain any kind of evidence
19 from that little search?

20 A. No, sir. I recall it was one area that they saw a
21 shoe print. It was cumulative or several shoe prints.
22 They couldn't determine whether it was law enforcement
23 officers' shoe prints or whether it was the suspect's
24 shoe prints as well as we didn't have a suspect in
25 custody in order to compare the imprint with that shoe

1 if we had one.

2 Q. And dog prints for that matter, weren't there?

3 A. And a dog tracking over the prints, correct.

4 **MR. MOWRY:** I believe that's all I have. Thank you,
5 sir.

6 **THE COURT:** Recross?

7 **MS. WIYGUL:** Very briefly, Your Honor.

8 RECROSS EXAMINATION

9 BY MS. WIYGUL:

10 Q. Investigator, was there a safe in the BP?

11 A. No, but I think I can explain that. Inside of that
12 office is cabinets there and I think it refers -- you're
13 referring to the incident report where Marshall may
14 have stated that the safe was left open. If you read
15 further, it also states that the cabinets is where the
16 money taken was from in that report and that's what he's
17 referring to as a locked cabinet, not an actual safe.

18 Q. Officer, would looking at this incident report help
19 refresh your recollection as to what's in it?

20 A. Yes.

21 Q. At the very top of this page, could you tell the
22 jury what that actually says? Just the first couple of
23 sentences.

24 A. A ski mask went -- and this is starting off with
25 the first page -- as a runoff from the first page. A

1 ski mask went -- a ski mask that come, went to the
2 office and broke the window of the office with the same
3 rock. In the office the subject was able to take the
4 money from the safe, which the owner stated was not
5 locked. Money from the cabinets and other cigarettes
6 stored in that office -- stored in the office. That's
7 the end of that sentence.

8 Q. Thank you, sir.

9 A. Yes.

10 Q. Investigator, was a report or any type of
11 documentation produced as to this second attempt the
12 next morning to go find the evidence?

13 A. No, there wasn't any evidence collected and there
14 wasn't anything to collect, so that was not on the
15 incident report.

16 Q. Was there any documentation produced to show that
17 such a search occurred?

18 A. No.

19 **MS. WIYGUL:** I have no further questions.

20 **THE COURT:** Thank you for your testimony, Officer.
21 You can step down.

22 **THE WITNESS:** Thank you.

23 (Witness excused.)

24 **MR. MOWRY:** And now the State rests, Your Honor.

25 **THE COURT:** Okay. Thank you very much, Solicitor.

1 Madam Forelady and ladies and gentlemen of the jury,
2 we're at a time now where we need to take a break and
3 what I'm anticipating that we're gonna do is maybe take
4 an early lunch break, but I need to check on a couple of
5 things.

6 So what I'm gonna ask you to do is just go back to
7 your jury room and then when I decide if, in fact,
8 that's what we're gonna do, which I believe we will,
9 I'll just have Mr. Bolt tell you what time that I'll
10 need you back in your jury room, okay?

11 So if you'll just go back there for a few minutes.
12 And, again, I remind you don't start discussing this
13 case amongst yourselves and hopefully we can get you a
14 time and you can just take an early lunch break, okay?

15 (Whereupon, the jury was excused for lunch.)

16 **THE COURT:** Ms. Wiygul, any motions on behalf of
17 the defense?

18 **MS. WIYGUL:** Not at this time, Your Honor.

19 **THE COURT:** Okay. All right. Let's be at ease for
20 just a moment. I've got one little scheduling thing and
21 I've got to figure out as far as time when we're gonna
22 start back.

23 And let me go ahead while we're checking on that,
24 Ms. Wiygul, have you explained to Mr. Odom what I need
25 to do as far as advising him of his rights concerning

1 testifying or not testifying?

2 **MS. WIYGUL:** I have, Your Honor.

3 **THE COURT:** Okay. Thank you. Mr. Odom, will you,
4 please, stand and, Madam Clerk, will you swear Mr. Odom
5 in.

6 **THE CLERK:** Yes, Your Honor.

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

9 **THE COURT:** Mr. Odom, at this time I'm going to
10 explain to you certain of your rights. If you do not
11 understand anything that I say, please let me know. If
12 you want to me to explain anything in more detail,
13 please let me know that as well. Do you understand,
14 sir?

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

16 **THE COURT:** Okay. We have now reached the stage
17 of the trial where you may present your defense. You
18 have the right to claim the protections given to you by
19 the Fifth Amendment to the Constitution of the United
20 States. This amendment states in part the following.
21 No person shall be compelled in any criminal case to be
22 a witness against himself. This means that you cannot
23 be required to testify in this case. You have the right
24 to testify in your own behalf; however, no one can make
25 you testify. This is a personal right and no one can

1 waive this right except you. If you decide to testify,
2 you'll be subject to the same rules that govern other
3 witnesses and you may be examined and cross-examined on
4 any relevant issue in this case. In addition, if you
5 have any convictions involving dishonesty or a false
6 statement or for crimes punishable by imprisonment for
7 more than one year and this Court determines that the
8 probative value of admitting this evidence outweighs its
9 prejudicial effect to you, the Solicitor would be able
10 to introduce your record to attack your credibility.

11 If you decide to testify, this decision on your
12 part must be freely, voluntarily and intelligently made,
13 with knowledge of the protections given to you by the
14 Fifth Amendment and the consequences of your decision to
15 testify. If you decide not to testify, I will instruct
16 the jurors that they not give the fact that you did not
17 testify any consideration whatsoever and that there is
18 to be absolutely no prejudice to you because you did not
19 testify. It is left entirely up to you whether or not
20 you testify. You may talk with your attorney, which
21 you've already done, your family, friends, anyone else,
22 but the final decision will be left entirely up to you.

23 Have you understood what I've explained to you thus
24 far, sir?

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

1 **THE COURT:** Okay. And do you have any questions
2 about what I've explained to you?

3 **THE DEFENDANT:** No, sir. I'm just -- if you don't
4 mind, I was just curious even though me and my lawyer
5 have discussed this already, the reason why -- the only
6 reason why I didn't want to testify is I didn't want
7 my record brought up to make it look like, you know,
8 even though I find case law where it says that after
9 a ten-year period -- a ten-year period that that
10 conviction and -- after you finish the conviction and
11 after your sentence that you cannot be cross-examined,
12 but my lawyer explained that I have in the past when I
13 was younger, a teenager, I have a past CSC twenty years
14 ago that they can bring it up.

15 **MS. WIYGUL:** Your Honor, we -- we discussed this.
16 He has a CSC conviction from 2002. We did some reach on
17 the case law and found that that has been held to be a
18 crime of moral turpitude. I discussed the issue with
19 Solicitor Mowry and he informed me that he did intend to
20 bring that up if Mr. Odom took the stand.

21 **THE COURT:** Okay.

22 **MR. MOWRY:** And, Your Honor, also the State has
23 certified copies of indictments on which the Defendant
24 pled for four burglaries at various times. Now they are
25 beyond the ten-year period, but that is still within

1 Your Honor's discretion to make that determination as
2 to whether or not those could be used for impeachment
3 purposes as well, and we would certainly try to do that.

4 **MS. WIYGUL:** That's correct, Your Honor. It's my
5 understanding that Mr. Mowry's argument would be common
6 scheme or plan.

7 **THE COURT:** Okay. But have you understand
8 everything I've explained to you?

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

10 **THE COURT:** Do you need any more time to talk
11 with Ms. Wiygul, any of our family members, friends,
12 concerning the issue of whether or not you testify?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** And what is your decision concerning
15 whether or not you're going to testify?

16 **THE DEFENDANT:** No, sir, I won't.

17 **THE COURT:** You will not testify?

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

19 **THE COURT:** All right. Let the record reflect that
20 I find that Mr. Odom has elected not to testify, and
21 this decision has been made by him freely, voluntarily
22 and intelligently, and he's done so with the advice of
23 counsel of this very capable attorney.

24 Thank you, Mr. Odom. You can have a seat.

25 **THE DEFENDANT:** You're welcome.

1 **THE COURT:** Ms. Wiygul, what are the plans of the
2 defense concerning putting up a case?

3 **MS. WIYGUL:** We do not plan to put up a case, Your
4 Honor.

5 **THE COURT:** Okay. All right. Thank you very much.
6 Everybody be at ease for just a moment and let me see --
7 figure out -- start back at one? Is that satisfactory
8 to everybody?

9 **MR. MOWRY:** That's satisfactory, Your Honor.
10 Your Honor, just one matter. If there is going
11 to be a directed verdict motion, frankly, we would
12 prefer that it be done before lunch. If it's gonna be
13 overruled, then we'll know to go ahead and prepare. If
14 it's gonna be granted, then we'll know not to. So if
15 we're gonna do that, for an abundance of caution, I'd
16 like to go ahead and do it now.

17 **MS. WIYGUL:** Your Honor, I believe I've already put
18 on the record we do not have any motions in this case
19 to make at this time. I believe that the evidence, if
20 believed by the jury, would be sufficient to --

21 **THE COURT:** Okay.

22 **MS. WIYGUL:** -- sustain a directed verdict motion.

23 **THE COURT:** And the Court appreciates your candor
24 very much. Thank you.

25 One other matter, for the record, and this was

1 discussed yesterday, and I don't know if it was done on
2 the record, but I believe there is a stipulation that
3 this burglary that took place on November 11, 2011, was
4 done at nighttime. Is that the stipulation?

5 **MR. MOWRY:** It's my understanding, Your Honor, yes,
6 sir.

7 **MS. WIYGUL:** Your Honor, I think that's the only
8 testimony in the record.

9 **THE COURT:** All right. Okay. Because my draft
10 charge, and I don't know if you guys have had a chance
11 to look at it yet or not --

12 **MR. MOWRY:** Yes, sir, I did.

13 **THE COURT:** -- but it is mentioned that there is
14 a stipulation between the attorneys that it was at
15 nighttime, okay?

16 All right. Very good. We'll be in recess until
17 1:00. Mr. Bolt, would you instruct the jury to go ahead
18 and take their lunch break now and to promptly be back
19 at 1:00. Thank you very much.

20 (Whereupon, a luncheon recess was taken.)

21 **BAILIFF:** Let's all rise. Court will come to order,
22 please.

23 **THE COURT:** Thank you very much. Have a seat. All
24 right. We're back on the record. Two matters. One,
25 it's my understanding that -- and the State's already

1 indicated no exceptions or objections to the final
2 charge by the Court. That was stated off the record
3 before we broke. And, Ms. Wiygul, you indicated you did
4 not have any exceptions or objections to the charge?

5 **MS. WIYGUL:** That's correct, Your Honor.

6 **THE COURT:** And, certainly, if a good thought comes
7 into your head while I'm doing it and you want to make
8 an objection, I'm gonna give y'all another opportunity
9 after the charge to state any objections you might have.

10 And, secondly, we found out that during the lunch
11 break that one of the jurors, Ms. Bodie, had gone to
12 the Clerk's office, made an inquiry concerning a charge
13 that her son had indicated that he had, but that had
14 been resolved, and she was just kind of checking up to
15 determine and find out if that was correct, and the
16 status of that charge is still pending, and that
17 information was given to Ms. Bodie. And in talking
18 with the attorneys, the Court indicated that I was
19 inclined not to deal with that, feeling like maybe it
20 would create some situation that may cause her to
21 deviate from whatever direction she's going in on this
22 case, and I think the lawyers were, for the most part,
23 in agreement and we're not gonna deal with that, but I
24 wanted to note it for the record.

25 **MR. MOWRY:** And, Your Honor, I'm confident that

1 Ms. Wiygul was doing this for strategic reasons, but
2 just out of an abundance of caution should the defense
3 have made a motion for a directed verdict, is Your Honor
4 willing to put on the record how you would have ruled in
5 that matter?

6 **THE COURT:** Sure. If a motion for directed verdict
7 had been made by the defense as to any or all of the
8 three indicted charges, the motion would have been
9 denied. I've already reviewed my notes and the evidence
10 that came out and compared that with the required
11 elements of burglary second, grand larceny, and the
12 conspiracy, and I find that there -- or I would have
13 ruled that there was the existence of evidence as to
14 each element to justify all three charges going to the
15 jury.

16 **MR. MOWRY:** Thank you, Your Honor. And, again,
17 knowing Ms. Wiygul's experience, I have no question that
18 that was a strategic decision on her part, but just for
19 the sake of caution we just wanted to broach that.

20 **THE COURT:** Sure. Okay. Very good. Anything else
21 before we bring the jury out? Everybody's ready to
22 argue?

23 **MR. MOWRY:** Yes, sir.

24 **MS. WIYGUL:** The defense is ready, Your Honor.

25 **THE COURT:** All right. Very good. Mr. Bolt, will

1 you bring them out, please.

2 (Whereupon, the jury returns to the courtroom.)

3 **BAILIFF:** All jurors present, Your Honor.

4 **THE COURT:** Thank you, Mr. Bolt. Ladies and
5 gentlemen of the jury, we're now at the conclusion of
6 this trial where two things will happen. One, the
7 lawyers will make their closing arguments to you and
8 then the Court will give you the final charge on the
9 law. So if you'll give the lawyers your very close
10 attention while they make their closing arguments.

11 Okay. You may proceed.

12 CLOSING ARGUMENT

13 **MR. MOWRY:** Madam Forelady, ladies and gentlemen,
14 lawyers are the only breed on Earth that would call a
15 10,000 word document a brief, but I promise you I'm not
16 going to go long today, but I wanted to talk about a few
17 matters that we have discussed over the last day and a
18 half basically. One of the things that you are gonna
19 have to consider in the jury room is whether or not
20 there is any reasonable doubt in this case, and that's
21 a legal term, a term of art more or less, that almost
22 defies description or definition. I have heard judges
23 define it as a doubt for which there can be given a
24 reason. My mother was a high school English teacher and
25 she would have whacked me upside the head if I had

1 defined a term by using the term itself, but there's
2 another way to define a reasonable doubt.

3 If we prove a case to you beyond a reasonable doubt,
4 what that means, in essence, and I believe His Honor
5 will instruct you on this, is that it leaves you firmly
6 convinced as to the truth of that proposition. And I
7 submit, ladies and gentlemen, that you should be firmly
8 convinced, firmly convinced, that Maurice Anthony Odom
9 burglarized the BP store on Highway 72 and I-26,
10 committed a larceny from it -- excuse me, a grand
11 larceny from it, and conspired with Christopher Mixon to
12 do so. You should be firmly convinced on all those
13 propositions.

14 Let me go back over the burglary again just to touch
15 on the elements. As you can see from the photographs
16 that we admitted during the course of the trial, there's
17 not a whole lot of doubt that a burglary was committed.
18 This rock, the boulder as it was described, or as
19 Christopher Mixon called it a couple of times, a brick,
20 was tossed through a window, this window, at the BP
21 store. And that's how it looked that night. Shattered
22 out the glass. Two intruders jump inside. There's the
23 individual that Mr. Mixon identified as Maurice Anthony
24 Odom carrying that big rock to go break into the office.

25 So was the building entered? There was a rock

1 through the window. Entry was made by the two
2 individuals. Was it without consent? Ramesh Patel,
3 the assistant manager, now the manager of the place, of
4 his family-owned business, said that no one should have
5 been in there after the close at 10:00. Was there an
6 intent to commit a crime inside? Yes. Christopher
7 Mixon said their whole plan was to go in there and steal
8 cigarettes and you can see in the pictures that they had
9 swept large quantities, dozens of cartons of cigarettes,
10 into those trash bags to take them out of there.

11 Was there a larceny? Again, there's not a doubt
12 as to whether a larceny was committed. What we're
13 talking about here is who done it. Take a look again,
14 ladies and gentlemen, at these pictures. The cash
15 drawer emptied out. More change drawers. Here's
16 another one, but mostly what were they intending to
17 steal? Cigarettes. Cigarettes, cigarettes, cigarettes.
18 Well, and change, too. And then more quantities of
19 cigarettes, cigarettes, cigarettes. As I told you,
20 dozens of cartons of cigarettes. Dozens of cartons of
21 cigarettes. Worth well over \$2000. I keep bringing
22 that figure up, ladies and gentlemen, because that's
23 the figure that the State has to prove to you for it to
24 be grand larceny. We've proved that and more. It was
25 probably well over \$3,000 in cigarettes alone, not

1 counting the money. And you heard Ramesh Patel talk
2 about how it was probably closer to \$5,000 altogether.

3 So there's not much doubt that a larceny was
4 committed. There's not much doubt that there was a
5 taking, a seizure, of the property of another person and
6 carrying away. They put it into the bags. His Honor
7 will tell you, ladies and gentlemen, that if there's any
8 movement of that property, no matter how slight that
9 movement, with the intent to steal it, then a larceny
10 has been committed, and we've certainly proven that.

11 The personal property of another. Well, there's a
12 difference between real and personal property. Real
13 property is land and anything affixed to it, whether
14 it's a house, a windmill, anything like that. Personal
15 property is everything else. So there was a question
16 about whether or not this was personal property that
17 was being stolen. Yes, it was. There is a designation
18 of this -- that cartons of cigarettes would be
19 considered personal property and it was the personal
20 property of that store, of that business, that those
21 two individuals, Christopher Mixon and Maurice Anthony
22 Odom, were stealing it.

23 Of another. Basically you can't steal from
24 yourself. It's got to be somebody else's property and
25 you're taking it without that person's permission. With

1 the intent to permanently deprive them of that property.
2 I don't think there's any doubt about that. Again, I
3 don't believe there's any question whatsoever about
4 whether a larceny took place. The matter is who done
5 it?

6 And was there a conspiracy? His Honor will instruct
7 you on what a conspiracy is all about, but a conspiracy
8 is, in essence, the meeting of the minds of two or more
9 people for the purpose of committing an unlawful act.
10 Once you have the meeting of the minds, there's not much
11 else that's required. Frankly, Maurice Anthony Odom
12 and Christopher Nixon entered a conspiracy in Barnwell.
13 That conspiracy continued until they broke into the
14 place, to the store, on Highway 72 and tried to steal
15 cigarettes. So the conspiracy did occur in Laurens
16 County.

17 Clearly, once again, looking at the video and the
18 still pictures that we've taken from it, you can see two
19 individuals entering the building, grabbing things, not
20 stopping, not debating, they're not hesitating, just
21 quickly going about trying to steal every cigarette in
22 the store. Clearly these two people had planned it out.
23 Clearly there was a conspiracy involved. Who were these
24 masked men? We know from the testimony, ladies and
25 gentlemen, that they were Christopher Nixon and Maurice

1 Anthony Odom.

2 Now think back over the witnesses that were
3 presented to you. Nick Moye testified, the sheriff's
4 deputy, testified that he was on routine patrol, he just
5 happened to be going by the store and as he pulled into
6 the lot to check on the store, to check on the integrity
7 of the store to make sure it was okay, he hears the
8 alarm going off and as he pulls around to the side of
9 the store he sees broken glass and then he sees a person
10 coming out and running. So he goes after that person
11 thinking he was the only thief, burglar and thief, in
12 the store, not realizing that there was another
13 individual who ended up making his escape through the
14 woods. It wasn't until Tyrone Goggins and the owners of
15 the store took a look at the video that they realized
16 that it wasn't just one, but two burglars, Christopher
17 Mixon and Maurice Anthony Odom, in the store.

18 Okay. Now there was a lot of fairly laborious
19 testimony about dog tracking and I want to go through
20 some of this with you. First of all, this was a process
21 that took a while, but what we heard, ladies and
22 gentlemen, was that the track basically went into the
23 woods, came out about here, lo and behold, almost
24 directly across the street or road from the car. And
25 whose car was that? Well, it was a 2005 Chrysler that,

1 lo and behold, came back registered to this Defendant.

2 Okay. Now while we can prove, ladies and gentlemen,
3 that crimes were committed, a lot of the who done it
4 part is gonna come down -- is gonna rise and fall on the
5 believability in your minds of Christopher Nixon.
6 Should you believe him? That's the question you're
7 gonna have to ask. I'm not asking you whether you
8 should like him, I'm not asking you to take him home to
9 Sunday dinner. All I'm asking you to do is consider
10 whether or not his testimony is worthy of your belief.
11 Yes, he was convicted of several burglaries. Yes, he
12 has charges pending against him in Laurens County right
13 now. All those charges arising from the same time
14 frame, the same time frame as the burglary on Highway 72
15 that we're dealing with today, but he's pled guilty to a
16 lot of charges, he's been sentenced, he's paid his debt,
17 and he's still appearing before you, as he told you, to
18 testify honestly.

19 Now you heard from Tyrone Goggins that
20 Mr. Nixon made a statement to law enforcement back on
21 November 18th of 2011. Nixon apparently said on --
22 well, he said on the witness stand he didn't remember
23 making the statement. The defense has access to it.
24 Don't you think if there had been some gross
25 inconsistency with what he said back then and what he

1 testified to in court we would have heard about it? So
2 I submit to you that Nixon's statement on November 18th,
3 ladies and gentlemen, and his testimony are consistent
4 and the one reason that they're consistent is because he
5 told the truth. He told it then, he told it now. It's
6 a lot easier to remember the truth than to remember what
7 lies you told. Christopher Nixon told you the truth
8 yesterday because he also told you the truth back on
9 November 18th.

10 So instead of being questioned about the events that
11 happened inside the store, about how the burglary took
12 place, about whether or not it was somebody else, not
13 Maurice Anthony Odom, what we heard about with Mr. Nixon
14 were tattoos, whether he was in a gang. Do you remember
15 Ms. Wiygul asked him if he was in a gang called Boss,
16 but as it turned out the only Boss we heard about was
17 the fact that Boss was Maurice Anthony Odom's nickname.
18 But there was never any contradictory evidence proposed,
19 no alternative scenario, no alternative individuals to
20 the crimes that were shown in this DVD and in the
21 photographs that we submitted. No other scenario than
22 the one proposed by Christopher Nixon from this witness
23 stand. No other individual did he testify to except
24 Maurice Anthony Odom as being his co-defendant, his
25 partner in crime.

1 So, ladies and gentlemen, I ask you are you firmly
2 convinced, are you firmly convinced that a crime was
3 committed, or, crimes plural, were committed and that
4 Maurice Anthony Odom committed them? That's the
5 question you have to ask -- those are the questions you
6 have to answer.

7 Now I want to also give you something else. Even
8 if you're hesitant to believe Christopher Mixon alone,
9 there's another piece of evidence that should help you
10 be firmly convinced, and I keep going back to the car.
11 You'll have this back there in the jury room, ladies and
12 gentlemen. This is that DMV printout, Department of --
13 oh, goodness, the motor vehicle printout. I'll leave it
14 like that. Y'all can look at this when you go back
15 there. That was run within about an hour, less than an
16 hour, from the burglary. Remember, the burglary was at
17 2:43 according to the alarm company. You heard that
18 from the victim, Ramesh Patel, you heard that from
19 Tyrone Goggins, and you can see it was printed out at
20 about 5:43 and it was run at an earlier time -- or, yes,
21 run at an earlier time. I'm just trying to find that
22 number on there. Yes, run at 3:40 AM, less than an hour
23 after the burglary, and it came back to a vehicle owned
24 by Maurice Anthony Odom, registered strangely enough in
25 Wilmington, North Carolina, but owned by Maurice Anthony

1 Odom.

2 So what did Tyrone Goggins do when he discovered
3 that car there? He was concerned that somebody might
4 try to make his way back to it. He checked out the
5 area, he looked from the bridge to see if there were any
6 other cars in the westbound lane. There were not. Now,
7 remember, when Reid Creswell talked about, yeah, I
8 remember there was a car there, he was passing about at
9 70 miles an hour himself. There may have been a car
10 pulled off afterwards for some other reason at around
11 5:00 when he arrived, but at around 3:30 when Tyrone
12 Goggins was looking, there was no car in the westbound
13 lane, there was only one car nearby and that was in the
14 eastbound lane going down I-26 towards Columbia, right
15 there where that green sticker is, where Christopher
16 Mixon said they parked before they walked back and broke
17 into the store. And that car, amazingly enough, with
18 the hood still warm from the engine heat, is Maurice
19 Anthony Odom's. Just a short walking distance from the
20 store.

21 So what does Mr. Mixon say about the break-in? He
22 says that they had a rock. State's Exhibit 32. I'm
23 gonna get all my weightlifting in today. That Mr. Odom
24 drove the car across the bridge towards the store,
25 dumped the rock. I don't blame him. That's smart.

1 That rock would be a pain in the neck to carry from
2 here. So he dumped the rock there. What was the
3 purpose of the rock? To shatter the window to the store
4 and then as you can see him picking it up and carrying
5 it here, he was gonna go back into the office -- bear
6 with me just a second -- and break out that window. So
7 he used it twice. Once to shatter the outside window
8 and gain access, once to use it here to get back into
9 the office. And that's where they left it. Back in the
10 office. There's the rock itself, right there.

11 So, ladies and gentlemen of the jury, the two
12 individuals fled separately. Mr. Nixon said that he ran
13 across the road, made his way down through the woods
14 behind the DOT building, made his -- excuse me. Ran
15 behind the DOT building, made his way through the woods
16 until he finally came out on I-26 and then went across
17 the street to the car; oh, thank goodness, he said, and
18 waited in the woods for Mr. Odom. He didn't go himself,
19 number one, because he didn't have the keys and, number
20 two, because he didn't know how to drive. So he waited
21 for Mr. Odom.

22 The dog is following Mr. Odom's track. The tracker
23 talked about two sets of prints coming together, but we
24 don't know when those tracks were made. We know they
25 went the same path. We don't know they went at the same

1 time. Mr. Odom said -- Mr. Nixon said he went across
2 the road and waited for Mr. Odom. Sometime later
3 Mr. Odom arrived and they fled. Mr. Nixon talked about
4 the police being around the car. How would he know that
5 unless he was there? And he just simply waited for
6 Mr. Odom to return and then they fled the scene. So
7 the car and the presence of Mr. Odom's car at the scene
8 should also help firmly convince you of the fact that
9 these two individuals were involved together.

10 And I want you to look at the addresses on these
11 two documents. The driving record of Maurice Anthony
12 Odom. You'll have it back there with you. Take a
13 look. It's highlighted. Right there.

14 , Barnwell. The city of Barnwell, the county of
15 Barnwell. That's on Maurice Anthony Odom. Then look
16 at Christopher Nixon's address. ,
17 Barnwell, South Carolina. They were neighbors. They
18 knew each other. This is how that conspiracy occurred.

19 Now, ladies and gentlemen, I wanted to let you
20 know in every case there are red herrings that are
21 thrown about. One of the most experienced crime scene
22 investigators I've ever known at SLED once told me that
23 he'd never been involved with or investigated a perfect
24 case. Law enforcement officers are human and they're
25 fallible. They might miss something. They do their

1 best. And I submit to you that Tyrone Goggins is a
2 good, experienced, capable police officer and
3 investigator as his sixteen years would document, but
4 what I tell you is we don't have a perfect case. If we
5 had a perfect case, Stewart Knapp would never have left
6 his post. He would not have quit looking at Mr. Odom's
7 car, he would have stayed there and we would have caught
8 Christopher Mixon and Maurice Anthony Odom that night.
9 It didn't happen. I know some of you were rolling your
10 eyes about that, and I don't blame you. I can assure
11 you that Tyrone Goggins was probably doing a lot more
12 than rolling his eyes when that happened that day, but
13 what you have to ask yourself is does this case as its
14 presented to you, not what would be a perfect case, does
15 this case as it's presented to you, warts and all, flaws
16 and all, still leave you firmly convinced that Maurice
17 Anthony Odom was guilty of these crimes? And I submit
18 to you that it should. You should be firmly convinced.

19 There's no reasonable doubt, as I said, that a
20 burglary took place in the nighttime; that a larceny
21 of property valued at more than \$2,000 was committed.
22 Nor was there any reasonable doubt that there was a
23 conspiracy hatched between two individuals to commit
24 these crimes. These two individuals that we know from
25 Christopher Mixon were both he and Maurice Anthony Odom.

1 The question is who done it? Christopher Nixon admits
2 that he was one and his uncontradicted testimony is that
3 Maurice Anthony Odom was the other.

4 Now I asked Tyrone Goggins about forensic evidence.
5 One of the problems that we've had, ladies and
6 gentlemen, with this explosion of forensic shows on
7 television is that you expect every time that there's
8 gonna be some break in the case because of some amazing
9 discovery with forensics. But that's drama. It simply
10 is not the case that things work that easily. So that's
11 why I asked Tyrone Goggins about fingerprints. Well,
12 not exactly a whole lot of sense running fingerprints
13 because the guys were wearing gloves. Not a whole lot
14 of sense in running DNA because the guys were wearing
15 head to toe clothing, literally head to toe clothing,
16 masks, gloves, long sleeves, long pants. They weren't
17 leaving anything behind. Ms. Wiygul likely will tell
18 you about tracks or ask you to consider tracks or
19 footprint impressions. She talked about officers taking
20 tape measurers into the woods at 3:00 or 5:00 in the
21 morning in November, man-tracking, and all I could
22 think of was wait a minute, guys, I've got to take a
23 measurement, don't run off without me, okay? That view
24 popped into my head. It just doesn't work that way.
25 Gil Grissom from CSI or Abby from NCIS are fictional

1 characters. The reality is considerably different from
2 the show. What Tyrone Goggins assessed, and this is
3 what experienced investigators have to do, he reasonably
4 assessed that the likelihood of finding anything
5 worthwhile was nil. Did he consider having the bags
6 tested for fingerprints? Yes, until he realized they're
7 wearing gloves. There's not gonna be anything there.

8 I'm sure that Ms. Wiygul is also gonna talk to you
9 about the other car. Again, that information came only
10 from Reid Creswell, two and a half hours after the fact
11 when he was arriving on the scene at around 5 AM from
12 Columbia. They're coming by here at 70 miles an hour
13 getting ready to come off the exit and he says there's
14 a car there. The assumption is, of course, that he's
15 referring to this car, Maurice Anthony Odom's car.
16 Yeah, we know about it, we got it under surveillance.
17 We don't know who that car was, we don't know why it was
18 stopped. What we do know is that at 3:30 in the morning
19 Tyrone Goggins had been right here, was looking down
20 this way, could see this car and there was nothing else
21 in sight in the westbound lane. So that car that Reid
22 Creswell thinks he saw was not there two hours earlier.
23 That's really what it comes down to.

24 Ladies and gentlemen, I asked you at the start of
25 this case to use your common sense. To consider the

1 evidence, but use your common sense. You've already
2 listened very carefully to the testimony. You will get
3 a chance to review the evidence that's been submitted to
4 you. That's one. The second thing is to listen very
5 carefully in a few minutes when His Honor instructs you
6 on the law in this case, that's two. But the third
7 thing is to use your common sense. Use your common
8 sense when you're applying the law that you hear from
9 Your Honor to the facts that you've determined them to
10 be, and if you do all those three things, ladies and
11 gentlemen, you're gonna come back with a just, fair and
12 true verdict, and that's all we ask. Thank you very
13 much.

14 **THE COURT:** Thank you, Solicitor. Ms. Wiygul?

15 **MS. WIYGUL:** Thank you, Your Honor. Sticks and
16 stones can break my bones, but words can never hurt me.
17 That's what my parents told me. That's what I used to
18 tell my children until I started practicing criminal
19 law. You've seen how much words can hurt someone, how
20 they can take away someone's freedom. Just words. Just
21 words. And apparently it doesn't really matter whose
22 words they are. It doesn't matter if they've already
23 been caught for something or if they're scared or if
24 they've been questioned for an hour and a half by an
25 experienced officer or they've got convictions, six of

1 them, for burglary second degree or that they've got
2 pending charges. Words can hurt. They're important.

3 I want to follow up on some of the things that
4 Mr. Mowry was just discussing with you. I was really
5 concerned -- one of the things he told you was to
6 listen very carefully to the judge's instructions, and
7 I would ask that you do that. One of the things the
8 judge is gonna stress to you is that Mr. Odom has no
9 obligation to take the stand. He has no obligation to
10 put up evidence, and you can't consider that, and yet
11 Mr. Mowry told you don't you think we would have
12 pointed out inconsistencies? There was never any
13 alternative explanation given, no other scenario
14 offered. Mr. Mixon's testimony was uncontradicted.
15 Well, so what? That still does not mean that you have
16 to believe him. You want an alternative scenario?
17 I'll give you one. Mr. Mixon is a young neighbor of
18 Mr. Odom with access to his vehicle, uses his vehicle
19 to go rob this place, gets caught, sees the cops
20 searching Mr. Odom's house, knows they're not gonna
21 find anything, says, oh, no --

22 **MR. MOWRY:** Your Honor, I have to object because
23 there's absolutely no evidence to that effect. She can
24 argue whatever reasonable inference can be obtained
25 from the evidence, but there's nothing like that that's

1 ever been presented.

2 **THE COURT:** Well, this is argument. Certainly we
3 have an extremely intelligent jury who can remember
4 what is in evidence, what has been presented, and they
5 realize that this is argument from both sides. So you
6 may proceed.

7 **MS. WIYGUL:** He takes the car. He goes and commits
8 the burglaries, he sees the cops, he knows the car's
9 been identified, he gets arrested on outstanding
10 warrants, he points the finger. Three years later he
11 doesn't remember doing that. He doesn't even remember
12 that hour and a half conversation with Investigator
13 Goggins. He couldn't even look at Mr. Odom.

14 It's your job to judge the believability and the
15 credibility of the witnesses on this stand. I watched
16 Mr. Nixon because body language tells a lot and every
17 time the Solicitor pinned him down and said who was it
18 with you, it was Mr. Odom, wasn't it, and Mr. Nixon
19 would say, yes, yeah. He asked him to point Mr. Odom
20 out. He said that's him. But when he was questioned
21 about what the reason was, what they were going in to
22 steal, they went to steal cigarettes and other tobacco
23 products. Well, I submit to you that Mr. Nixon might
24 have gone in to steal blunts and he might have gone in
25 to steal cigarettes and he might have gone in to steal

1 cash, but the phrase tobacco products is not one that
2 would come naturally to Mr. Nixon.

3 The registration information on Mr. Odom's car was
4 run less than an hour after the burglary. Why didn't
5 they issue an APB for it? Why not list it as a suspect
6 vehicle in a crime and have law enforcement looking for
7 it? It was only an hour after the burglary. The car
8 was still there.

9 Let's talk about the witnesses that we did hear
10 from in this case. We heard from three witnesses with
11 absolutely nothing to lose. We heard from Nick Moyer
12 with the Laurens County Sheriff's Department who told
13 you it was very important to include all information
14 in an incident report. That documentation of the
15 investigation of a case is critical. He defined the
16 phrase bush-bonded for us so we would understand what
17 they were talking about; that that meant someone had
18 taken off into the bush to run away from the scene of a
19 crime. He told us that he called two other agencies to
20 the scene. He called the Clinton Police Department and
21 he called the highway patrol. The highway patrol is on
22 the scene, they have a car identified that they think is
23 involved, but they can't go look for that car when it
24 drives away? Please use your common sense. Because
25 they didn't.

1 We heard from Ramesh Patel who testified very
2 honestly that he's not one of the owners of this
3 company. He works for his brother. It's a family-owned
4 company because his brother owns it and he works there.
5 He told you that there was no safe there in the store,
6 the store did not have a safe, and he told you that he
7 provided all the surveillance videos to Investigator
8 Goggins. Well, let's think about that because it seems
9 to me there's a missing video here. We saw the video.
10 He picked up the outside and the inside. We heard
11 testimony from Mr. Nixon that before they parked the
12 car, whoever he was with, they drove to the store and
13 unloaded this. Well, where's that video? Because that
14 shows who was in the car. We don't have that. We don't
15 have it.

16 We heard from Special Agent Reid Creswell, who's
17 an expert in dog tracking. Agent Creswell got very
18 uncomfortable on the stand when I asked him about the
19 officer that accompanied them. He went so far as to say
20 it might have been the county officer. Investigator
21 Goggins was very honest. He told us it was Officer
22 Jeremy Marshall, the officer that prepared the incident
23 report, the officer that is not here, the officer that
24 we didn't get to hear from at all because Investigator
25 Goggins is the lead investigator. What that means is

1 that he is responsible for this investigation or lack
2 thereof. He is responsible. Not Officer Knapp, who
3 left his post and wasn't even formally reprimanded, not
4 Officer Marshall, who for some reason went out into the
5 woods and supposedly didn't have even have a camera to
6 snap shots of the footprints. What did Agent Creswell
7 tell us? He told us that he notified the Clinton PD
8 that he saw a car parked on the opposite side of I-26.
9 Investigator Goggins told us for some reason they just
10 didn't look into that. Had that been the only thing
11 they didn't look into, that would not give me pause,
12 but it wasn't. That was just one among many of the
13 inconsistencies in this investigation of this case.

14 Agent Creswell told us that there were multiple
15 footprints. You see my little Post-Its where I put
16 them, but Investigator Goggins testified they only
17 found footprints in one location. Well, the expert
18 told us they found footprints in multiple locations.
19 The investigator also told us that Judy, the bloodhound,
20 did not pick up the trail on the opposite side of I-26
21 despite Mr. Nixon's testimony that he squatted over
22 there for a couple of hours.

23 Let's talk about Christopher Nixon. He's very
24 young. He's only 23 years old. He was only 21 when
25 all this occurred. He was convicted of six counts of

1 burglary second degree on May 17th of 2012. He was
2 charged with six counts in Laurens County on June 6th
3 of last year. He was charged for incidents that
4 occurred back in 2011. Why do that? Why wait a year,
5 year and a half to charge someone unless you want
6 something hanging over their head while they're
7 testifying. Otherwise, why wait? Christopher Mixon
8 told us that he wants to stay out of jail and he wants
9 his life back. He told us he doesn't remember talking
10 to Investigator Goggins at all in 2011. He told us
11 that they drove from Spartanburg. Please use your
12 common sense. Barnwell -- and I'm geographically
13 challenged, but Barnwell is south of Laurens.

14 Investigator Goggins testified that road patrol
15 calls him when they need an investigator at the scene
16 and that's what they did. Unfortunately, they didn't
17 get an investigation. They got someone who was willing
18 to go there and hang out with Officer Marshall and
19 count the cigarettes, but not collect evidence. He
20 told us that he didn't test these plastic trash bags
21 for fingerprints because when they were in the store
22 the suspects had gloves on. Who cares? They brought
23 the trash bags with them. Doesn't it seem that it
24 would be worth a test or a dusting of these bags to
25 see if there were fingerprints because maybe the

1 people that broke into this store didn't have gloves
2 on before they came into the store? Please use your
3 common sense.

4 They identified Maurice Odom as the owner of that
5 Chrysler 300 less than an hour after the burglary, but
6 they did not charge him with the burglary because the
7 mere presence of your car at the scene of a crime is
8 not indicative of your guilt. That's not enough to
9 charge someone with a crime. So on November 18th,
10 Investigator Goggins accompanied another officer down
11 to Barnwell and he told you Mr. Odom's house and
12 property were searched and nothing was found. What
13 was found at the search of Mr. Mixon's house? We
14 don't know. Was Mr. Mixon's house searched? We don't
15 know. But we do know that Mr. Odom's house, property
16 and vehicles were searched and nothing was found
17 implicating him in this crime. Investigator Goggins
18 testified that they got the warrants for Mr. Mixon and
19 Mr. Odom as a direct result of the interview with
20 Mr. Mixon, but Mr. Mixon testified that he wasn't
21 charged until a month later.

22 Let's talk about blame. There seems to be a lot
23 of that going on today. Investigator Goggins told us
24 that Lieutenant Ledda was the supervisor of road
25 patrol and they were at the scene, but they're not

1 here because he's the lead investigator. He said
2 Officer Knapp didn't follow his instruction. He
3 didn't feel it necessary to document him or formally
4 reprimand him. Officer Marshall was the one walking
5 in the woods with the dog and the dog handlers. We
6 don't know why he didn't collect any evidence. We
7 know that Investigator Goggins testified that he had
8 no camera, no flashlight, no measuring tape, but he
9 had a gun to protect the dog handlers, the SLED agents.

10 Investigator Goggins said that they tried to go
11 out the next day to collect evidence, but he didn't
12 feel any need to document that search. Asked about
13 whether he routinely violates traffic laws to save
14 driving time, his response was we do it all the time.
15 Does that make sense? If they're in a chase or
16 someone's life is at stake, by all means break the
17 traffic laws. Don't do it just to save yourself
18 driving down the road a mile. That kind of leadership
19 is what leads to patrol officers thinking they don't
20 have to follow the rules either.

21 What we're asking you to do here today is to
22 carefully consider the evidence. To think about the
23 credibility and believability of all the witnesses and
24 to hold the Clinton Police Department to the standards
25 they set for themselves. Their standards state that

1 professionalism requires impeccable conduct, careful
2 protection of all citizens' rights and the maintenance
3 of high levels of accountability. Well, there was no
4 accountability when Officer Knapp left -- didn't follow
5 his instructions and there was no accountability
6 whenever evidence was collected. We're asking that
7 you -- we're policing accountability now. Send the
8 message that you have to do a good job to prove a case
9 beyond a reasonable doubt. Every piece of missing
10 evidence in this case is missing doubt, is reasonable
11 doubt. Ever single piece. Investigator Goggins told
12 you they didn't take footprints because they didn't have
13 a suspect in custody. That doesn't even make any sense
14 because the hope and prayer would be that at some point
15 you plan to have a suspect in custody that you can
16 compare those footprints to.

17 Investigator Goggins had a lot of tools at his
18 disposal. He had the Laurens County Sheriff's Office,
19 he had the South Carolina Law Enforcement Division, he
20 had the highway patrol. He did not make effective use
21 of those tools to investigate this case. Words don't
22 make Mr. Odom guilty. Mr. Mixon trying to get out of
23 trouble by pointing the finger isn't enough. There's
24 too much missing evidence in this case not to find
25 reasonable doubt. And the judge is gonna tell you,

1 Mr. Odom, you can't see it, but he's wearing a cloak,
2 it covers him, it's called innocence, and it stays on
3 him unless you determine that the State did prove its
4 case beyond a reasonable doubt. We are confident they
5 did not and that you will find Mr. Odom not guilty.
6 Thank you.

7 **THE COURT:** Thank you, Ms. Wiygul.

8 CHARGE OF THE COURT

9 **THE COURT:** Madam Forelady and ladies and
10 gentlemen of the jury, I will now charge you on the
11 law applicable to this case. You must consider the
12 charge as a whole and not focus on some portions to
13 the exclusion of other portions of the charge. The
14 indictments charge the Defendant with burglary second
15 degree, criminal conspiracy, and grand larceny.

16 I remind you, once again, the fact that the
17 Defendant was arrested, charged and indicted in this
18 case is not evidence in this case and cannot be
19 considered by you as evidence of guilt in this case,
20 nor does it create any presumption or inference of
21 guilt. These three indictments, as I told you at the
22 outset of the case, are simply the formal written
23 instruments which contain the charges made against the
24 Defendant. These are the formal documents by which
25 this case is brought into court.

1 The indictments in this case allege several
2 different offenses against the Defendant. The charges
3 are Indictment Number 12-GS-30-311, burglary second
4 degree; Indictment Number 12-GS-30-314, criminal
5 conspiracy; Indictment Number 12-GS-30-317, grand
6 larceny. Each indictment charges a separate and
7 distinct offense. You must decide each indictment
8 separately on the evidence and the law applicable to
9 it uninfluenced by your decision as to any other
10 indictment. The Defendant may be convicted or acquitted
11 on any or all of the offenses charged. You will be
12 asked to write a separate verdict of guilty or not
13 guilty for each indictment.

14 The Defendant has pled not guilty to these
15 indictments and that plea puts the burden on the State
16 to prove the Defendant guilty. A person charged with
17 committing a criminal offence in South Carolina is
18 never required to prove himself innocent. I charge
19 you that it is an important rule of the law that the
20 Defendant in a criminal trial, no matter what the
21 seriousness of the charge or charges may be, will
22 always be presumed to be innocent of the crime from
23 which the indictment was issued unless guilt has been
24 proven by evidence satisfying you of that guilt beyond
25 a reasonable doubt. This presumption of innocence

1 does not end when you begin your deliberations, but it
2 accompanies the Defendant throughout the trial unless
3 you reach a verdict of guilt based on the evidence
4 satisfying you of that guilt beyond a reasonable doubt.

5 Presumption of innocence is like a robe of
6 righteousness placed about the shoulders of the
7 Defendant which remains with the Defendant unless it
8 has been stripped from the Defendant by evidence
9 satisfying you of the Defendant's guilt beyond a
10 reasonable doubt. The presumption of innocence is
11 not mere legal theory. It is not just a legal phrase.
12 It is a substantial right to which every Defendant is
13 entitled unless you, the jury, are satisfied from the
14 evidence of the Defendant's guilt beyond a reasonable
15 doubt.

16 The State has this burden of proving the Defendant
17 guilty beyond a reasonable doubt. Some you have may
18 have served as jurors in civil cases where you were
19 told that it is only necessary to prove that a fact
20 is more likely true than not true, such as by the
21 greater weight or the preponderance of the evidence.
22 In criminal cases; however, the State's proof must be
23 more powerful than that. It must be beyond a reasonable
24 doubt. Proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced of the Defendant's guilt.

1 Now there are very few things in this world that we
2 know with absolute certainty and in criminal cases
3 the law does not require proof that overcomes every
4 possible doubt. If, based on your consideration of
5 the evidence, you are firmly convinced that the
6 Defendant is guilty of the crime charged, you must
7 find the Defendant guilty. If, on the other hand,
8 you think there's a real possibility that the Defendant
9 is not guilty, you must give the Defendant benefit of
10 the doubt and find him not guilty.

11 Now, Madam Forelady and ladies and gentlemen of
12 the jury, there are two types of evidence which are
13 generally presented during the trial; direct evidence
14 and circumstantial evidence. Direct evidence directly
15 proves the existence of a fact and does not require
16 deduction. Circumstantial evidence is proof of a chain
17 of facts and circumstances indicating the existence
18 of a fact. Crimes may be proven by circumstantial
19 evidence. The law makes no distinction between the
20 weight or value to be given to either direct or
21 circumstantial evidence; however, to the extent the
22 State relies on circumstantial evidence, all of the
23 circumstances must be consistent with each other and
24 when taken together point conclusively to the guilt
25 of the accused beyond a reasonable doubt. If these

1 circumstances merely portray the Defendant's behavior
2 as suspicious, the proof has failed. The State has
3 the burden of proving the Defendant guilty beyond a
4 reasonable doubt. This burden rests with the State
5 regardless of whether the State relies on direct
6 evidence, circumstantial evidence or a combination
7 of the two.

8 And I remind you, once again, that during this
9 trial you and I have had certain duties to perform.
10 As the trial judge, it has been my responsibility to
11 preside over the trial of this case and I also have
12 the duty to rule on the admissibility of the evidence
13 offered at trial. You are to consider only the
14 competent evidence before you. If there was any
15 testimony ordered stricken from the record in this case
16 during this trial, you must disregard that testimony.
17 You are only to consider the testimony which has been
18 presented from the witness stand, any exhibits which
19 have been made a part of the record in this case and
20 any stipulation or agreements of counsel.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding judge, I am
23 the sole judge of the law of this case and it is your
24 duty as jurors to accept and apply the law as I now
25 state it to you. As I told you at the outset, if you

1 have any ideas of what the law is or what the law ought
2 to be and it does not agree with what I now tell you
3 the law is, you must abandon this idea because you are
4 sworn to accept the law and to apply the law exactly as
5 I state it to you.

6 In every case tried in this Court before a jury,
7 the jury becomes the sole and exclusive judge of the
8 facts of the case. A trial judge cannot intimate,
9 state, comment on or make any statement to a trial jury
10 about the facts in the case. Since you, the jury, are
11 the sole judge of the facts in this case, you are not
12 to infer from what I have said during the progress of
13 the trial in ruling upon the admissibility of the
14 evidence or otherwise or anything I say now during the
15 course of this instruction to you that I have any
16 opinion about the facts of this case. I do not have
17 an opinion about the facts in this case. The law does
18 not allow me to have an opinion about the facts in this
19 case. This is a matter solely for you, the jury, to
20 determine. As jurors, it is your duty to determine the
21 effect, the value, the weight and the truth of the
22 evidence presented during this trial.

23 Necessarily, Madam Forelady and ladies and
24 gentlemen of the jury, you must determine the
25 credibility of the witnesses who have testified in

1 this case. Credibility simply means believability. It
2 becomes your duty as jurors to analyze and to evaluate
3 the evidence and to determine which evidence convinces
4 you of its truth.

5 In determining the believability of witnesses
6 who have testified in this case, you may believe one
7 witness over several witnesses or several witnesses
8 over one witness. You may believe a part of the
9 testimony of a witness and reject the remaining part
10 of the testimony of that same witness. You may believe
11 the testimony of a witness in its entirety or reject
12 the testimony of a witness in its entirety. You may
13 consider whether any witness has exhibited to you any
14 interest, bias, prejudice or other motive in this case.
15 You may also consider the appearance and manner of the
16 witness while on the witness stand.

17 Now as I told you during the course of this trial,
18 the rules of evidence ordinarily do not permit witnesses
19 to testify to opinions or conclusions. An exception to
20 this rule exists for witnesses we call expert witnesses.
21 A witness who by education and experience has become an
22 expert in some art, science, profession or calling, may
23 state an opinion as to relevant and material matters in
24 which the witness claims to be an expert and may also
25 state the reasons for the opinion. You should consider

1 any expert opinion received in evidence in this case and
2 like any other evidence give it the weight you think it
3 deserves. If you decide that the opinion of an expert
4 witness is not based on sufficient education or
5 experience or if you conclude that the reasons given
6 in support of the opinion are not sound or that the
7 opinion is outweighed by other evidence, you may
8 disregard the opinion entirely. An expert witness's
9 testimony is to be given no greater weight than that of
10 other witnesses simply because the witness is an expert.
11 Further, you are not required to accept an expert's
12 opinion even though it is not contradicted.

13 Now a person who has a past criminal record is
14 competent to testify during a trial. A past record does
15 not affect the ability of that witness to testify. The
16 past record may only be considered by you, if at all,
17 in determining the witness's believability. Remember,
18 you are the sole judges of the facts in this case and
19 of the believability of any and all of the witnesses.

20 Madam Forelady and ladies and gentlemen of this
21 jury, I instruct you and emphasize that the fact that
22 the Defendant did not testify is not a factor to be
23 considered by you in any way in your deliberations and
24 in your consideration on the question of the guilt or
25 the innocence of the Defendant. It must not be

1 considered by you in any manner whatsoever. A Defendant
2 has the constitutional right to remain silent and the
3 assertion of this right must not be considered by you
4 in your deliberations. I repeat. Under your oath you
5 are to draw no conclusion whatsoever from the fact that
6 the Defendant in this case did not testify. The fact
7 that this Defendant did not testify should not even be
8 discussed in the jury room. The burden of proof, as I
9 have stated to you, is on the State. The Defendant is
10 not required to prove his innocence. The burden of
11 proof remains on the State to prove guilt beyond a
12 reasonable doubt.

13 Now as I stated previously, the Defendant is
14 charged with three criminal offenses. The first one
15 is second degree burglary. That's found in Section
16 16-11-312 of our Code of Laws. To prove second degree
17 burglary, the State must prove beyond a reasonable
18 doubt that the Defendant entered a building without
19 consent with the intent to commit a crime in that
20 building. Now a building is defined as any structure,
21 vehicle, watercraft, or aircraft where any person
22 lodges or lives or where people assemble for the
23 purpose of business, government, education, religion,
24 entertainment, public transportation, or public use, or
25 where goods are stored.

1 The final element of this offense is that it must
2 be proven that the Defendant entered or remained in the
3 building at nighttime. It has been stipulated and
4 agreed between the State and the defense that it was
5 nighttime when a burglary took place.

6 The second offense is criminal conspiracy. That's
7 16-17-410 of our Code of Laws and the Defendant has
8 been charged with conspiracy. The State must prove
9 beyond a reasonable doubt that the Defendant combined
10 with one or more persons for the purpose of committing
11 an unlawful act or of committing a lawful act by
12 unlawful means. There must be a mutual understanding,
13 agreement or common intention and plan. The mere
14 passive knowledge or -- let me start over. Mere
15 passive knowledge of or consent to the criminal conduct
16 of another is not enough to make a person a conspirator.
17 There must be guilty knowledge and participation. The
18 mere fact that the Defendant may have associated with
19 another person or met with another person and discussed
20 common aims and interests does not necessarily establish
21 proof of the existence of a conspiracy or that the
22 Defendant was involved in a conspiracy.

23 On the other hand, it is not necessary that the
24 agreement be a formal one, that it be in writing, that
25 the persons hold a meeting and expressly state the

1 terms of the common plan or that the agreement be
2 stated in words between them. The agreement of a
3 criminal conspiracy may come into being through an
4 implied mutual understanding. The willful, intentional
5 and knowing adoption by two or more persons of a common
6 plan is sufficient. No overt acts need to be shown to
7 establish a conspiracy. A conspiracy may be shown by
8 circumstantial evidence and the conduct of the parties.

9 In order to convict the Defendant of conspiracy,
10 the State must prove beyond a reasonable doubt not only
11 that the Defendant knew of the unlawful conduct, but
12 that the Defendant agreed to combine with other persons
13 for the purpose of accomplishing the unlawful conduct.

14 And the third offense the Defendant has been
15 charged with is grand larceny. The State must prove
16 beyond a reasonable doubt that the Defendant took and
17 carried away the property of another against the will
18 or without the consent of the other person. The
19 slightest removal of the property or the complete
20 possession of the property, even for an instant by the
21 Defendant, is enough to show a taking and carrying away
22 of the property. The State must also prove beyond a
23 reasonable doubt the Defendant intended to permanently
24 deprive the owner of the property. And, finally, the
25 State must prove beyond a reasonable doubt that the

1 value of the thing or things taken was at least \$2,000
2 in value, but less than \$10,000 in value.

3 Now, Madam Forelady and ladies and gentlemen of
4 this trial jury, I instruct you that your verdict on
5 each charge must be unanimous among the twelve of you
6 and when you have reached a unanimous verdict as to each
7 of the three criminal charges, you are to notify the
8 bailiff of the fact that you have reached a unanimous
9 verdict.

10 Now I'm gonna come down in front of you and show
11 you the verdict form. This verdict form has just the
12 identifying information, the name of the case and
13 three indictment numbers, and as to the indictment
14 concerning burglary second degree, we, the jury, find
15 the Defendant, and you mark either guilty or not guilty,
16 Madam Forelady, and likewise do it as to the criminal
17 conspiracy and the grand larceny. The fact that it has
18 been placed guilty first and not guilty second is of no
19 significance. One has to go before the other. And when
20 you have reached a unanimous verdict as to each of the
21 three charges, Madam Forelady, you will sign it. It's
22 already been dated with today's date. Thank you.

23 Now I will continue to instruct you right now that
24 you are to not to start your deliberations yet when you
25 go back into your jury room. When the verdict form

1 and all of the exhibits and the three indictments are
2 carried back to the jury room by the bailiffs, then two
3 things will happen. One is the alternate will need to
4 leave the jury room and be brought back here into the
5 courtroom and then you can start your deliberations.
6 We do not start any discussions concerning this case
7 prior to the exhibits, the indictments and the verdict
8 form being brought to you. I anticipate that we're
9 only talking about a few minutes, okay?

10 So now, Mr. Bolt, if you will escort the jury back
11 to the jury room.

12 (Whereupon, the jury retires to the jury room.)

13 **THE COURT:** Okay. From the State, any objections
14 or exceptions to the Court's final charge?

15 **MR. MOWRY:** No exceptions, no objections, Your
16 Honor.

17 **THE COURT:** Thank you, sir. Ms. Wiygul?

18 **MS. WIYGUL:** No exceptions, no objections, Your
19 Honor.

20 **THE COURT:** Okay. Thank you very much. All right.
21 We're gonna go off the record and if the lawyers want
22 to participate in making sure that all of the exhibits
23 are together and then we're gonna need to figure out
24 how many people we're gonna need to deliver them to the
25 jury. We're off the record.

1 (Recess taken.)

2 (Whereupon, the jury commenced its deliberations at
3 2:30 PM.)

4 **THE COURT:** Okay. The note from the Forelady is we
5 would like to view the DVD, and she has signed it. So
6 we can do it one of several ways. Bring them back out
7 and let Walter hook it up, do the exact -- like he did
8 during the trial or we can get his laptop back there,
9 then assuming that they know how to operate it, they
10 could look at it, and if they want to look at it more
11 than one time. My preference is to get them out here
12 and it be done in open court, but we have had them take
13 laptops back to jury rooms before and give them access.
14 So what would be --

15 **MR. MOWRY:** I'm easy either way, Your Honor.

16 **MS. WIYGUL:** I have no objection either way, Your
17 Honor. I think it's in evidence, so they can watch it
18 wherever the Court would like.

19 **MR. MOWRY:** I don't know how many times they wish
20 to see it, so they may want to have it back there.

21 **THE COURT:** How -- how easy is it to -- you know,
22 if you were to go back there and instruct them on how
23 to do it, how easy or how difficult? Now, I mean, the
24 question's being asked by someone who does not have
25 much -- well, I may be a cut above, Warren, but --

1 **MR. MOWRY:** That's not saying much, Your Honor.

2 **MS. WIYGUL:** Your Honor, my only concern would be
3 that if there's anything else on that laptop that they
4 could potentially access. Perhaps we could get a laptop
5 from someone who's not with the Solicitor's office.

6 **MR. MOWRY:** The problem is it's got to work.

7 **MR. BENTLEY:** And it only plays in one program and
8 it took me five days and a call to SLED tech services
9 to get my computer to play it.

10 **THE COURT:** Okay. I'm gonna bring them out and
11 after they've seen it one time, I'll ask them would you
12 like to see it again. We'll play it as many times as
13 they want, but that's probably gonna be the easiest
14 thing. So let me get the robe on and, Stacy, would you
15 mark that as Court's Number 1.

16 (Court's Exhibit Number 1, a jury note, was marked
17 for identification.)

18 **BAILIFF:** All right. The courtroom will come back
19 to order, please.

20 **THE COURT:** You may proceed Mr. Bolt.

21 (Whereupon, the jury returns to the courtroom.)

22 **BAILIFF:** All present, Your Honor.

23 **THE COURT:** Thank you, Mr. Bolt. Madam Forelady, I
24 understand that the jury wants to view the DVD again and
25 I understood that you wanted to have the computer back

1 in the jury room. It's my understanding that even
2 though I'm sure a lot of you are very technologically
3 savvy, but Mr. Bentley informs me that it was pretty
4 difficult to be able to get this thing running, so we
5 will play it as many times as you, the jury, want to see
6 it, okay, but we felt like we needed to do it out here.

7 So with that said, Mr. Bentley, if you will proceed,
8 sir.

9 (Whereupon, the surveillance DVD was played for the
10 jury.)

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

12 **THE COURT:** Madam forelady, what I need to know
13 from the jury is do you want to see those two segments
14 again? And I understand even though the entire DVD is
15 into evidence, there are other segments that were not
16 actually played to the jury during the trial. Now what
17 I would like for y'all to do, and y'all are used to
18 making this trip back and forth, I'm going to ask that
19 you go back to the jury room and then come back out and
20 inform the Court if you want to see just those two
21 segments another time or if you want to see any -- the
22 other segments. I need to know that, so -- but I would
23 prefer that you go back to the jury room and then notify
24 the bailiff that you do have a response, then come back
25 out, okay? Thank you very much.

1 (Whereupon, the jury retires to the jury room.)

2 **THE COURT:** Let me get one other thing on the
3 record, Stacy. Ms. Wiygul, I understand that the
4 Defendant waived his right to be present while this
5 DVD is being played to the jury; is that correct?

6 **MS. WIYGUL:** That's correct, Your Honor, in light
7 of the fact that he would just be able to view the back
8 of the TV screen.

9 **THE COURT:** All right. Thank you very much. All
10 right. We'll just see what they want to do.

11 **BAILIFF:** Your Honor, I just got the word they want
12 to see all of it. They want to see everything they can
13 see.

14 **THE COURT:** All right. If you'll just bring them
15 out. Let's wait on Warren to get back out here. Wait
16 one second.

17 **BAILIFF:** Yeah, they're ready.

18 **THE COURT:** All right. If you'll bring them back
19 out, please.

20 (Whereupon, the jury returns to the courtroom.)

21 (Whereupon, the surveillance DVD was played for the
22 jury.)

23 **BAILIFF:** She's asking if there's a place you can
24 pause it for just a second.

25 **THE COURT:** As I understand it, Madam Forelady,

1 there are approximately eighteen segments on this
2 surveillance DVD. Some segments, as I understand it,
3 I've not seen it, last for just a few seconds at a time.
4 What the plan was, was to just start at the very
5 beginning and let it run. So here's what I'm gonna
6 suggest; is let you see it from start to finish and then
7 if there's -- if you need to have it paused, then I'll
8 just have to check with Mr. Bentley and see if we can
9 pause between segments. I just don't know. So is that
10 permissible? All right. We'll just run it start to
11 finish.

12 (Whereupon, the surveillance DVD was played for the
13 jury.)

14 **THE COURT:** All right. Madam Forelady, certainly
15 we will play any segments again or the entire DVD again
16 for you, if you're prepared to give the Court an answer.

17 **THE FOREPERSON:** The first one.

18 **THE COURT:** Okay. The first one meaning --

19 **THE FOREPERSON:** The first video. I guess --

20 **THE COURT:** The one that was played during the
21 trial, the two segments? No?

22 **THE FOREPERSON:** The first one on the list.

23 **THE COURT:** The very first one you just saw. Okay.
24 Mr. Bentley, can you handle that, sir?

25 (Whereupon, the surveillance DVD was played for the

1 jury.)

2 **THE COURT:** Any others, Madam Forelady?

3 **THE FOREPERSON:** I think we're good.

4 **THE COURT:** Okay. Good. Thank you very much and
5 I'll ask that you retire back to your jury room.

6 (Whereupon, the jury retires to the jury room to
7 continue its deliberations.)

8 **THE COURT:** All right. Y'all be at ease.

9 (Recess taken.)

10 **BAILIFF:** Let's rise and come to order, please.

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

12 Okay. Anything we need to take up with -- I
13 understand that there is a verdict. Anything we need to
14 take up on the record before we bring the jury out?

15 **MR. MOWRY:** Nothing from us, Your Honor.

16 **MS. WIYGUL:** Nothing from the defense, Your Honor.

17 **THE COURT:** Okay. Not that I anticipate anybody
18 will have any sort of outward showing of emotion, but
19 if anyone in the courtroom believes that you may be
20 inclined to do so, then I'm gonna ask you to be excused
21 at this time.

22 Okay. Mr. Bolt, if you'll bring the jury out,
23 please, sir.

24 (Whereupon, the jury returns to open court to report
25 its verdict at 3:45 PM.)

1 **BAILIFF:** All jurors present, Your Honor.

2 **THE COURT:** Thank you, Mr. Bolt. Madam Forelady,
3 it's my understanding that you have reached a verdict?

4 **THE FOREPERSON:** Yes, sir.

5 **THE COURT:** Okay. And was that -- or is that
6 verdict unanimous as to all three charges?

7 **THE FOREPERSON:** Yes, Your Honor.

8 **THE COURT:** Okay. All right. If you'll hand the
9 verdict form to Mr. Bolt.

10 Okay. Mr. Odom, would you, please, stand. And,
11 Madam Clerk, would you publish the verdict.

12 VERDICT OF THE JURY

13 **THE CLERK:** This is the case of the State of
14 South Carolina versus Maurice Anthony Odom. As to
15 Indictment Number 2012-GS-30-311, the charge of
16 burglary, second degree, we, the jury, find the
17 Defendant guilty. As to Indictment 2012-GS-30-314,
18 the charge of criminal conspiracy, we, the jury, find
19 the Defendant guilty. As to Indictment 2012-GS-30-317,
20 the charge of grand larceny, we, the jury, find the
21 Defendant guilty. It is signed by the foreperson of
22 the jury.

23 Ladies and gentlemen, if that be your verdict,
24 please indicate by your upraised right hands. Thank
25 you.

1 **THE COURT:** Ms. Wiygul, do you desire for there to
2 be any individual polling of the jury?

3 **MS. WIYGUL:** No, Your Honor. I believe the hand
4 raising was sufficient.

5 **THE COURT:** Okay. Y'all can have a seat. Madam
6 Forelady and ladies and gentlemen of the jury, let me,
7 once again, thank you for your jury service. This is --
8 any case that a jury sits on is always difficult and
9 it's a lot of work for the jury, a lot of difficult
10 work, but you paid very close attention, as I instructed
11 you to do, and I looked at you quite often, and I know
12 that you were very interested and you served on this
13 jury very diligently and I appreciate that very much.

14 The verdict means nothing to me, but what means to
15 me or is most important to me is that the twelve of you
16 upheld the oath that you took and I do appreciate your
17 jury service.

18 Madam Forelady, you'll need to hang around for just
19 a moment to sign the three indictments to indicate the
20 verdict. The sentencing will take place in just a
21 little bit. You are certainly welcome to hang around,
22 if you'd like to, for the sentencing phase of this
23 process.

24 After we conclude, sometimes lawyers like to speak
25 with members of the jury just to find out how well they

1 thought they did and things of that nature. You are
2 free to speak with anyone about this case, if you so
3 choose, but that's entirely left up to you. I would
4 mention to you that if someone wants to talk to you
5 about this case and you don't want to talk with them
6 and they insist, I'm not suggesting that will happen,
7 but if that does happen, you need to notify the Court
8 immediately. We want to protect our jurors and so it's
9 entirely left up to you whether or not you want to talk
10 with anybody about this particular case. In the near
11 future you will be mailed a check for your --

12 **BAILIFF:** We already have them.

13 **THE COURT:** Oh, we already have them. Okay. See
14 how efficient our Clerk's office is? Nonetheless, it's
15 not gonna be a very large check, so don't plan -- make
16 big plans for your check. And, again, I appreciate it
17 very much. You'll need to leave your pins with us.
18 Jury service is concluded for this week, so you do not
19 need to come back. And, again, we thank you very much.
20 You're now excused, but you're welcome to remain with us
21 here, if you'd like. If you want to remain with us, you
22 can now sit out in the gallery, okay?

23 **MS. WIYGUL:** Your Honor, before the jury leaves,
24 can we approach very quickly?

25 **THE COURT:** Okay. Just keep your seats for just a

1 moment.

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

3 **THE COURT:** Madam Forelady, we just need your
4 patience. Y'all have been extremely patient with us,
5 and we appreciate that. I just need for you to -- you
6 thought you would never go back into that jury room
7 again, but I'm gonna ask that you go back for just a
8 moment and we'll hopefully get you back out shortly.
9 Just one little issue that I've just talked with the
10 lawyers about and I don't want to excuse you yet.

11 Now I'll go ahead and ask Mr. Bolt when you go
12 back to your jury room to hand out your checks. That
13 might make you feel a little bit better, even though
14 the checks aren't that large, but if you'll just do
15 that for me, please, okay?

16 (Whereupon, the jury retires to the jury room.)

17 **MR. MOWRY:** Your Honor, if I could be excused, I'll
18 go get the sentencing sheets.

19 **MS. WIYGUL:** Your Honor --

20 **THE COURT:** Okay. Wait -- wait for Solicitor Mowry.

21 **MS. WIYGUL:** Yes, Your Honor.

22 **THE COURT:** Thank you. Okay. Ms. Wiygul, you may
23 want to reiterate what you told the Court at the sidebar
24 and see where we are.

25 **MS. WIYGUL:** Your Honor, this morning Mr. Odom --

1 prior to court beginning, Mr. Odom indicated to me that
2 be believed that one of the jurors had a boyfriend over
3 at the jail. He told me he did not know which juror it
4 was and wasn't sure about the boyfriend, but that he had
5 no information but they had discussed the case. So at
6 that time I told him that was kind of a non-issue and
7 it didn't really matter.

8 **THE COURT:** Right.

9 **MS. WIYGUL:** Immediately after the verdict being
10 read, Mr. Odom told me that he did not relay the full
11 extent of his information about this juror because he
12 thought that it would get him in trouble. At this
13 point, I believe it's best that he just put it on the
14 record for the Court.

15 **THE COURT:** Okay. Madam Clerk, will you swear the
16 Defendant in, please.

17 MAURICE ANTHONY ODOM,
18 having been duly sworn, was examined
19 by the Court as follows:

20 **THE COURT:** Okay. What would you like to tell me,
21 Mr. Odom?

22 **THE DEFENDANT:** That last night or the night before
23 when I went back to the jail, you know, guys are asking
24 me about my jury trial.

25 **THE COURT:** Speak up, sir.

1 **THE DEFENDANT:** Last night when I went back to the
2 jail, and the night before, some of the guys at the jail
3 asked me how was my jury trial was going and I was
4 telling them that I didn't really know, it was really
5 kind of shaky a little bit, I wasn't really certain,
6 and one of them, he asked me who was all on the jury
7 trial and I was telling him some of the names that I
8 had known and remembered and everything and he was --
9 one man back there say who was it, one of them guys
10 said oh, he know her, he know her and everything was
11 all fine and then he said he talked to her just about
12 every week. He say he talked to her every week and
13 everything and I said I don't know her, what kind of
14 person is she? And they were telling me that her uncle
15 was a guy named Chilly Pop that had just gotten, you
16 know, a lot of time. Her uncle. Something Evans. I
17 forgot his first name. Something Evans. And I said
18 oh, what's her name, Chilly Pop niece? He went yeah,
19 Chilly Pop niece, okay.

20 But, you know, we -- we finished the conversation,
21 but probably about maybe 30 minutes later he came back
22 up to me and he asked me can I give him a phone call, he
23 say he got something for you. He said I got something
24 for you and so I stopped and said yeah, I can do that
25 for you. So I called my wife. I had called my wife,

1 you know, she's outside. I had called my wife and asked
2 her can she make a call for the guy and so when he was
3 making the call, I told her that she could put the phone
4 down and she would make the call for you and so he
5 called her. He had called her and everything and he
6 said whatever he said to her and everything. He said he
7 used to deal with her, they know each other from way
8 back and everything.

9 And he got off the phone and he said that -- he
10 said that he talked to her and said that her and the
11 guy, Tony Lyons, they feel the same way about the case.
12 They said all this emotion they doing, they're tired,
13 they don't want to be here, all the emotion and saying
14 that everybody be paying half attention to it, not
15 paying half attention, but there's more than one, they
16 don't know each other probably anyway, and just want to
17 get it over with and --

18 **THE COURT:** Let me just stop you just a second. And
19 I'm having a hard time following you. I need for you to
20 slow down in talking.

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

22 **THE COURT:** And I realize you're in a situation
23 where the jury has just come back and found you guilty.
24 I understand that.

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

1 **THE COURT:** I understand that, but you need to slow
2 down. Are you suggesting to me that someone in
3 the jail had some communication with one or two of the
4 jurors?

5 **THE DEFENDANT:** Yes, sir. And he told me --
6 he told -- he told her also, he said oh, he's from
7 Charleston anyway, I don't care nothing about that
8 nigger. Excuse my expression. That's what he said.
9 He told her that and so then she started laughing and
10 everything because she got to take a shower or whatever,
11 bla, bla, bla.

12 **THE COURT:** All right. Now who are the two jurors
13 that this man at the detention center had communication
14 with last night?

15 **THE DEFENDANT:** Well, he talked to one of them. He
16 talked to -- I think her name is Andriek Evans, but she
17 was telling him that him -- her and Tony Lyons they
18 talked about the case and they both feel the same way.
19 She told him that Tony Lyons, they both talked about
20 the case and they both feel the same way about both
21 situations. He said I know him. He's from Charleston
22 anyway.

23 **THE COURT:** All right. So he talked with Evans?

24 **THE DEFENDANT:** Yes, sir. Andriek Evans. Yes, sir.

25 **THE COURT:** Okay.

1 **MS. WIYGUL:** What was the inmate's name?

2 **THE DEFENDANT:** They call him Cheese, but I know --
3 I know who he is. They call him Cheese because I know
4 who he is. He's over there now.

5 **MR. MOWRY:** And I can tell you Chilly Pop, Your
6 Honor, is Richard Sylvester Evans. He's somebody that
7 Solicitor Stumbo and I tried last year on several
8 violent offenses, and he's serving life without parole.

9 **THE COURT:** Okay. All right. So the guy that you
10 talked with in the detention center, his name is Cheese?
11 That's all you know him as?

12 **THE DEFENDANT:** That's the -- that's the nickname
13 that he uses.

14 **THE COURT:** Well, I realize that. You don't know
15 his real name?

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

17 **THE COURT:** Okay.

18 **THE DEFENDANT:** And my wife --

19 **THE COURT:** And so -- and so through the -- all
20 right. So Cheese talked with Andriek Evans --

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

22 **THE COURT:** -- and she relayed some concerns about
23 the case, didn't want to be here --

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

25 **THE COURT:** -- and that Tony Evans {sic} also kind

1 of felt the same way?

2 **THE DEFENDANT:** She -- well, she said that about
3 Tony Evans {sic}; that he felt about the situation, that
4 he feel the same way she feels.

5 **THE COURT:** Okay.

6 **MR. WIYGUL:** And it's Tony Lyons, Your Honor.

7 **THE DEFENDANT:** Tony Lyons.

8 **THE COURT:** Oh, I'm sorry. Yeah, Tony Lyons. I'm
9 sorry.

10 **MS. WIYGUL:** And Mr. Odom relayed to me -- he says
11 his wife heard this conversation. She had stepped out
12 the front whenever we were waiting.

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

14 **MS. WIYGUL:** But she is present in the courthouse
15 if we need her.

16 **THE DEFENDANT:** I can even tell you her phone
17 number, if you'd like.

18 **THE COURT:** Okay. All right. Now how is your wife
19 involved in this communication between Cheese and
20 Andriek Evans?

21 **THE DEFENDANT:** Well, he told me can I give him
22 a phone call. He asked me can I give him a phone call.

23 **THE COURT:** Give -- give who a phone call?

24 **THE DEFENDANT:** Cheese a phone call.

25 **THE COURT:** All right. Who was gonna call Cheese?

1 **THE DEFENDANT:** I asked -- I asked my -- Cheese
2 asked me if I can give him a phone call, so I said yeah,
3 I can get my wife to give you a phone call.

4 **THE COURT:** Why was your wife gonna give Cheese a
5 phone call?

6 **THE DEFENDANT:** That's the only way he can make a
7 phone call. You've got to have money on the phone.

8 **MS. WIYGUL:** I believe, Your Honor, he's referring
9 to a three-way call where he called his wife and asked
10 him to call --

11 **THE COURT:** All right. So it's a three-way call
12 between your wife, Cheese and this juror?

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

14 **THE COURT:** Okay. All right. Get the wife in here,
15 please, Officer Turner.

16 See, here's what my concern is. We've got a
17 situation of jury tampering involving you, involving
18 Cheese, involving your wife and involving --

19 **THE DEFENDANT:** Well, my wife didn't know anything
20 about it.

21 **THE COURT:** She participated in the call; did she
22 not?

23 **THE DEFENDANT:** I asked her to make a call for me.

24 **THE COURT:** Right.

25 **THE DEFENDANT:** And she didn't know anything about

1 what the call was for. He just told me you're gonna
2 call for someone and he say he know her and I say okay,
3 I'll give you a call.

4 **MS. WIYGUL:** My understanding, Your Honor, is the
5 wife didn't know who she calling. I've not spoken to
6 the wife about it.

7 **THE COURT:** I thought it was a three-way call.

8 **MS. WIYGUL:** She -- she was given a phone number.
9 She didn't realize --

10 **THE DEFENDANT:** Not knowing who she was calling.

11 **MS. WIYGUL:** She didn't -- she didn't know who she
12 was calling is my understanding.

13 **THE COURT:** But she -- she listened in on the phone
14 call?

15 **THE DEFENDANT:** Sir?

16 **THE COURT:** She listened in on the phone call?

17 **THE DEFENDANT:** She picked up the phone when I
18 talked to her and, yes, sir, and I talked to her and she
19 said -- and she said why I give that phone call, that
20 was wrong. She said that guy just made me look real
21 bad. She said the guy just made me look real bad. He
22 asked me for a phone call and I said I'll give you one.
23 That's all I did. I said I'll give you a phone call.

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

25 **THE DEFENDANT:** That's all I did; I'll give you

1 a phone call. That's all I did. I never even spoke to
2 her or anything in no kind of way.

3 **THE COURT:** But, Mr. Odom, you knew the -- the
4 purpose for your wife making the call to hook up
5 Ms. Evans and Cheese, correct?

6 **THE DEFENDANT:** That I knew the purpose? Well, he
7 said that he got something for me and he asked me can I
8 make that number. He said -- he gave me the telephone
9 number. He say he knew her. He say he knew her, yes,
10 sir. He did -- did say he knew her and so I said okay,
11 I'll give you a phone call. I didn't think no big deal
12 of it though. He didn't say do you know her. He say he
13 talk to her every week. He say he talk to her every
14 single week. He say he talk to her every single week.
15 I didn't think no situation about it. I brought it to
16 my lawyer's attention in the morning, but then I backed
17 down from it. I backed down from it because I thought I
18 would get into some trouble, so I just backed down from
19 it.

20 **THE COURT:** Okay. All right. Let me -- let me see
21 the lawyers back in chambers. Would you just tell the
22 jury just to sit tight and be patient?

23 (Recess taken.)

24 **BAILIFF:** All right. Let's come back to order,
25 please. The Court will come back to order.

1 **THE COURT:** Okay. Officer Turner, if you would take
2 Mr. Odom's wife in one of those rooms and -- and remain
3 with her, please.

4 All right. Now, Mr. Bolt, if you would get just
5 Andriek Evans.

6 **BAILIFF:** Which two?

7 **THE COURT:** No, just the juror Andriek Evans, which
8 would be an Afro-American female, and if you would just
9 bring her out. Just say the Judge needs to talk with
10 her.

11 **BAILIFF:** Okay.

12 **THE COURT:** And leave the other ones back in there.
13 Just tell them to be patient. We just have a matter
14 that's arisen we need to deal with.

15 **BAILIFF:** Okay.

16 **THE COURT:** Ms. Wiygul, what is your husband's --
17 your husband -- your client's wife's name?

18 **MS. WIYGUL:** Tometrius, T-R-E-M-I-U -- T-R-I-U-S --
19 T-I-O-U-S, Odom.

20 **THE COURT:** Tometrius Odom?

21 **MS. WIYGUL:** Tometrius Odom.

22 **THE COURT:** Tometrius?

23 **MS. WIYGUL:** Tometrius.

24 **THE COURT:** All right. Ms. Evans, I apologize for
25 having to bring you out here, but there's -- something

1 was reported to the Court after the verdict was
2 delivered, and I'm gonna need to ask you some questions.
3 Madam Clerk, would you swear Ms. Evans in, please.

4 ANDRIEK EVANS,
5 having been duly sworn, was examined
6 by the Court as follows:

7 **BAILIFF:** Your Honor, do you want her --

8 **THE COURT:** No, she's fine right there.
9 Ms. Evans, do you know a gentleman by the name of
10 Antone Blakely that goes by Cheese?

11 **JUROR:** Uh-huh.

12 **THE COURT:** Okay. Did you have a phone conversation
13 with Cheese last night?

14 **JUROR:** Yeah, he called me last night.

15 **THE COURT:** Okay. All right. Was there anyone else
16 a part of that phone call?

17 **JUROR:** Unh-unh.

18 **THE COURT:** You didn't hear anybody else on -- on
19 the other end?

20 **JUROR:** No. I mean -- no, I didn't hear nothing.

21 **THE COURT:** Okay. All right. And tell me to the
22 best of your recollection of that phone call. And about
23 what time was it?

24 **JUROR:** Oh, God. It -- it could have been around
25 nine or something.

1 **THE COURT:** Okay. And do you know where Cheese was
2 originating that phone call?

3 **JUROR:** No, I don't. No. I mean, the number popped
4 up, but it was like a regular number, so I don't know
5 where it came from or anything.

6 **THE COURT:** Okay. All right. And you don't know
7 where Cheese was when the call was made?

8 **JUROR:** Oh, I know he's in the detention center --

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

10 **JUROR:** -- but as far as where the phone call could
11 have come from, I don't know where it came from.

12 **THE COURT:** Okay. All right. Well, tell me
13 specifically what was discussed in your phone
14 conversation with Cheese.

15 **JUROR:** He just called and told me -- because he
16 said he seen my name. I mean, he knows me pretty good
17 a little. He said he just seen my name on a list of
18 jurors and I'm like how you even know that over there
19 and he was like -- he said he was shown by someone else,
20 whatever, and he was just, you know, asking me questions
21 and I'm like there's not nothing I really can tell you
22 or whatever, but as far as you know, you know, I'm on
23 the jury and that's pretty much it.

24 **THE COURT:** Okay. What kind of questions was he
25 asking you?

1 **JUROR:** He just was -- he was -- well, he wasn't
2 really asking me some questions. He was just saying
3 that the person who showed him my name, or however he
4 found out my name, was like -- was asking him questions
5 about me or whatever and like what kind of person I was
6 and stuff like that.

7 **THE COURT:** All right. And who is that person that
8 was asking Cheese these questions?

9 **JUROR:** It was the Defendant.

10 **THE COURT:** Okay. All right. Okay. And -- and
11 what did you tell Cheese?

12 **JUROR:** I just told him basically, you know, I can't
13 really tell you nothing. I'm like yeah, I'm on the jury
14 or whatever and I was like it's a long process, I'm
15 tired of it or whatever, but other than that there's
16 nothing else.

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

18 **JUROR:** We just was discussing. He was just telling
19 me stuff and then after that he talked about some
20 things.

21 **THE COURT:** Okay. Did you ever say anything to him
22 concerning Mr. Lyons that's on the jury?

23 **JUROR:** Yeah, he say that he noticed his name, too,
24 and I'm like yeah, he went to school with us or
25 whatever.

1 **THE COURT:** Okay. All right. And did he say that
2 Mr. Odom had asked him to make the contact with you?

3 **JUROR:** No, he didn't tell me that.

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

5 **JUROR:** He just called -- Cheese done call me before
6 -- even before this even went on because, like I said,
7 we -- we friends.

8 **THE COURT:** Okay. The fact that you had this
9 conversation with -- with Cheese, did that in any way
10 have any effect on your -- on your decision on the
11 verdict?

12 **JUROR:** No, it don't.

13 **THE COURT:** Okay. Did you relay to anyone the fact
14 that this conversation took place, that you got this
15 call from Cheese?

16 **JUROR:** You're talking about like --

17 **THE COURT:** Have you told anybody?

18 **JUROR:** No.

19 **THE COURT:** Anybody on the jury?

20 **JUROR:** No.

21 **THE COURT:** Okay. Even Mr. Lyons?

22 **JUROR:** No. Yeah, I haven't, no.

23 **THE COURT:** Okay. All right. Anything?

24 **MR. MOWRY:** No, sir.

25 **THE COURT:** Come up here.

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

2 **THE COURT:** All right. Ms. Evans, I assume that you
3 were called on your cell phone?

4 **JUROR:** Uh-huh.

5 **THE COURT:** Okay. And where is your cell phone?

6 **JUROR:** In my car.

7 **THE COURT:** Okay. All right. When I excuse the
8 jury in just a minute, I'm gonna ask you to bring your
9 cell phone in so we can have that phone number, okay?
10 Now, and I know you've been honest, but I want you to
11 know that the phone call from the detention center is
12 recorded.

13 **JUROR:** Yeah, I know that.

14 **THE COURT:** Okay. And so understanding that,
15 everything you've told me is -- is true and correct?

16 **JUROR:** Uh-huh.

17 **THE COURT:** Okay. All right. And, again, you had
18 no communication with anybody on the jury concerning
19 this phone call?

20 **JUROR:** (Shakes head.) No, sir.

21 **THE COURT:** Okay. All right. And it had no effect
22 whatsoever on your reaching the verdict that you did?

23 **JUROR:** None whatsoever.

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

25 **MR. MOWRY:** The State is satisfied.

1 **THE COURT:** Okay. All right. Does the defense
2 have --

3 **MS. WIYGUL:** Your Honor, we would move for a
4 mistrial based on --

5 **THE COURT:** We'll -- we'll deal with that in just a
6 moment, okay? All right. Ms. Evans, just -- well,
7 you just keep your seat because I'm gonna go ahead and
8 bring the jury out and I'm gonna go ahead and excuse
9 the -- the jury if there's -- unless there's any other
10 examination of this juror or any other juror.

11 **MR. MOWRY:** No, sir.

12 **MS. WIYGUL:** No, Your Honor.

13 **THE COURT:** All right. You can just keep your seat,
14 okay, and bring --

15 **BAILIFF:** I'm gonna ask her to move down.

16 **THE COURT:** That would be good. Just move down a
17 little bit, Ms. Evans. This is just something we had to
18 -- we had to explore.

19 **JUROR:** I understand.

20 **THE COURT:** It was reported to us and we had to
21 explore it. If you'll bring the rest of the jury out.
22 But I will need for you, when you leave, to get your
23 cell phone and bring it back in so you can give us the
24 number.

25 **JUROR:** Which way do you want me to come back in?

1 **THE COURT:** Excuse me?

2 **JUROR:** Which way do you want me to come back in?

3 **THE COURT:** (Indicating.)

4 **JUROR:** Okay.

5 (Whereupon, the jury returns to the courtroom.)

6 **THE COURT:** Okay. Ladies and gentlemen, we just
7 received some information that we had to follow up on,
8 and I didn't want to excuse you until -- until we did
9 follow up on the information. Everything's fine,
10 everything's good, and you are now free to leave.
11 Again, the offer is still extended to you if any of
12 you are interested in staying for the sentencing.
13 I'll just ask that you remain in the gallery. It will
14 probably be about fifteen minutes or so before we -- we
15 start that, but everything's good and you're now free
16 to leave. And, once again, thank you very much for your
17 very efficient jury service.

18 And, Madam Forelady, you still need to come --
19 if you'll get with the Clerk to sign the indictments.

20 (Whereupon, the jury was excused.)

21 **THE COURT:** Y'all can have a seat. This is not on
22 the record.

23 (Off the record discussion.)

24 **THE COURT:** Let's go ahead and do the sentencing.
25 The wife can come out because she'll probably want to be

1 here for the sentencing and then I'll -- I'll talk with
2 her after the sentencing. Let's go ahead. I'm not
3 gonna take my break. I'm all right. Let's go ahead and
4 do the sentencing if you're ready, Ms. Wiygul, and the
5 State's ready, okay?

6 **MR. MOWRY:** The State's ready, Your Honor.

7 **THE COURT:** Okay. She can be in the courtroom, but
8 just have her in the back somewhere.

9 **MS. WIYGUL:** Your Honor, he'd like his mother to be
10 present also and the victim advocate has gone to get
11 her.

12 **THE COURT:** Okay.

13 (Brief recess.)

14 **THE COURT:** Okay. The mom's here, so if y'all would
15 approach.

16 Okay. We're in the sentencing phase of the case
17 of the State of South Carolina versus Maurice Anthony
18 Odom; Mr. Odom having been found guilty by the jury
19 on all three of the indictments. With respect to
20 sentencing, I'll be glad to hear from the State first
21 and then from the defense. Anyone on behalf of the
22 State who wishes to address the Court, I'll allow that.
23 Likewise, for the defense. Go ahead, Solicitor.

24 **MR. MOWRY:** Thank you, Your Honor. I think
25 the -- the events of the last several minutes are

1 indicative of Mr. Odom's character. He is one of the
2 most manipulative defendants I have ever encountered
3 and would want to make that very clear to Your Honor.
4 I've had a lot of experience in the courtroom. I've
5 hardly ever met anybody that -- that tries to twist
6 the system as much as Mr. Odom does.

7 He has five prior felony convictions, Your Honor;
8 four for burglary from back in the early nineties to
9 the late nineties, as well as a criminal sexual conduct
10 with a minor in the second degree. This would mean that
11 this is his second violent offense, his second serious
12 offense -- serious and most serious offense. He still
13 has numerous charges from around the State, similar
14 charges to what -- what Mr. Nixon had. Mr. Nixon
15 manned up and pled on the charges. Mr. Odom obviously
16 has not. He had a right to a jury trial, but the jury
17 has found him guilty.

18 Your Honor, based on all that we have, and I
19 will make these indictments -- I have certified copies
20 of indictments from other parts of the state. If you
21 would like to make these part of the Court's exhibit,
22 I would be happy to submit those to you.

23 **THE COURT:** All right. Ms. Wiygul, do you need to
24 see those first?

25 **MS. WIYGUL:** I've not seen them, Your Honor.

1 **THE COURT:** Okay.

2 **MR. MOWRY:** In any event, Your Honor, we would ask
3 not only for maximum sentences on each, but that all of
4 these sentences run consecutive.

5 **MS. WIYGUL:** Your Honor, I would ask that these not
6 be made part of the court record. I don't think that's
7 the normal course and I don't believe it's necessary.
8 These are public information documents and sentencing
9 sheets.

10 **THE COURT:** Okay. That's documentation concerning
11 the unresolved or pending charges?

12 **MR. MOWRY:** No, sir. No, sir, these are
13 convictions.

14 **MS. WIYGUL:** These are convictions.

15 **THE COURT:** I'll have them marked as a Court's
16 exhibit and they can be marked -- just hand it to the
17 court reporter -- as one exhibit.

18 **MS. WIYGUL:** And, Your Honor, Mr. Odom is telling
19 me he only has three burglaries on his record. I'll
20 be happy to review that exhibit with him after the
21 sentencing hearing if the Court would permit.

22 **MR. MOWRY:** I have four certified true copies of
23 indictments -- or certified true copies of indictments,
24 Your Honor.

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

1 (Court's Exhibit Number 2, prior convictions, was
2 marked for identification.)

3 **THE COURT:** Just give me a moment to review this
4 before I hear from -- okay. Ms. Wiygul, I'll be glad to
5 hear from you and from the Defendant and anybody on his
6 behalf, whatever you decide.

7 **MS. WIYGUL:** Your Honor, first off, we would move
8 for a mistrial based on the juror misconduct and it is
9 my understanding from the Court's prior comments that
10 that will -- that motion would not be granted, but I
11 felt it important to protect the record that the motion
12 has been made.

13 **THE COURT:** Right.

14 **MR. MOWRY:** Your Honor -- oh, I'm sorry.

15 **THE COURT:** Well, you know, based upon the
16 information that we have thus far, that the juror --
17 the subject juror indicated that, number one, that the
18 phone call she received last night had no bearing
19 whatsoever on her ability to deliberate and reach a
20 verdict and, two, that she disclosed that -- the
21 existence of that phone call to no one on the jury and
22 actually no one else. So with the information that I
23 have before me at this time, I -- I don't see -- and
24 certainly, you're doing the right thing, Ms. Wiygul, to
25 -- to make your motion for mistrial to protect the

1 record and I don't know what further information would
2 be -- that would surface that would be relevant to -- to
3 a mistrial motion.

4 **MR. MOWRY:** And the State agrees with that
5 assessment, Your Honor, and I would also state that
6 Mr. Odom initiated this and should not be the recipient
7 of any benefit from this type of illegal conduct.

8 **THE COURT:** All right. So I'm gonna deny your
9 motion for mistrial, but, again, you're doing the right
10 thing to protect the record.

11 **MS. WIYGUL:** Your Honor, Mr. Odom is asking that
12 the Court not hold the fact that he exercised his right
13 to a jury trial against him.

14 **THE COURT:** And the Court will not hold that
15 against him for him exercising his constitutional
16 right to a trial by a jury of his peers. The Court
17 will not factor that in at all in -- in determining
18 the appropriate sentence.

19 **MS. WIYGUL:** Thank you, Your Honor. We would
20 ask that the Court consider concurrent time on these
21 sentences; that the Court take into account the fact
22 that Mr. Odom has remained in jail continuously since
23 November of 2011; is that correct?

24 **THE DEFENDANT:** Yes, ma'am.

25 **MS. WIYGUL:** Since late November of 2011. I believe

1 the 23rd.

2 **THE DEFENDANT:** The 17th.

3 **MS. WIYGUL:** The 17th? Okay. He tells me since
4 November 17th of 2011.

5 **THE COURT:** Okay.

6 **MS. WIYGUL:** We would ask that the Court give
7 him credit for the time that he has done in jail. We'd
8 also ask that the Court consider concurrent time and
9 Mr. Odom is more than willing to pay any restitution in
10 this case if the Court would consider putting a portion
11 of this sentence as a probationary sentence to give him
12 that opportunity. His family has been here in support
13 of him throughout this trial. His wife is seated in
14 back. His mother and sister are standing up front at
15 the rail.

16 **THE COURT:** Okay.

17 **MS. WIYGUL:** Would either of you like to address
18 the Court before the Court pronounces sentence? And,
19 Your Honor, his mother is indicating that she's just too
20 upset to speak right now.

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

22 **MS. WIYGUL:** He does have twelve children, Your
23 Honor. His youngest is a six-year-old he's not seen in
24 three years except from the door of this courtroom.
25 He'd like the opportunity to get out and try and make

1 everything right. He does have some other charges that
2 he will be having to deal with and we would just ask
3 that the Court consider a five-year sentence perhaps
4 followed by five years of probation.

5 **THE COURT:** Okay. The -- the other charges, that's
6 not going to be resolved today. I know that there was
7 some brief discussion, but -- about the possibilities
8 of that, but that is not going to be --

9 **MR. SCOTT:** For the record, Judge -- and I would
10 give him a formal notice, but I would notice him for
11 trial June 23rd in Newberry with a backup of July the
12 7th. I have made an offer and he's rejected it.

13 **THE COURT:** Okay. Would you just put that in
14 writing and hand it to him, Solicitor?

15 **MR. MOWRY:** And, Your Honor, I would also put on
16 the record that the offer that we made was for ten years
17 before trial, so I would request that the Court not give
18 him the benefit of going to trial and getting a lesser
19 sentence than that. Again, we -- we ask for maximum
20 sentences on everything consecutive.

21 **THE COURT:** Okay.

22 **MS. WIYGUL:** And, Your Honor, just in response
23 to Mr. Scott, I plan on asking for court protection
24 the week of July 7th. I just have a family vacation
25 scheduled.

1 **THE COURT:** Okay. Are you representing him on the
2 other charges?

3 **MS. WIYGUL:** I am at this time, Your Honor.

4 **THE COURT:** At this time. Okay. All right. Is
5 there anything the Defendant wishes to tell the Court?
6 He certainly doesn't have to, but I'll be glad to hear
7 from him or anybody else.

8 **THE DEFENDANT:** Yes, sir. I ask for -- I ask the
9 Court, I ask the Solicitor and the Solicitor to please
10 have mercy on me. Please have mercy on me. I don't
11 want to put my family and my wife and my mother through
12 any more than I have put them through already by being
13 here. And my kids. You know, the only ones I get to
14 see is when they came through here and I live so -- so
15 far away from here I just ask the Court to please -- the
16 Court, the Solicitor, Mr. Goggins and all of them to
17 please -- please have mercy on me. I just want to
18 get everything resolved. I just want to get it all
19 resolved, get everything behind me. That's all I want
20 to do is get it all behind me. I just want to get it
21 all behind me because I -- you know, I know I can't beat
22 all this. I can't beat it. I know I can't beat it. I
23 don't -- I don't -- I don't stand a chance because, you
24 know, Your Honor, I can't even get on the stand because
25 I've got a past record when I was a teenager, when I was

1 a teenager, so I can't defend myself because it will be
2 bad off for me, so I just want to get it all resolved.
3 I just want to get everything resolved and get it all
4 behind me. That's all I ask, Your Honor. I want to get
5 it all behind me. I don't stand a fighting chance. I
6 just want to get to my family, my wife and my kids and
7 just -- just -- to just get this life behind me. I just
8 want to just -- I just want to just start over and go
9 somewhere and start over and get everything behind me.
10 I ask the Court to have mercy on me, please. I respect
11 the Solicitor, Mr. Goggins and the Courts. Please, Your
12 Honor, I don't want to put my family through any more
13 trouble than they already going through, all right,
14 because I know they cannot take it, Your Honor. I just
15 want to get it all over. I want to get it all over. I
16 really do. I want to get it all behind me. I'm ready
17 to pay restitution just to get it -- just to get it
18 over. I know I can't beat it. Restitution, probation,
19 house arrest, whatever I can do, Your Honor, to get it
20 all over with. And Mr. Mowry --

21 **MR. MOWRY:** Your Honor, we have tried for two and a
22 half years to get all of this taken care of and he has
23 rejected every offer we've made.

24 **THE DEFENDANT:** Yes, sir, I did. I did, you know,
25 and I only did that because -- not only that, I have

1 other pending charges and I knew if I would have pled
2 to it, Your Honor -- I knew if I would have pled to
3 them other pending charges, you know, Mr. -- Mr. Young.
4 Mr. Young. I know as soon as I would have pled to it
5 that was gonna give him ammo -- he was gonna -- he was
6 going to -- he was gonna come at me even harder. That's
7 the only reason why I didn't pled to get it out of the
8 way because I was acting in fear for what Mr. Young was
9 gonna do to me. That's the only reason why I didn't do
10 that.

11 **MS. WIYGUL:** Who's Mr. Young?

12 **MR. SCOTT:** Frank, the Solicitor in --

13 **THE DEFENDANT:** That's the only reason why I didn't
14 want to get it over with. If I could have got him to
15 get it over with and everybody got -- I would have just
16 got it all out the way. That was my only fear.

17 **THE COURT:** Anything further, Ms. Wiygul, from your
18 side?

19 **MS. WIYGUL:** No, Your Honor.

20 **THE COURT:** Okay. Thank you very much. Anything
21 further from the State?

22 **MR. MOWRY:** No, sir. Thank you, Your Honor.

23 SENTENCE OF THE COURT

24 **THE COURT:** Mr. Odom, I'm certainly taking into
25 consideration the fact that you do have a significant

1 prior record; however, it's -- it's about twelve years
2 old and older, but nonetheless, it's a significant prior
3 record. Certainly I've taken into account the very
4 serious nature of this -- of these three charges. For
5 the record, I will make a finding pursuant to Section
6 16-23-500 that the burglary second is a violent felony;
7 all that as it relates to future possession of a
8 firearm.

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

10 **THE COURT:** Mr. Odom, the sentence the Court is on
11 the Indictment 12-GS-30-311, which is the burglary
12 second degree, you be committed to the State Department
13 of Corrections for a period of fifteen years. On the
14 other two charges, five years on each. Those to run
15 concurrent with each other. You'll be given 937 days'
16 credit for time served. Good luck to you, sir.

17 **MR. MOWRY:** Thank you, Your Honor.

18 **MS. WIYGUL:** Your Honor, at this time I would move
19 to be relieved from representing Mr. Odom on all
20 of his pending charges. I believe that the issue
21 after the trial just highlights a complete breakdown
22 in communication between myself and Mr. Odom.

23 **THE COURT:** Okay. Mr. Odom, Ms. Wiygul apparently
24 has been court-appointed in some other charges, possibly
25 Newberry charges, and she's requesting that -- that I

1 relieve her. Do you want the Court to make a
2 determination on that at this time or do you want to
3 have sufficient notice for that issue to be addressed
4 later on?

5 **THE DEFENDANT:** Later on.

6 **THE COURT:** Okay. All right. In all fairness
7 to -- to Mr. Odom, I will not make a ruling on that. I
8 would just ask, Ms. Wiygul, that you just file and serve
9 a written motion to be relieved and it certainly does
10 not need to be heard by me necessarily. Just you can
11 schedule it and make arrangements to have it, you know,
12 heard at whatever time the Court can give you.

13 **MS. WIYGUL:** Yes, Your Honor.

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

15 **MR. MOWRY:** Thank you, Your Honor.

16 (Discussion off the record.)

17 **THE COURT:** Officer Turner, if Mr. Odom wants to
18 remain in the courtroom so I -- when I examine his wife,
19 he can.

20 All right. Ms. Odom, would you come up here,
21 please, ma'am. No, the wife Ms. Odom. And, if you
22 will, just -- you can just come up here just a little
23 bit closer to me and I'm gonna need to swear you in
24 because I'm gonna need to ask you about some things.

25 **MS. ODOM:** Okay.

1 **THE COURT:** Madam Clerk, would you swear this lady
2 in.

3 TOMETRIUS ODOM,
4 having been duly sworn, was examined
5 by the Court as follows:

6 **THE COURT:** Okay. You can put you hand down. State
7 your name, please, ma'am.

8 **MS. ODOM:** Tometrius Odom.

9 **THE COURT:** Okay. Now you're gonna need to
10 speak up loud, but the first thing I need for you to do
11 is spell your first name for the court reporter.

12 **MS. ODOM:** T-O-M-E-T-R-I-U-S.

13 **THE COURT:** Okay. All right. And, Ms. Odom, do you
14 have a cell phone?

15 **MS. ODOM:** Yes, sir.

16 **THE COURT:** Can you state for -- for us, please, the
17 phone number.

18 **MS. ODOM:** I have two. I have one that he calls on
19 and I have a new one, so.

20 **THE COURT:** Well, give us both.

21 **MS. ODOM:** The [REDACTED], then I have [REDACTED] --
22 I'm not exactly for sure of that number.

23 **THE COURT:** Well, you're gonna have to find out for
24 us. What do you need to do to get your number?

25 **MS. ODOM:** My phone is in the car.

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

2 **THE DEFENDANT:** I can tell you what it is.

3 [REDACTED].

4 **THE COURT:** Okay. All right. And, Ms. Odom, I
5 understand that you participated in a phone conversation
6 with -- between a fella that -- Antone Blakely, but
7 known as Cheese, and one of the jurors, Andriek Evans,
8 last night; is that correct?

9 **MS. ODOM:** I did participate in the conversation.

10 **THE COURT:** Okay.

11 **MS. ODOM:** I was asked to dial a number that he
12 want to talk to someone and I dialed the number and
13 put the phone down and when I picked the phone up, I
14 overheard the conversation.

15 **THE COURT:** Okay. All right. Well, let's -- let's
16 kind of start back at the beginning of this. You were
17 at home last night?

18 **MS. ODOM:** Yes, sir.

19 **THE COURT:** Okay. And did you receive a phone call?

20 **MS. ODOM:** Yes, sir.

21 **THE COURT:** And you received the phone call from
22 whom?

23 **MS. ODOM:** Maurice.

24 **THE COURT:** Okay. From your husband, Mr. Odom?

25 **MS. ODOM:** Uh-huh.

1 **THE COURT:** And what did your husband ask you to do?

2 **MS. ODOM:** He just said that one of the guys in
3 there wanted to talk to his friend and could I dial the
4 number for him and I didn't have to sit on the phone,
5 because I told him I had company, and he said you just
6 dial the number and put the phone down. When -- when
7 the phone hang up -- when he get finished, the phone
8 hang up. So I dialed the number and finished talking
9 to who I was talking to, but in the middle of me having
10 company, I picked up the phone and overheard the
11 conversation.

12 **THE COURT:** Okay. And what was being discussed?
13 What did you overhear?

14 **MS. ODOM:** I heard a guy saying that he had --
15 he -- he -- he heard that she was on the jury and he was
16 like -- she was like what's going on and then I heard
17 him say something about I heard you were on the jury, I
18 seen your name came back here and some of the people I
19 knew and she was like yeah, I ain't even interested in
20 that and some more stuff and he was like yeah, this dude
21 back here, he's from Charleston, he has a bunch of
22 pending charges and he's worried to death about the
23 trial, and he was like nah, don't tell me you're gonna
24 put that man away and she was like well, it's more
25 besides me on the jury, I can't -- something about she

1 can't necessarily say whether or not they're gonna --
2 then she said something about a co-defendant and then I
3 put the phone down for a minute because they was talking
4 about some other stuff and people that -- she thought it
5 was somebody else that was supposed go to trial named
6 Daniek (ph.) or something and I put the phone down and
7 then I picked it back up. When I picked it back up, he
8 was like yeah, this nigger got a bunch of charges
9 everywhere and just saying some more stuff and I can't
10 necessarily remember everything after that and he said
11 he'll be home next week and some more other stuff and
12 then the phone hung up.

13 **THE COURT:** Okay. Now when your -- when your
14 husband contacted you about calling this number, did he
15 give you a name of the person that you were calling?

16 **MS. ODOM:** No.

17 **THE COURT:** Did he indicate to you that it was
18 someone on the jury?

19 **MS. ODOM:** No.

20 **THE COURT:** Okay. But during -- overhearing the
21 conversation, you then learned that the person that you
22 had dialed was, in fact, a member of your husband's
23 jury?

24 **MS. ODOM:** Yeah, when he said that her name was
25 highlighted and he asked her about another person was on

1 the jury and did y'all go to school together.

2 **THE COURT:** Okay. All right. Now, Ms. Odom, you
3 understand that the phone conversation that you had with
4 your husband and, of course, this phone conversation
5 that you caused to take place by dialing the number, all
6 that is recorded?

7 **MS. ODOM:** Yes, sir.

8 **THE COURT:** So -- so law enforcement can determine
9 exactly what was said among everybody. You understand
10 that?

11 **MS. ODOM:** Yes. I'm telling the truth. That's what
12 was said.

13 **THE COURT:** Okay. All right. Solicitor, any
14 questions?

15 **MR. MOWRY:** No, sir. I don't know if Mr. Bentley
16 has anything.

17 **MR. BENTLEY:** No, I can -- can do that later.

18 **THE COURT:** Okay. All right. Ms. Wiygul, I'm just
19 gonna ask you, is there any questions?

20 **MS. WIYGUL:** I don't have any questions.

21 **THE COURT:** All right. Thank you, ma'am. You can
22 go on back.

23 Okay. All right. So, Solicitor, I understand
24 you're gonna take appropriate action as far as having
25 this matter turned over?

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

2 **THE COURT:** Okay.

3 **MR. MOWRY:** We'll discuss it with the sheriff's
4 office tomorrow and they'll conduct an investigation.

5 **THE COURT:** All right. Very good. Thank you very
6 much. This matter's adjourned.

7 **MR. MOWRY:** Thank you, your Honor.

8 (Whereupon, the proceedings were concluded at
9 4:52 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 9th - 11th day of June, 2014.

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

September 24, 2014

s/ Stacy S. Johnson

STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LAURENS)

CASE NUMBERS: 2012-GS-30-311

2012-GS-30-314

2012-GS-30-317

STATE OF SOUTH CAROLINA,)

vs.)

MAURICE ANTHONY ODOM,)

DEFENDANT.)

VERDICT FORM

1. As to **Indictment 2012-GS-30-311** the charge of **Burglary Second Degree**, we the Jury find the Defendant:

☒ Guilty.

☐ Not Guilty.

2. As to **Indictment 2012-GS-30-314**, the charge of **Criminal Conspiracy**, we the Jury find the Defendant:

☒ Guilty.

☐ Not Guilty.

3. As to **Indictment 2012-GS-30-317**, the charge of **Grand Larceny**, we the Jury find the Defendant:

☒ Guilty.

☐ Not Guilty

I certify this decision was the unanimous decision of the jury.

Cassie R.
Foreperson
June 11, 2014

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

PLEASE NOTIFY THE BAILIFF WHEN YOU HAVE COMPLETED THIS FORM.

ARREST WARRANT

M-790634

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

THE STATE

against

MAURICE ANTHONY ODOM

Address:
BARNWELL SC 29812Phone: SSN: Sex: M Race: B Height: 5-10 Weight: 185DL State: SC DL#: DOB: 1975 Agency ORI#: SC0300200Prosecuting Agency: CITY OF CLINTONProsecuting Officer: GOGGINSOffense: BURGLARY 2ND DEGREEOffense Code: 0080Code/Ordinance Sec. 16-11-0312

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant MAURICE ANTHONY ODOM
on 11/23/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

Personally appeared before me the affiant DETECTIVE TYRONE GOGGINS who

being duly sworn deposes and says that defendant MAURICE ANTHONY ODOM

did within this county and state on 11/11/2011 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CLINTON)

in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-0312 / BURGLARY 2ND DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:ON THE DATE OF NOVEMBER 11, 2011 ONE MAURICE ANTHONY ODOM DID BREAK INTO THE BUSINESS LOCATED AT 19267
HIGHWAY 72 WITHIN THE CITY LIMITS OF CLINTON. MAURICE ODOM DID BREAK INTO THIS LOCATION AND DID STEAL
PROPERTY AND CURRENCY FROM WITHIN THE LOCATION. THIS CRIME WAS COMMITTED WITHIN THE NIGHT TIME HOURS
AND WITH THE INTENT TO DEPRIVE THE RIGHTFUL OWNER OF THE PROPERTY. THIS OFFENSE VIOLATES SOUTH
CAROLINA CODE OF LAWS 1976, AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

Affiant's Address 404 NORTH BROAD STREET

CLINTON SC 29325

Affiant's Telephone 833-7512

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 11/11/2011 defendant MAURICE ANTHONY ODOM

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CLINTON) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (NON-VIOLENT) - SECOND DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/22/2011

JOEL H. WHITSEL

Judge Code: WHIT

Judge's Address 404 N. BROAD ST.

CLINTON SC 29325

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 201111077

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518CLINTON COUNTY
CLERK OF COURT
DEC - 8 P 3:28
LYNN W. LANCASTERA TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Tyrone Goggins
Clinton Police Department

WARRANT NUMBER

M790634

True Bill

J. B. Odom

Foreman of the Grand Jury

Date: *2-26-12*

VERDICT

guilty

Casey

Foreman

6/11/2014

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2012

Indictment # 12GS30- *0311*

THE STATE

vs.

Maurice Anthony Odom

INDICTMENT FOR

BURGLARY
16-11-0312

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

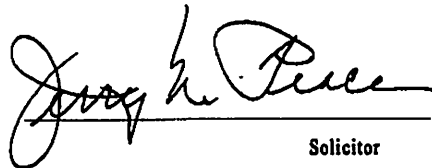
COUNTY OF LAURENS

INDICTMENT FOR**BURGLARY
16-11-0312**

At a Court of General Sessions, convened on the 24th day of February, 2012 the Grand Jurors of Laurens County present upon their oath:

That Maurice Anthony Odom, did in Laurens County, state aforesaid, on or about the 11th day of November, 2011 willfully and unlawfully enter a building without consent and with intent to commit a crime therein, when such entering or remaining occurred in the nighttime, the said building being owned and/or occupied by BP of Clinton (BJC Inc.), in violation of Section 16-11-312 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LaurensSTATE VS.Maurice Anthony Odom

AKA:

Race: AFRICAN AME Sex: M Age: 39DOB: 1975 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Barnwell, SC 29812DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degreeINDICTMENT/CASE#: 12GS30-0311A/W#: M790634Date of Offense: 11/11/2011S.C. Code §: 16-11-0312CDR Code #: 0086

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0086☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Waverly WarrenSC Bar# 4124

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 937 Days Credit

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: **A TRUE COPY OF ORIGINAL**

Lynn W. Lancaster
 Lynn W. Lancaster
 Laurens County CCJP & GS

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk: Lynn W. LancasterCourt Reporter: Jacy Pham

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2167Sentence Date: 6/11/14

ARREST WARRANT

M-790647

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

THE STATE

against

MAURICE ANTHONY ODOM

Address: [REDACTED]

BARNWELL SC 29812

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5-10 Weight: 185

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] 1975 Agency ORI#: SC0300200

Prosecuting Agency: CITY OF CLINTON

Prosecuting Officer: GOGGINS

Offense: GRAND LARCENY

Offense Code: 3420

Code/Ordinance Sec. 16-13-0030 (B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant MAURICE ANTHONY ODOM

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

Personally appeared before me the affiant DETECTIVE TYRONE GOGGINS who

being duly sworn deposes and says that defendant MAURICE ANTHONY ODOM

did within this county and state on 11/11/2011 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CLINTON)

in the following particulars:

DESCRIPTION OF OFFENSE: 16-13-0030 (B) / GRAND LARCENY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON NOVEMBER 11, 2011 ONE MAURICE ANTHONY ODOM DID STEAL OVER \$2300 US CURRENCY FROM THE BP STATION. THIS OFFENSE WAS COMMITTED WITH THE INTENT TO DEPRIVE THE RIGHTFUL OWNERS OF THE CURRENCY. THIS OFFENSE TOOK PLACE AT [REDACTED] WITHIN THE CITY LIMITS OF CLINTON.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

Affiant's Address 404 NORTH BROAD STREET

CLINTON SC 29325

Affiant's Telephone 833-7512

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 11/11/2011 defendant MAURICE ANTHONY ODOM

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CLINTON) as set forth below:

DESCRIPTION OF OFFENSE: LARCENY / GRAND LARCENY, VALUE MORE THAN \$2,000 BUT LESS THAN \$10,000

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 09/22/2011

JOEL H. WHITSEL (L.S.)

Judge Code: WHIT

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCGA 518CLINTON COUNTY
CLERK OF COURT
LYNN W. LANCASTER
DEC - 8 P 3: 29

Judge's Address 404 N. BROAD ST.

CLINTON SC 29325

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 201111077

416

WITNESSES

Tyrone Goggins
Clinton Police Department

WARRANT NUMBER

M790647

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2012

Indictment # 12GS30-0317

THE STATE

vs.

Maurice Anthony Odom

VERDICT

guilty
Cassie Brown
Foreman 6/11/2014

INDICTMENT FOR

GRAND LARCENY
16-13-0030

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

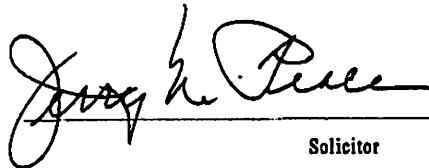
COUNTY OF LAURENS

INDICTMENT FOR**GRAND LARCENY
16-13-0030**

At a Court of General Sessions, convened on the 24th day of February, 2012 the Grand Jurors of Laurens County present upon their oath:

That Maurice Anthony Odom, did in Laurens County, state aforesaid, on or about the 11th day of November, 2011 feloniously take and carry away the personal goods of BP of Clinton (BIJC Inc.) of the value of more than two thousand and NO/100 (\$2,000.00) dollars, but less than ten thousand and NO/100 (\$10,000.00) dollars described as follows: United States currency with intent to deprive the owner permanently of such goods, in violation of Section 16-13-30 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

ARREST WARRANT

M-790640

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

THE STATE

against

MAURICE ANTHONY ODOM

Address [REDACTED]
BARNWELL SC 29812

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5-10 Weight: 185

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] 1975 Agency ORI#: SC0300200

Prosecuting Agency: CITY OF CLINTON

Prosecuting Officer: GOGGINS

Offense: CONSPIRACY TO COMMIT BURGLARY

Offense Code: 0049

Code/Ordinance Sec. 16-17-0410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant MAURICE ANTHONY ODOMon 11/23/11
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 28, 1960
SCCA 518Personally appeared before me the affiant DETECTIVE TYRONE GOGGINS who
being duly sworn deposes and says that defendant MAURICE ANTHONY ODOM
did within this county and state on 11/11/2011 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CLINTON)
in the following particulars:

DESCRIPTION OF OFFENSE: 16-17-0410 / CONSPIRACY TO COMMIT BURGLARY

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:ON NOVEMBER 11, 2011 ONE MAURICE ODOM DID CONSPIRE WITH ONE CHRISTOPHOR MIXON TO COMMIT THE CRIME OF
BURGLARY. THIS CRIME WAS COMMITTED INVOLVING BOTH SUBJECTS AT [REDACTED] WITHIN THE CITY LIMITS OF
CLINTON. THIS OFFENSE VIOLATES SOUTH CAROLINA CODE OF LAWS 1976, AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

Affiant's Address 404 NORTH BROAD STREET
CLINTON SC 29325

Affiant's Telephone 833-7512

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 11/11/2011 defendant MAURICE ANTHONY ODOM

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CLINTON) as set forth below:DESCRIPTION OF OFFENSE: CONSPIRACY / CRIMINAL CONSPIRACY, COMMON LAW CONSPIRACY
DEFINEDHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/22/2011

JOEL H. WHITSEL (L.S.)

Judge Code: WHIT

Judge's Address 404 N. BROAD ST.
CLINTON SC 29325

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 201111077

ORIGINAL

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Tyrone Goggins
Clinton Police Department

WARRANT NUMBER

M790640

True Bill
[Signature]

Foreman of the Grand Jury

Date: *2-24-12*

VERDICT

guilty
[Signature]

Foreman

6/11/2014

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2012

Indictment # 12GS30- 0314

THE STATE

vs.

Maurice Anthony Odom

INDICTMENT FOR

CRIMINAL CONSPIRACY

16-17-0410

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

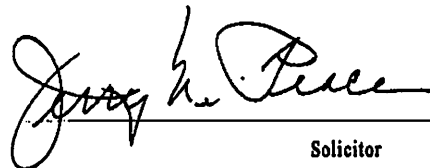
COUNTY OF LAURENS

INDICTMENT FOR**CRIMINAL CONSPIRACY
16-17-0410**

At a Court of General Sessions, convened on the 24th day of February, 2012 the Grand Jurors of Laurens County present upon their oath:

That Maurice Anthony Odom, along with another person or persons did in Laurens County, state aforesaid, on or about the 11th day of November, 2011 willfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Burglary, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Laurens

STATE VS.

Maurice Anthony Odom

AKA:

Race: AFRICAN AME Sex: M Age: 39

DOB: 1975 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Barnwell, SC 29812

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

INDICTMENT/CASE#: 12GS30-0314

A/W#: M790640

Date of Offense: 11/11/2011

S.C. Code §: 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mowry, Warren

SC Bar# 4124

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12-GS-30-0311
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 2.90
TOTAL		\$ 133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning _____

\$ paid to Public Defender Fund

Other: _____

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2167

5/11/14

FORM 5

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of LAURENS)Maurice Anthony Odum #199677)

A 10: 37)

2016 **CP30-251**

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

v.)

LAURENS COUNTY
CLERK OF COURT)

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 Laurens County Detention Center
2. Name and location of Court which imposed sentence Laurens County Court house in Laurens County, S.C. 29360
3. Name(s) of co-defendant(s) (if any) Christopher Mixon
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) burglary 16-11-0312 - 2012-GS-30-311
 - (b) Grand larceny - 12-GS-30-0312

(c) Conspiracy - 12-65-30-0314

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

(a) burglary 2nd 15 years concurrent - June 11th 2014

(b) Conspiracy 5 years concurrent - June 11th 2014

(c) Grand Larceny concurrent - June 11th 2014

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

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

Judgment of conviction 'Yes'

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

(a) the name of each Court to which you appealed:

i. Court of Appeals of South Carolina

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. Dec. 2015

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

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

(a) _____

(b) _____

- (a) Ineffective counsel / unlawful detainment
- (b) malicious prosecution
- (c) violation of my 8th Amendment
- (d) Vindictive prosecution
- (e) violated my right of confrontations of my co-defender and he only testified and openly admitted he's testifying for a lesser sentence.
State v. Mizzell (S.C. 2002) 349 S.C. 326, 567 S.E. 2d 315
- (f) I was denied direct verdict to where the only evidence was my codefender word was saying I was there with him. State v. Cherry, 361 S.C. 588 (2004)
- (g) The Fact that my co-defender charges were dismissed after he plead guilty to some burglary charges receiving 3 years sentence and upon him pleading guilty to them the agreement was for the other charges were dismissed. He served a total of 17 months and were released but when it came time for my trial they picked them same charges back up on him til after my trial. My attorney confronted them about that "the solicitor" but they replied it was a mistake. How you make a mistake like that? That was the case that mistake could have been taken care of way before trial or when you made the mistake. Why did the solicitor wait until after my trial before they dismissed knowing it scared my codefender into testifying and not wanted to get any more time

after the time he served, on their agenda was clearly to scare tactics, and any human will do what ever it takes even if it means to lie, in order not to go to prison, or back to prison.

(H.) The state Failed to prove the defendant guilty upon reasonable doubt state v. Grippone

(I.) Insufficiency of evidence. state v. Hernandez, 382 S.C. 620 (2009) 677, S.E. 2d. 603

(J.) Denied direct verdict when should not have been when clearly there wasn't enough evidence, also considering one or more of the members of the jury was contaminated or defective, when it was clearly stated in plain English not to talk to any one concerning this case "Anyone" no pre-deliberations before deliberations, and one juror Andreka Evans admitted to judge that she did in fact talk to her boyfriend in the county jail about the case and Mr. Lyons another juror member about it during trial. She stated that her and Mr. Lyons both feel the same way and don't want to be there and they're sick and tired of all them damn motions that they need to get it over with. She told her boyfriend that's in jail that Maurice co-defendant made him look bad on stand and then her boyfriend told Andreka "juror" Fxck it throw away the key on Maurice he's not from around here

he's From that Charleston Area. When that was said, it should have been a mistrial right then and there.

(K.) My burglary warrants were all non-violent charges and never been indicted on violent offenders and should have been non-violent because the state failed or grand jury failed to indict me on violent, when it was clearly non-violent, but the solicitor took it upon his self to change it to violent which was against the law and he didn't follow proper procedure or channels to do that on his own and the charges should all have been non-violent or commitment sheet.

(L.) Unlawful conduct from judge, when he should have allowed me a bond so I could have afforded me with a private attorney by keeping my job. He told me several lies considering he would give me a bond but didn't deliver on his promises. Then when he gave me in bond in open court, Everytime I tried to bond out they would say they ~~didn't~~ don't have it on record to where he gave me one, which I believe was a conspiracy to keep me hold back in there.

(M.) It was not proven that I was at the scene of the crime state. v. Mayfield, 235 S.C. 11, 109 S.E. 2d 716 and state v. Beal, 201 S.C. 490, 23 S.E. 2d 746 (1943)

- continue (M) state v. Robinson, 344 S.C. 220, 543 S.E. 2d 249 (2001)
 state v. Owens, 291 S.C. 116, 352 S.E. 2d 474 (1982)
- (N) Violation of my 6th Amendment, which also guarantee me a Speedy trial. It provides that a defendant in a criminal case, and a suspect in a criminal case and shall enjoy the right to counsel to aid in his or her defense. Article I, §14 of the S.C. constitution is similar.
- (O) I didn't have an attorney in timely manner - state v. Sanders, 251 S.C. 431 (1968) 163 S.E. 2d 220. Updated my speedy trial right (6th Amendment) state v. Cature, 357 Mont. 398 (2010) 240 P.3d 987, 2010 Mt. 201
- (P) It should of been Disqualification of Judge by reason of relationship to parties. The judge personally knew the one member of the juror which I felt bias against and this falls under the Code 1976 (14-1-130)
- (Q) The solicitor was asked why wasn't there was my search warrants in my motion of discovery and he stated that he never knew or seen anything like it and it could have helped me because they found nothing and I have proof of the search warrant and signed by judge. The solicitor lied in court.
- (R) I wasn't there for the qualification of the jurors or even knew it was going on until it was over. It's my right to be there
- (S) My ~~the~~ search warrant should have been in Exhibit but wasn't.

- (I.) My right to review evidence state v. money, 2012 me 69, 43 A.3d 972 (me.2012) An accused has the right to prepare a defense to a criminal charge. state v. District court of Eighteenth Judicial district of Montana, 2010 MT 263, 358 mont, 325, 2x6 (2010)
- (U.) Discovery is appropriate in criminal case if it will lead to relevant and material information state v. Williams 403 N.J. Super. 39, 956 A.2d 375 (App. Div. 2008) They didn't put my search warrant ^{in motion} to where it was helpful for me nor allowed me to review the video tapes in a timely manner except on same day Hooks v. Workman, 689 F.3d 1148 (10th Cir. - 2012) Fla-state v. Gillespie, 227 so.2d 550 (Fla. - Dist. Ct. App. 2d Dist. 1969) U.S. v. Tavera, 719 F.3d-205 (2013)
- (V.) Prosecutorial misconduct by picking up on charges on allegedly co-defender giving him P.R. bond to hold charges over his head, after he done serve time in prison, to get him to testify on defendant, State v. Nash, 212 N.J. 518 (2013)
- (W.) Not Enough Evidence for conviction U.S. v. Bagley, 473 U.S. 667 (1985) Plus I didn't get evidence or video til day of trial and couldn't complete looking at them.
- (X.) ITS A TIME LIMIT RULE, 10 years my conviction and release, so they couldn't bring up my record of charges but they said they would and could which kept me from testifying on my behalf but under this case law

- continue (X.) I could state v. Sarvis, 317 S.C. 102, 450 S.E. 2d 606 (ct. App. 1994) state v. Mueller, 319 S.C. 266 460 S.E. 2d 409 (ct. App. 1995)
- (Y.) Ineffective assistance of counsel and proving it over whelmely, Welch v. MacDougall (S.C. 1965) 246 S.C. 258, 143 S.E. 2d 455.
- (Z.) About Juror mistrust - state v. Kelly, 331 S.C. 132, 502 S.E. 2d 99 (1998) she knew she talked about the case to someone on the juror and in jail and she chose not to report it, state v. woods, 345 S.C. 583, 550 S.E. 2d 282 (2001) Improper communication from a juror and outsider "Juror misconduct" state v. McDaniel, 275 S.C. 222, 268 S.E. 2d 585 (1980) state v. Kelly, 331 S.C. 132, 502 S.E. 2d 99 (1998) state v. Galbreath, 359 S.C. 398, 592 S.E. 2d 845 (ct. App. 2004). state v. Cooper 384 S.C. 540, 514 S.E. 2d 584 (1999) state v. Banta, 387 S.C. 412, 692 S.E. (ct. App. 2000)
- (ZA) The juror was also involved in premature deliberations state v. Aldret, 333 S.C. 307, 509 S.E. 2d 811 (1999) Shumpeet v. state, 378 S.C. 62, 661 S.E. 2d 369 (2008)
- (ZB) conflict of Interest - where witness is likely to engage in biased testimony to obtain recommendation for leniency, state v. mizzell (S.C. 2002) 349 S.C. 326, 563 S.E. 2d 315
- (ZC) direct verdict - state v. mitchell (S.C. 2000) 341 S.C. 406 535
- (Zd.) No Evidence none - state v. mitchell (S.C. App 1998) 332 S.C. 619, 506 S.E. 2d 523

(7)

- (7E) The state has to prove all the elements of burglary which they didn't prove. I did say and the burden of proof is on them. state v. simmons (S.C. App 2002) 352 S.C. 342, 573 S.E.2d 856
- (7F) the dog man stated the dog didn't take him to a car on the side of road. state v. more (S.C. App. 1999) 334 S.C. 411, 513 S.E. 2d 626
- (16) Prosecutor amended the indictment that hadn't been before the grand jury changing the burglary to non-violent to violent changing the classification of it because I decided to take it to trial.
- (7F) They told the judge that they didn't know anything about phone records that judge Griffith ordered to see if I was in the area at the time but the fact remains judge Griffith did order that record. That shows by towels I wasn't in Laurens or Newberry County at the time of crime. This document was in my Newberry motion.
- (16) The juror Valerie Jones knows the judge called him by his name, knows and taught in school the arresting officer Tyrone Goggins also knows and taught the solicitor investigator Walter Bentley and her Valerie Jones son and Walter Bentley are good friends of All these people represented the state during my trial, which was more than enough to believe that I wasn't going to get a fair trial or receive one. Mrs. Jones even when trial was over stayed around for sentencing or behind when all the jurors were gone, which displays she had interest.

TURN OVER →

7H.) My allegedly co-defender Christopher Nixon admitted on open stand and documented when my defense attorney asked him is he looking for leniency for his testimony, then she replied after he acted like he didn't understand the question, is he looking to get his charges dropped and he said yes, He do want his charges dropped for it. That would be any person be glad to testify in exchange for testimony for that case to keep from going to prison.

1I.) The state solicitor waited 1 year after my co-defender were released from prison on his 3 year sentence only doing 16 or 17 months then released, then all of a sudden then all of a sudden they re-charge him with 6 indictments but Mr. Warren Mowry stated he didn't know how it happen, these charges should have been taking care of but he didn't taken care of them, instead he gave him a P.R. Bond on them, which shows and displays bad intent but gave a P.R. bond to Mr. Nixon until after defendant jury trial. Defendant stayed in jail until from Nov. 2011 til time of trial because he couldn't get a bond on all his charges. It have reasons to believe that Mr. Warren Mowry "assistant solicitor" used them picked up charges on allegedly co-defendant Christopher Nixon as a tool over his head that if he didn't testify saying Maurice committed the crimes with him,

continue

1I) he'll be prosecuted on the other 6 pending charges that was and should have been handled when Mr. Nixon pleaded guilty to the other ~~burg~~ charges. It's a form of threat and coercion.

1J) There was clearly no sufficient evidence of any kind and the judge should have granted the defense attorney motion for direct verdict. There was no fingerprints, no D.N.A. that could have put Maurice at the crime scene. When during the burglaries the person were wearing mask, so the person who did the burglary were unidentifiable, but Christopher Mixon word, a convicted felon of 6 burglaries on his record, which shows he has no creditability and displays dishonesty and trust issues from the charges he has. He could have been lying on anyone and he called Maurice name saying he done the crime with him but there was no proof Maurice committed anything but his word. By a car being registered to Maurice doesn't Maurice committed anything because his car being on so-called side of road or interstate. That only mean the car is in Maurice name, doesn't mean he committed a crime. The car could have been broken down or anything or # of reasons, and even if his car was gone when they realized it wasn't there doesn't mean Maurice broke a law. They don't even know who was driving. In fact the case was closed from no evidence until they over →

^{cast}
15) spoke with Christopher Nixon. Even if they did know who was driving the car, it still doesn't show by a car on the side of the road displays a crime being committed. Even the dog K-9 handler stated and testified on oath that he never seen Maurice car on the side of the road nor did the dogs ever, nor never went to the Chrysler car on the interstate. There were no one found on the scene of the crime or near it, nor did the K-9 dog trail led to anyone. Tracks were found, but the K-9 dog tracker were unable to make out who's they were. Neither officer could tell for a fact who the mask man were, no more than whom Christopher Nixon says it were. They were no evidence of any kind to convict Maurice - Odom. Everything is and was based on what Christopher Nixon says, a convicted felon of 6 burglaries looking for leniency. Maurice has maintained his innocence sitting in jail nearly 3 years and still maintains his innocence now.

1K) All the jurors of the panel were instructed under strict rules and regulations not to talk about the case to anyone or discuss under any circumstances but one of the jurors did do just that with her boyfriend, that's Lauren's jail, which she knew and understand all the rules and regulations. There's no excuse what so ever when her boyfriend talk to her about the case telling her to throw away the key on the defendant and she laughed about it and talked about how Maurice co-defender made him look bad, and how her and Tony Crows didn't want to be there and how

1K

and how she just want it all over as quick as possible, and how she's tired of all them clam motions and how slow they're going, they need to hurry up. She repeated she don't want to be there at all. Then her boyfriend Antwain Blakely told her I'm tired of this nigga asking me about the trial, the hell with him, he's not from around here anyway, that nigga from Charleston anyway throw away the key on him. So after trial I told the attorney, my attorney, she took it to the judge, got her back in courtroom and ask her if she in fact spoke to anyone and in particular Antwain Blakely and she stated yes she did and some of the things they talked about, but nothing else was done about it when the conviction should have right then and there been upheld and overturned, or considered a mistrial. There was no exceptions because the rules are the rules and I understand that Hon. Judge Hawker is a fairly new circuit judge and may be that took him by surprise and didn't know what to do. Despite all circumstances the jurors are not suppose to talk to anyone. Andreik Evans could have easily to Antwain Blakely I can't talk to you about that, but she chose not to, which resulted or should resulted in a mistrial or etc....

1L

A unexpected, search warrant was made to my house my 2 storages, 3 cars, buildings, surroundings areas and still yet nothing was found or inventory period to lead to or link to a crime.

1M

They also allowed someone who wasn't the owner of the store but the brother, of the owner of the store.

Over →

continue

1M) someone who wasn't the registered owner testified when in fact his name wasn't on the witness list but the brother name was, who was the registered owner. My attorney wasn't prepared to cross-examine him bc his name wasn't the name as the registered ^{store} owner or was his name on the witness list. So they just automatically brought him there, catching her off guard, all because the registered owner decided to take a vacation and he knew well in advance of the court trial date that he had to be there and testify but the state decided to use the brother knowing he wasn't on the witness list to be cross examined and the defendant, Maurice Odom has the right to confront his accuser and this guy isn't the accuser whom testified, it was his brother whom is the store owner and registered owner whom we were prepared to cross examine, not the brother.

1N) The case was closed, even with car on side of road but after coercion and repeatedly talking to Mixon and his confession and saying I was with him a warrant was obtained on both of us.

1O) They wouldn't let me get on stand the solicitor and my lawyer because they say that they go bring up my past record to the jurors and that's a form of threat and trickery, when in fact when justice bad acts suppose to prohibit them from bringing that on me as well as these case loads. I should have been able to get on stand defending myself without any threats when these case loads help me on that.

1P) I had the right to study the evidence against me but they go bring me tapes that I never got a chance to review or finishing reviewing the audio and video D.V.D. They actually tried to let me look at them the same day of trial the other days the tapes wouldn't work. That's not enough adequate time ~~to study anything~~. I needed to prepare for what they had to present at trial before the trial not the day of trial. That's why it's important that I had enough adequate time with my attorney and to review these tapes on what all would be said against me in trial and etc.

1Q) They lied to judge saying that they didn't ask for phone records to see if I been in area during the burglaries and the judge did the order, Judge Griffith but they told the judge they have no record of such thing or recollection and Nixon told them we used phone in area, that's what made them do it and they even got my wife phone records. ~~State v. Bing~~ ~~115 S.C. 506 (1931)~~ the state witness credibility was no good being involved in the crime and convicted. The court should have moved to strike him. The state relied principally upon alleged confessions of the defendants counselor my attorneys ^{did} motion. For that, and of direct verdict, upon them and other grounds and conclusively shown that other pending charges on allegedly co-defender state witness administered him to say it was Odom and in hopes of getting his charges dropped and over →

Continued

I Q) Nixon openly admitted that in open court, I have a right to discovery in discovery, disclosure and inspection of evidence *U.S. v. Hyler* (8th Circuit 2007)

I R.) Trial Court solicitors abused its discretion by not trying me for all my burglaries, but only one of them knowing I could have prove deceit and my innocence on them if did but they kept me limited by doing so. Nixon said we did all them together but videos only showed one person committed one of the burglaries, which shows he's a liar and had me charged for no reason.

I S.) there was no credible evidence

I T.) Delay in almost 3 years in bringing defendant to trial violated his constitutional right to a speedy trial *State v. Gillen*, 183 Vt. 425. (2008)
~~that motion was made in Jan 2012~~ I had speedy trial motion since Jan 2012. In-Effectiveness of counsel or assistance

- 1) Ineffective counsel - I have the right to study the evidence against me but they go bring tapes "DVD's" that I never got a chance to review or finish reviewing the audio and video D.V.D. They brought them either the same day and a couple days before trial, that's not enough adequate time to study anything. I needed to prepare for what they had to present at the trial before the trial. That's why it's important that I had enough adequate time with my attorney and to review these tapes or what all would be said against in trial and etc....

My attorney was drawing pictures the whole time of my trial then passing it to me. That's not professional.

I told my attorney that I need her to ask the witness certain things at trial for my defense, she said I will not ask them that, you might as well fire me now, when all I told her to ask them is can they say for a fact if that is Maurice in the film and is it possible that Christopher Mixon is lying or Maurice and she said she will not because if they say no, then we're stuck with that answer. I said that's a chance I gotta take, it can't hurt asking, she said no and I said it's part of my defense.

I even told her that I wanted to get on stand and the record reflects that and she said no and she didn't want me to because she loves her closing arguments, her last closing arguments that she loves. I even wanted my wife to get up on stand to testify that Christopher Mixon, she seen him bring my car up in the yard early that morning, and she said that she didn't want her
over →

2.)
To do that either and she'll want have closing arguments. I again told her its my defense that could help me. So she went and talked my wife out of it and came back to me and said, your wife now don't wants to do it, but the whole time my wife told me after that she told her its best she dont and that's because she's my wife, they're probably not going to believe her anyway.

Mrs. Elizabeth Wiggul "my attorney" told me that the solicitor Warren Mowry is sweet on her that gave me the impression I was going to be O.K. in trial. The statement saying he likes her and wants to get with her.

She told me the offer was 10 years non-violent and that will take care of any of my pending charges in S.C. but then before the trial she told me it wouldnt have. So I didn't plead but to keep from going to trial I would have pled to North Carolina v. Alfred or no contendere but when she told me it want take care of all my charges only just pleading to one burglary charge. So why would I plead to only one and have several more here in this circuit. So I decided to go to trial but after my conviction, the solicitor told the judge that they offered me a nonviolent 10 years for all my charges in this circuit which had me confused because the lawyer told me something different, told me that it but then said it wasn't all my charges now the solicitor just said it was. She ~~old~~ they wasn't consistent.

Also she gave me the jury list name and addresses all on it and I took it to the county jail back with me and plenty of people viewed them then the next day she came back and got it at the county jail and she stated that do I have that jury paper with the names address and telephone #'s of all the jurors I said yes but its in the dorm. She replied please go get it and when I went to go get it she said whooooo thanks you almost and could have got her in trouble.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEffective counsel/unlawful detainment
- (b) malicious prosecution (see attach. #10 continuance)
- (c) violation of my 8th Amendment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____ (see attach. #11 continuance)
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? (Yes)
- (b) your trial, if any? Mrs. Elizabeth Wiggul (Yes)
- (c) your sentencing? Mrs. Elizabeth Wiggul (Yes)
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Russell D. Brown Columbia, S.C.
- ii. Elizabeth Wiggul Greenville, S.C.
- iii. Tara Waters "Public Defender"
- (b) the proceedings at which each such attorney represented you:
- i. Elizabeth Wiggul at trial
- ii. _____
- iii. _____

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

Reverse and Remand
or Dismissed

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

No

STATE OF SOUTH CAROLINA)

County of Laurens)

VERIFICATION

I, Maurice Anthony Odom, 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.

Maurice A. Odom

SWORN to and subscribed before me this 11
day of March, 2016.

Jennifer Anderson (L.S.)
Notary Public

My Commission Expires: 6/10/2018

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

I, Maurice Anthony Odom, 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.

Maurice Anthony Odom
& 1/2/2016
 Applicant

SWORN or affirmed to and subscribed before me this

11 day of March, 2016.

Tennille Montgomery
 Notary Public

My Commission Expires: 6/10/2018

LAURENS COUNTY
CLERK OF COURT

2016 MAR 17 A 10:37

LYNN W. LANCASTER



ALAN WILSON
ATTORNEY GENERAL

March 30, 2017

The Honorable Lynn W. Lancaster
Clerk of Court, Laurens County
PO Box 287
Laurens, SC 29360-0287

Re: Maurice Odom, #199677 v. State of South Carolina
2016-CP-30-0251

Dear Ms. Lancaster:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office. If you have any questions, feel free to contact me at (803) 734-3737.

Respectfully yours,

Justin J. Hunter
Assistant Attorney General

JJH/dgr

Enclosure

cc: Carson M. Henderson, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

MAURICE ODOM, #199677)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-30-0251

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**Plaintiff's Attorney: Carson McCurry Henderson,
EsquireAddress: The Henderson Law Firm, PC109-B Oak Ave.Greenwood, SC 29646

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney: Justin J. Hunter, AAG
Bar No. 101254Address: PO Box 11549Columbia, SC 29211Phone: (803) 734-3737 Fax: (803) 734-4113

E-mail: _____ Other: _____

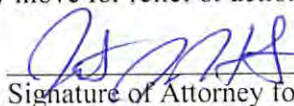
☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☒ NO**SECTION II: Motion/Order Type**☐ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff/☒ Defendant

March 30, 2017

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached
order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	2016-CP-30-251
Maurice Anthony Odom,	)	
SCDC # 199677	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed March 17, 2016, would respectfully show this Court

I.

Applicant was indicted at the February 2012 term of the Laurens County Grand Jury for burglary (2012-GS-30-311), criminal conspiracy (2012-GS-30-314), and grand larceny (2012-GS-30-317). Elizabeth Wiygul, Esquire, represented him. Deputy Solicitors Warren Mowery and Dale Scott represented the State. On June 9-11, 2014, Applicant proceeded to a trial before the Honorable Donald B. Hocker, after which he was found guilty. Applicant was sentenced to imprisonment for fifteen years for burglary (second degree, violent), five years for criminal conspiracy, and five years for grand larceny. All sentences were to run concurrently

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by briefing by Appellate Defender Lara Caudy. The South Carolina Court of Appeals affirmed Applicant's conviction by an unpublished opinion. State v. Jovan Mitchell, Op. No 2015-UP-561 (Ct. App. Filed Dec. 23, 2015). The remittitur was sent January 8, 2016.

II.

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

1. Ineffective assistance of counsel
2. Malicious prosecution
3. Violation of 8th Amendment
4. (See Application's attachments for complete list of allegations)

Attached herewith and incorporated herein by reference are the Laurens County Clerk of Court records regarding the subject convictions, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The

courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S.

794, 109 S. Ct. 2201 (1989). Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct; therefore, this allegation should be summarily dismissed.

V.

Applicant's second claim is an allegation of judicial misconduct, alleging several grounds of "unlawful conduct from the judge." Judicial misconduct is not an issue for Post-Conviction Relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-Conviction Relief is not a substitute for an appeal. Simmons, 264 S.C. at 423, 215 S.E.2d at 885. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised his allegations against the trial judge on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant has not supported this allegation with any facts whatsoever. Respondent submits Applicant has not carried his burden of proving actual judicial misconduct; therefore, this allegation should be summarily dismissed.

VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

[Signature block on following page]

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

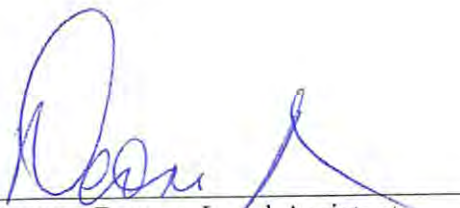
3/30, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	
	)	
	)	2016-CP-30-0251
	)	
MAURICE ODOM, #199677	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

Mr. Carson McCurry Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Ave.
Greenwood, SC 29646

DATED this 30th day of March, 2017.


 Deonna Rogers, Legal Assistant
 For Respondent

COPY

LAW OFFICE

THE HENDERSON LAW FIRM, P.C.**Carson M. Henderson**

ATTORNEY AND COUNSELOR AT LAW

109-B Oak Avenue
Greenwood, South Carolina 29646

Telephone: (864) 953-0011
Facsimile: (864) 229-8001

January 8, 2021

Hon. Michelle Simmons
Laurens County Clerk of Court
P.O. Box 287
Laurens, S.C. 29360

Re: Maurice Anthony Odom v. State of South Carolina
Laurens C/A No. 2016-CP-30-251

Dear Ms. Simmons:

Please record the enclosed First Amended Application for Post-Conviction Relief and return a clocked copy to me in the enclosed self-addressed and stamped envelope. By copy of this letter, I'm serving this document on Attorney General Brianna Schill.

My email address is carson@carsonhendersonlawfirm.com.

Thank you for your assistance and cooperation in this matter.

Cordially yours,

THE HENDERSON LAW FIRM, P.C.
Carson M. Henderson

CMH/ckb
Enclosures as indicated



Cc: Brianna L. Schill, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

LEGAL MAIL – PERSONAL AND CONFIDENTIAL

Maurice Anthony Odom (#199677)
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210

#2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
MAURICE ANTHONY ODOM	)	
(#199677),	)	
	)	
Petitioner,	)	FIRST AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
v.	)	
	)	C/A No. 2016-CP-30-251
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

The Petitioner, while reserving motions filed and to be filed, and while reserving his right to further amend his Application for Post-Conviction Relief, would respectfully allege and show unto the Court as follows:

INCORPORATION OF PETITIONER'S PRIOR PLEADINGS

1. The Petitioner hereby incorporates into this his First Amended Application for Post-Conviction Relief all allegations contained in his pro se Application for Post-Conviction Relief dated March 11, 2016, and filed with the Court on March 17, 2016.

FOR A FIRST ALLEGATION

2. The Petitioner hereby incorporates Paragraph 1 into this his First Allegation as if fully set forth herein verbatim.

3. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to object when the trial judge said the following to the entire jury panel prior to jury qualification and selection: "Just ask God for some guidance, some wisdom and understanding, and he'll take care of you." (Page 11, lines 10-12.) Furthermore, trial counsel

didn't ask for a curative instruction or for the statement to be stricken from the record, or ask for the Petitioner's trial to be continued. The trial judge authorized the jury panel to rely on outside evidence (i.e., the will of God) during the Petitioner's trial if selected for the trial jury, and not solely on the evidence introduced during the trial of the Petitioner's case. The trial judge's statement changed the State's burden of proof from strictly beyond a reasonable doubt to include divine intervention.

FOR A SECOND ALLEGATION

4. The Petitioner hereby incorporates Paragraphs 1-3 into this his Second Allegation as if fully set forth herein verbatim.

5. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to object to the language contained in the conspiracy indictment, and failed to ask the trial judge to quash the indictment. (Page 13, lines 3-13.) The trial judge informed the jury panel that the Petitioner's alleged co-conspirator was an unknown person. At the time the grand jury considered the indictment, the State knew the name of the Petitioner's alleged co-conspirator.

FOR A THIRD ALLEGATION

6. The Petitioner hereby incorporates Paragraphs 1-5 into this his Third Allegation as if fully set forth herein verbatim.

7. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to object to the solicitor's opening statement in which he told the jurors: "You determine what the truth is." (Page 71, lines 19-20.) Furthermore, trial counsel didn't ask for a curative instruction or for the statement to be stricken from the record, or ask for a mistrial. The

jury's duty isn't to determine the truth. The jury isn't composed of detectives whose job is to solve crimes and determine what happened. The jury's sole duty is to determine whether the State has proved the allegations contained in the indictments beyond a reasonable doubt. The solicitor's statement lowered the State's burden of proof.

FOR A FOURTH ALLEGATION

8. The Petitioner hereby incorporates Paragraphs 1-7 into this his Fourth Allegation as if fully set forth herein verbatim.

9. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to object to the solicitor's opening statement in which he told the jurors: "But I submit to you that he [co-defendant and witness Christopher Mixon] is before you with no promises, no rewards, no hope of anything like that. He is simply here to tell you the truth and I believe you will find him in spite of his criminal record to be a credible witness." (Page 73, lines 10-14.) Furthermore, trial counsel didn't ask for a curative instruction or for the statement to be stricken from the record, or ask for a mistrial. The solicitor vouched for the credibility and trustworthiness of the only witness who testified about the Petitioner's involvement in the burglary, thereby bolstering Mr. Mixon's testimony. Moreover, the State presented no forensic evidence of the Petitioner's involvement, such as fingerprints, DNA, hair fibers, or footprints. No evidence of the crime was found during a search of the Petitioner's house and property.

FOR A FIFTH ALLEGATION

10. The Petitioner hereby incorporates Paragraphs 1-9 into this his Fifth Allegation as if fully set forth herein verbatim.

11. The Petitioner is informed and believes that his trial attorney was ineffective because of the way she objected to the following testimony from witness Ramesh Patel: “[I]t looked all too familiar because it had just happened two weeks ago the very same way.” (Page 94, line 20 - page 95, line 9.) Trial counsel was correct to object, but then she proceeded to argue the objection in the presence of the jury when she should have requested a side bar, thereby confirming to the jury that a prior break-in had occurred, and allowing the jury to speculate whether the Petitioner was involved. Trial counsel failed to ask for a curative instruction and/or a mistrial after the jury heard evidence of a prior break-in from the witness and trial counsel herself.

FOR A SIXTH ALLEGATION

12. The Petitioner hereby incorporates Paragraphs 1-11 into this his Sixth Allegation as if fully set forth herein verbatim.

13. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to object to the following statement from the trial judge: “Well, if he knows that that DVD is what he -- he made a DVD according to his testimony and I would have to assume that Solicitor would not show him a DVD that was not made by him[.]” (Page 100, lines 3-6.) Furthermore, trial counsel didn’t ask for a curative instruction or for the statement to be stricken from the record, or ask for a mistrial. The trial judge vouched for the credibility and trustworthiness of the solicitor.

FOR A SEVENTH ALLEGATION

14. The Petitioner hereby incorporates Paragraphs 1-13 into this his Seventh Allegation as if fully set forth herein verbatim.

15. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to introduce a document produced by the State in discovery indicating that witness and co-defendant Christopher Mixon had a driver's license. (Page 174, line 23 - page 180, line 10.) Trial counsel said she was "confused" by the document. However, trial counsel could have used the document to impeach Mr. Mixon's testimony about not having a driver's license and not being able to drive.

FOR AN EIGHTH ALLEGATION

16. The Petitioner hereby incorporates Paragraphs 1-15 into this his Eighth Allegation as if fully set forth herein verbatim.

17. The Petitioner is informed and believes that his trial attorney was ineffective when she asked witness Christopher Mixon if he was "a member of the gang called Boss." (Page 181, lines 2-3.) This had absolutely nothing to do with this case. However, it opened the door to witness Tyrone Goggins testifying to Boss being the Petitioner's nickname. (Page 296, lines 11-18.) This could have led the jury to believe that the Petitioner was involved in gang activity, after trial counsel previously had equated "Boss" with a gang. Trial counsel didn't object to Mr. Goggins' testimony (clearly hearsay), didn't ask for a curative instruction or for the statement to be stricken from the record, or ask for a mistrial.

FOR A NINTH ALLEGATION

18. The Petitioner hereby incorporates Paragraphs 1-17 into this his Ninth Allegation as if fully set forth herein verbatim.

19. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to object, and then consented, to the introduction of the NCIC document

which indicated that the Petitioner owned the vehicle located near the crime scene. (Page 264, line 2 - page 268, line 12.) The information contained in this document was hearsay, and no hearsay exceptions apply. Trial counsel should have demanded that the State call a witness from North Carolina DMV to get this document into evidence. Furthermore, by not objecting, trial counsel waived her right to confront a North Carolina DMV witness about the information contained in this document. After this document was entered into evidence without objection, the State and its witnesses repeatedly referred to the Petitioner as the owner of the vehicle. This document strengthened the State's case against the Petitioner.

FOR A TENTH ALLEGATION

20. The Petitioner hereby incorporates Paragraphs 1-19 into this his Tenth Allegation as if fully set forth herein verbatim.

21. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to properly object to the introduction of the Petitioner's South Carolina DMV record. (Page 288, line 14 - page 291, line 16.) Trial counsel argued relevance. The information contained in this document was hearsay, and no hearsay exceptions apply. Trial counsel should have demanded that the State call a witness from South Carolina DMV to get this document into evidence. Furthermore, by not objecting, trial counsel waived her right to confront a South Carolina DMV witness about the information contained in this document. After this document was entered into evidence, the State and its witnesses repeatedly referred to the Petitioner's address as being the place where the Petitioner's vehicle was located. This document strengthened the State's case against the Petitioner.

FOR AN ELEVENTH ALLEGATION

22. The Petitioner hereby incorporates Paragraphs 1-21 into this his Eleventh Allegation as if fully set forth herein verbatim.

23. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to properly preserve the record regarding which of the Petitioner's convictions could be used against him if he testified during the trial. (Page 321, line - page 322, line 6.) Trial counsel folded on this issue. The Petitioner wanted to testify. Trial counsel should have gotten a ruling from the trial judge about whether the prior convictions could be used at all to impeach the Petitioner. If the Court allowed the State to introduce the CSC conviction, trial counsel could have asked the Court to forbid the State to mention the nature of the conviction (because of the prejudicial nature of sex crimes) and to only mention that it was a felony. Trial counsel didn't challenge the use of the burglary convictions because the State intended to argue "common scheme or plan." That's not a permissible reason for the State to impeach with prior burglary convictions which happened years prior to the burglary that the Petitioner was on trial for. Trial counsel could have asked the Court, if the Court allowed the State to introduce the burglary convictions, to forbid the State to mention the nature of the convictions (because of their prejudicial and similar nature to the case at hand) and to only mention that they were felonies.

FOR A TWELFTH ALLEGATION

24. The Petitioner hereby incorporates Paragraphs 1-23 into this his Twelfth Allegation as if fully set forth herein verbatim.

25. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to object to portions of the solicitor's closing argument. (Page 333, line 2 - page 334, line 23). After vouching for witness Christopher Mixon in his opening statement, the solicitor does it again. On top of that, the solicitor comments on the Petitioner's failure to challenge evidence and the Petitioner's failure to present an alternative theory of the crime that didn't include the Petitioner. Furthermore, trial counsel didn't ask for a curative instruction or for the arguments to be stricken from the record, or ask for a mistrial. The solicitor vouched for the credibility and trustworthiness of the only witness who testified about the Petitioner's involvement in the burglary, and shifted the burden to the Petitioner to establish his innocence. See also page 340, lines 1-3, where the solicitor refers to Mr. Mixon's testimony as "uncontradicted," which was a comment on the Petitioner's right to remain silent and present a defense.

FOR A THIRTEENTH ALLEGATION

26. The Petitioner hereby incorporates Paragraphs 1-25 into this his Thirteenth Allegation as if fully set forth herein verbatim.

27. The Petitioner is informed and believes that his trial attorney was ineffective because she failed to object to the solicitor's closing argument in which he told the jurors: "They do their best. And I submit to you that Tyrone Goggins is a good, experienced, capable police officer and investigator as his sixteen years would document[.]" (Page 338, line 25 - page 339, line 3.) Furthermore, trial counsel didn't ask for a curative instruction or for the argument to be stricken from the record, or ask for a mistrial. The solicitor vouched for the credibility and trustworthiness of the investigating officer, thereby bolstering the witness' testimony.

PRAYER

WHEREFORE, the Petitioner prays:

1. That this Court grant judgment to the Petitioner, vacate the Petitioner's convictions, and grant the Petitioner a new trial.
2. For such other and further relief as this Court deems just, proper, and equitable.

THE HENDERSON LAW FIRM, P.C.
Attorney for the Petitioner

By: s/Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 953-0011
Fax: (864) 229-8001

Greenwood, South Carolina

January 8, 2021

State of South Carolina	)	
	)	Court of Common Pleas
County of Laurens	)	

2016-CP-30-00251

Maurice A. Odom	)	
Applicant	)	
vs.	)	Transcript of Record
	)	
State of South Carolina	)	PCR
Respondent	)	

January 26th and 27th, 2021

Virtual Court, Newberry, South Carolina

B E F O R E:

Honorable J. Mark Hayes, Judge

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

Briannna, L. Schill, Assistant Attorney General
Attorney for the State

Carson Henderson, Esq.
Attorney for the Applicant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(AW) - Denotes Applicant's Witness
(SW) - Denotes State's Witness

(AW) Ms. Wiygul:

Direct examination by Mr. Henderson:	8
Cross-examination by Ms. Schill:	60
Redirect examination by Mr. Henderson	78

(AW) Maurice Odom

Direct examination by Ms. Henderson:	95
Cross-examination by Ms. Schill:	106

(SW) Dale Scott

Direct examination by Ms. Schill:	111
Cross-examination by Mr. Henderson:	118

Certificate of Reporter	123

E X H I B I T SApplicant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Copy State v. Maurice Odom		X	4
2	Copy Exhibit Sheets		X	4
3	Copy DVD 201111077		X	4
4	3 Year Driver Record-C. Mixon		X	4
5	N.C. Vehicle Registration		X	4
6	3 Year Driver Record-M. Odom		X	4
7	Barnwell County Public Index		X	4
8	Petition Telephone Records		X	4
9	Search Warrant		X	4

1 (Whereupon, Applicant's Exhibits 1 through 9 were
2 admitted into evidence.)

3 THE COURT: Okay. Mr. Odom?

4 MR. ODOM: Yes, Your Honor.

5 THE COURT: You can hear me okay?

6 MR. ODOM: Yes, sir.

7 THE COURT: All right, Mr. Odom, it is good to see
8 you again. I just need to let you know that we are,
9 unfortunately, not together in person. And during the
10 time of COVID this is how Court Administration allows up
11 to take care of these matters. I need to remind you we
12 are making a recording of everything so that when you
13 speak today be sure that you speak slowly and loud enough
14 so we can both understand you and hear you. But if ever
15 during the process you cannot hear me or any of the people
16 participating immediately let us know and we will speak up
17 as well. Now, Mr. Odom, what I am going to do, is I have
18 go to resubmit the oath to you. So if you would, please,
19 raise your right hand.

20 Maurice Odom, being
21 first duly sworn, testified as follows:

22 THE COURT: Okay. Mr. Odom, I am going to turn the
23 matter over to the Attorney General and she is going to
24 announce the case for us.

25 MS. SCHILL: Thank you, Your Honor, may it please the

1 Court. This is the case of Maurice Odom versus the State
2 of South Carolina. And that is case number
3 2016-CP-30-251. Mr. Odom was indicted during the
4 February, 2012 term of the Laurens County Grand Jury for
5 burglary, criminal conspiracy and grand larceny.
6 Elizabeth Wiygul, Esquire representing Mr. Odom. Deputy
7 Solicitor Warren Mowry and Dale Scott represented the
8 State. On June 9th through 11th, 2014 Applicant proceeded
9 to a jury trial before the Honorable Donald B. Hocker
10 after which he was found guilty. Mr. Odom was sentenced
11 to imprisonment for 15 years for burglary; 5 years for
12 criminal conspiracy; and 5 years for grand larceny. All
13 sentences were to run concurrently. A timely notice of
14 appeal was filed on Applicant's behalf and an appeal was
15 perfected. The South Carolina Court of Appeals affirmed
16 Applicant's conviction by an unpublished opinion. And the
17 remittitur was sent January 8th, 2016. On March 17th,
18 2016 Mr. Odom filed his current application for post
19 conviction relief alleging various allegations of
20 ineffective assistance of counsel as well as prosecutorial
21 misconduct and Eighth Amendment violation. Subsequently
22 Mr. Odom filed amended allegations alleging 13 allegations
23 of ineffective assistance of counsel. And Mr. Odom is
24 present today represented by Mr. Carson Henderson. And,
25 Your Honor, it is my understanding that Mr. Odom intends

1 to go forward primarily on his amended allegations, 13
2 amended allegations as well as, from his pro se
3 application. I guess I would just ask Mr. Henderson to
4 sort of clarify the actual allegations that they intend to
5 go forward on.

6 THE COURT: Yes sir, Mr. Henderson.

7 MR. HENDERSON: Yes sir, Your Honor. Ms. Schill and
8 I have discussed this. But the allegations that are
9 contained in the amended complaint and also the following
10 allegations that are in the pro se complaint; the speedy
11 trial allegation; the phone records allegation; the search
12 warrant for the Defendant's house. And I am not attacking
13 the validity of those documents, Your Honor. I am
14 basically using those documents to prove what, in my
15 mind's eye, how trial counsel was defective in not doing
16 some cross-examination and investigation. Also that my
17 client wanted to present a defense, was not allowed to.
18 And the prior offer of settlement that were made. And,
19 Your Honor, you heard a good bit of that, of those issues
20 this morning in the Newberry PCR hearing but I am going to
21 get into those probably into some more depth this
22 afternoon in this Lauren's PCR.

23 THE COURT: Okay. So I guess, Mr. Henderson, are you
24 ready to call your first witness?

25 MR. HENDERSON: Yes I am, Your Honor. And Ms. Wiygul

1 is going to be my first witness. But for the record, Your
2 Honor, Ms. Schill and I have agreed on nine exhibits. I
3 have emailed them to the Court; I have emailed them to Ms.
4 Wiygul; I have emailed them to the Court Reporter, Your
5 Honor. So she already has them. And I would just ask
6 that during my examination of Ms. Wiygul that she have the
7 amended petition; the original petition; the exhibits; and
8 probably the trial transcript at her ready because I am
9 going to be referencing all of them, Your Honor.

10 THE COURT: Does she have those?

11 MR. HENDERSON: Your Honor, I have sent her the
12 amended petition; I have sent her the nine exhibits; I
13 think I also sent her the pro se petition. Now, again,
14 whether or not the Attorney General has sent the trial
15 transcript to her or not, but if need be I will just start
16 reading from the trial transcript and I can question her
17 on that.

18 MS.WIYGUL: Your Honor, I believe I have all of those
19 documents with me today.

20 THE COURT: Okay. And you have the trial transcript
21 as well?

22 MS.WIYGUL: Yes, Your Honor.

23 THE COURT: Okay. So we are ready to go. All right.
24 Ms. Wiygul, please raise your right hand.

25 Elizabeth Wiygul, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Henderson:

4 Q Ms. Wiygul, how are you today?

5 A I am well.

6 Q I want to start off with my amended petition, on the
7 first allegation. And in the first allegation I will
8 quote verbatim to you what the trial Judge told the jury
9 panel. He told them, just ask to God for some guidance,
10 some wisdom and understanding and he will take care of
11 you. Did I read that correctly?

12 A I believe so.

13 Q You did not object to that, did you?

14 A I did not.

15 Q You didn't ask the Court to, don't continue Mr.
16 Odom's trial because of that?

17 A I did not.

18 Q Can you tell His Honor why you did not object to that
19 statement by the trial Judge?

20 A It is my belief that any such objections would have
21 done more harm in alienating the jury than it would have
22 done in assisting Mr. Odom's defense.

23 Q Now, you understand that the trial jury is not
24 suppose to consider outside evidence?

25 A Yes, sir.

1 Q And you would agree that the will of God would be
2 outside evidence?

3 A I, I think that that would depend on a person's
4 internal belief which is I would not really, it is not
5 something that I would want to discuss right before
6 beginning a criminal trial.

7 Q Okay. But you would agree with me that anything that
8 God wants would not be before the jury. I mean, that
9 wouldn't be evidence presented from the jury stand?

10 A Mr. Henderson, I would agree with you that I did not
11 make that objection. And I would tell you that, were it
12 said at a trial today, I probably would still not make
13 that objection.

14 Q Even though the Court, the trial Judge is giving
15 potential jurors the authority to rely on evidence outside
16 the courtroom?

17 A I didn't interpret it that way, Mr. Henderson.

18 Q I want to turn to the second allegation of the
19 amended petition.

20 A Yes, sir.

21 Q And that is on the conspiracy indictment.

22 A Yes, sir.

23 Q And you didn't file a motion to quash that
24 indictment, did you?

25 A I did not.

1 Q And you would agree with me, that reading that
2 indictment, at the time the Grand Jury considered this
3 case the State knew through the codefendants --

4 A Mr. Henderson, let me explain just a little bit. I
5 have very little recollection of this trial. I believe I
6 was appointed in mid-April and I was the fourth or fifth
7 attorney appointed. And we went to trial June 9th. I did
8 not move to quash the indictment, I don't recollect ever
9 noticing that as an issue. And that may have been my
10 mistake.

11 Q Okay. So, again, you are telling His Honor under
12 oath that you only had two months to deal with Mr. Odom
13 and prepare this case for trial?

14 A Yes sir, less than two months.

15 Q Less than two months. What was your date of
16 appointment?

17 A I believe it was April 11th of 2014.

18 Q It would be 2014, and you would agree with me that
19 the trial started, I believe, on June the 9th of '14?

20 A Yes, sir.

21 Q That is less than two calendar months?

22 A Yes, sir.

23 Q Did you ask the Court to continue this matter?

24 A No, sir. In speaking with Mr. Odom, he was very
25 anxious to have this trial.

1 Q Okay. And he was incarcerated this whole time,
2 correct?

3 A That is my understanding.

4 Q Well, I mean you represented him. I mean, yes or no?

5 A He was incarcerated during the entire time I
6 represented him.

7 Q I got you. Did you hire an investigator on this
8 matter?

9 A I did not.

10 Q Okay. You didn't hire anybody, did you go down to
11 Laurens County and examine the General Sessions Clerk's
12 files?

13 A I did not.

14 Q Did you go down to Newberry County to examine their
15 General Sessions Clerk's file?

16 A I did not.

17 Q If I am not mistaken, you were appointed on the
18 Laurens and the Newberry charges?

19 A That's correct.

20 Q And how many charges, between the two counties, were
21 there. Wasn't it like 11 or 12?

22 A I believe there was more than that. Give me one
23 moment and I can tell you exactly.

24 I am sorry, sir, if you will give me one moment I
25 will find it.

1 Q Take your time, I am looking for accurate answers.

2 A I believe there were maybe four charges from Newberry
3 and then the charges from Laurens.

4 Q How many were in Laurens? There were a lot more than
5 the three that were the subject of this PCR, correct?

6 A There were.

7 Q Okay. But regardless of how many there were, you
8 were appointed to Mr. Odom on all of them?

9 A I was.

10 Q Okay.

11 A And I had most of my focus on the charges that were
12 scheduled for trial.

13 Q The Laurens trial?

14 A Yes.

15 Q And going back to this indictment. The State didn't
16 move the Court to amend the indictment, did they, at the
17 call of the case?

18 A No.

19 Q And, again, you didn't move to quash the indictment?

20 A No, I did not.

21 Q And you would agree that the indictments just
22 contained information that is not accurate?

23 A That's my understanding because the Defendant was, or
24 coconspirator was a known person.

25 Q Right. And you say you never, never noticed that

1 before?

2 A I did not.

3 Q Okay. I want to go to the third allegation in my
4 amended petition. And, again, going back to the
5 Solicitor's opening statement, where the Solicitor tells
6 the trial jury that you determine what the truth is.

7 A I did not object to that.

8 Q And you didn't ask the Court to strike it or you
9 didn't ask for a mistrial, did you?

10 A I did not.

11 Q And you agree that in any criminal case, the burden
12 is on the Government to prove the allegations beyond all
13 and any reasonable doubt?

14 A I would agree.

15 Q You agree, the jury's role is not to determine truth,
16 is it?

17 A No, it is to determine facts.

18 Q Is to determine what the Government can prove beyond
19 all and any reasonable doubt, is that correct?

20 A Yes.

21 Q You didn't object to that?

22 A No, sir.

23 Q Okay. And you would agree that the trial jury isn't
24 a group of detectives?

25 A Yes, sir. However, I will tell you that it is not

1 practice to object during openings and closings. It is my
2 belief that a lot of times that just brings additional
3 kind of spot lights whatever has been said. And so in
4 that case I generally would not have objected to that.

5 Q But, again, you recognize that you could have
6 objected and then approached the trial Judge outside the
7 presence of the jury?

8 A I didn't.

9 Q You understand that. You could have asked the Court
10 outside the presence of the jury to strike those comments?

11 A Yes, sir.

12 Q You could have asked the Court for a curative
13 instruction?

14 A Yes, sir.

15 Q Okay. Or for a mistrial?

16 A Yes, sir.

17 Q And you didn't do any of those?

18 A I did not.

19 Q Okay. And I want to turn you to the fourth
20 allegation in my amended petition. And, again, we are
21 still on the Solicitor's opening statement.

22 A Yes, sir.

23 Q And, again, I want to make sure I am reading this
24 verbatim. But I will submit to you that he is before you
25 with no promises, no rewards, hope of anything like that.

1 He is simply here to tell you the truth and I believe you
2 will find him, in spite of his criminal record, to be a
3 credible witness.

4 A Yes, sir.

5 Q Did I read that verbatim?

6 A I believe you did.

7 Q And the Court and the Solicitor was referring to Mr.
8 Odom's codefendant, a Christopher Nixon, M-I-X-O-N. Is
9 that correct?

10 A Yes.

11 Q Did you object to any of that?

12 A I did not.

13 Q So you didn't ask the Court to strike that?

14 A I did not.

15 Q Didn't ask the Court for a curative instruction?

16 A I did not.

17 Q Didn't ask the Court for a mistrial?

18 A I did not.

19 Q You understand the Solicitor is not suppose to vouch
20 for the credibility of his witnesses?

21 A I do.

22 Q Do you understand that he is not suppose to vouch for
23 the trustworthiness of his witness?

24 A I do.

25 Q Okay. And, again, is this fair to say that, I would

1 call this a he said, she said case. Would that be a fair
2 assessment even though I know there is no she. But it is
3 kind of a he said, he said, case, correct?

4 A I believe there were multiple witnesses that
5 testified against Mr. Odom, not just Mr. Mixon.

6 Q Okay. Let me ask you this. The State presented no
7 forensic evidence tying Mr. Odom to this crime, did they?

8 A They did not.

9 Q They didn't produce any fingerprints, did they?

10 A No, sir.

11 Q They didn't produce any DNA?

12 A No, sir.

13 Q They didn't produce any hair fibers?

14 A I don't believe they did.

15 Q They didn't produce any footprints?

16 A No, sir.

17 Q They didn't produce any items seized pursuant to a
18 search warrant?

19 A No, sir.

20 Q And that search warrant covered Mr. Odom's house and
21 car, correct?

22 A That's my recollection.

23 Q And the State didn't produce any cell phone records
24 putting my client there at the scene of the crime, did
25 they?

1 A No, sir. And I believe that, just prior to the trial
2 starting we did put something on the record before the
3 Court, I had it in my notes that we had never or none of
4 Mr. Odom's attorneys had ever been provided the cell phone
5 records.

6 Q Okay. And did you cite to that in the trial
7 transcript?

8 A I could not find any of the discussions immediately
9 prior to swearing the jury on or immediately prior to
10 starting. So it must not have been on the record but it
11 was discussed in court.

12 Q Okay. But, again, I was going to represent to you, I
13 can't find it either. But as an officer of the court, you
14 are telling this trial Judge that you asked or you put on
15 the record that you did not get the cell phone records?

16 A I cannot recollect if it was put on the record but I
17 know there was a discussion about it with the Judge and
18 the Solicitor prior to the trial starting. I had a list
19 of pretrial issues to make sure that were addressed with
20 little boxes beside them to check off as they were
21 discussed. And that was one of the issues that was
22 checked off.

23 Q And you didn't see fit enough to put that on the
24 record?

25 A I honestly cannot recollect why, Mr. Henderson.

1 Q Well, what did the Solicitor tell the trial Judge
2 when you said, hey, you haven't given me these records?

3 A Mr. Henderson, I do not remember.

4 Q Let me ask you. Did he tell you that the Solicitor
5 represents to the Court that those records were located to
6 Mr. Odom?

7 A Mr. Henderson, I cannot recollect anything further
8 about it. The only reason I know it was discussed is
9 because I had it in my pretrial check list to be discussed
10 with the Court.

11 Q Is it fair to say, if those cell phone records were
12 located, the Solicitor would have been jumping all over
13 it?

14 A My recollection is that nobody, not the State nor any
15 of Mr. Odom's prior attorneys had seen the cell, my
16 recollection is the cell phone records were never produced
17 for anybody to look at.

18 Q And you didn't file a motion with the Court to demand
19 that the trial Judge order the Solicitor to come out here
20 and get these documents obtained by law enforcement
21 agencies?

22 A I did not.

23 Q Okay. Going back to that, doesn't this case come
24 down, I mean obviously we are going to talk about the car
25 here in a little bit. But as relates to Mr. Mixon, this

1 comes down to Mr. Mixon's allegations against my client,
2 correct?

3 A Mr. Henderson, I believe it was the State's
4 allegation against your client. But I know that Mr. Mixon
5 was a witness in the trial.

6 Q Well, he was only an ID witness, wasn't he?

7 A I believe so.

8 Q Okay. So, again, the State's case was principally
9 Mr. Mixon's testimony against Mr. Odom because the State
10 had no forensic or outside evidence linking Mr. Odom --

11 A Mr. Henderson, you can describe the case however you
12 would like. My recollection is very slim as to this case.
13 It occurred in 2014 and I represented Mr. Odom for a
14 period of two months.

15 Q Okay. And you didn't ask the Court for a
16 continuance?

17 A I did not. And I did discuss asking the Court for a
18 continuance with Mr. Odom. And he was very adamant that
19 he wanted to go forward with trial.

20 Q Okay. Even without having records, i.e. cell phone
21 records or the, those records that could actually
22 exonerate him?

23 A Mr. Henderson, my recollection is that Mr. Odom had
24 had significant issues with his previous attorneys because
25 he wanted a speedy trial. And he wanted to have his

1 trial. I did explain to him that if we ask for a
2 continuance I could get a private investigator appointed,
3 that we would have more time to gather the records and to
4 investigate the case and to prepare for trial. But he
5 wanted to go forward, so we did.

6 Q You understand on your date of appointment you could
7 have immediately petitioned the Court for a private
8 investigator. You don't need Mr. Odom's permission for
9 that.

10 A I do understand that. I did not feel like two months
11 was sufficient time to work with a private investigator,
12 get them appointed, catch them up to speed with the case
13 and permit them to do an investigation.

14 Q I will turn to my fifth allegation in the amended
15 complaint. And, again, this is the owner or one of the
16 employees of the convenient store that was robbed. A man
17 by the name of Ramex Patel, R-A-M-E-X; Patel, P-A-T-E-L.
18 And I am going to read you his testimony.

19 It looked all too familiar because it just happened
20 two weeks ago the very same way.

21 Did I read that correctly?

22 A I believe you did.

23 Q And, again, Mr. Odom was on trial for robbing this
24 convenient store, allegedly?

25 A Yes, sir.

1 Q And it turns out this convenient store had just been
2 robbed two weeks ago before this robbery. Is that
3 correct?

4 A Yes sir, it sounds like.

5 Q Okay. And when Mr. Patel said that you immediately
6 objected, didn't you?

7 A From the transcript it appears I did.

8 Q Right. And am I correct that the trial Judge ask you
9 to describe what was said because I don't believe that he
10 understood or heard what the witness said. Is that
11 correct?

12 A I believe so.

13 Q And you proceeded to announce in open court before
14 the trial jury what the witness said. Is that correct?

15 A I believe so. I read your allegation and I would
16 agree to it. I believe that is something that I probably
17 should have requested a sidebar and argued outside of the
18 presence of the jury. I can't tell you why I didn't but
19 in retrospect it is one of the things I would have done
20 differently.

21 Q Okay. And, again, I am not picking on anybody but
22 Mr. Patel, I would imagine, is an Indian, correct?

23 A I don't recollect, Mr. Henderson. From the name I
24 would assume so but I do not recollect.

25 Q And, again, I am not picking on him and I don't want

1 to characterize but he may have spoke with an accent,
2 correct?

3 A I have no recollection whether he spoke with an
4 accent.

5 Q But when you announced it to the Court, you don't
6 speak with an accent, do you?

7 A That depends on who you ask, Mr. Henderson.

8 Q Well, I mean, a non-native accent?

9 A I don't believe so.

10 Q Right. And you agree that you should have taken this
11 up to the sidebar?

12 A I do feel like I should have taken it up to the
13 sidebar.

14 Q Okay. I want to turn to the sixth allegation in my
15 amended petition. And this corresponds as what we have
16 marked as Exhibit 3 which is a photocopy of that DVD.

17 A Yes, sir.

18 Q And, again, I am going to read you what the trial
19 Judge said. I know there were some, you objected to the
20 function of this DVD, correct?

21 A I believe I did.

22 Q Because the witness that the State was trying to get
23 it in through, in your opinion, they couldn't lay the
24 proper foundation. Is that correct?

25 A Yes, sir.

1 Q And I want to read you what the trial Judge said.
2 Well, if he knows that that DVD is what he, he made a DVD
3 according to his testimony and I would have to assume that
4 the Solicitor would not show him a DVD that was not made
5 by him.

6 Did I read that correctly?

7 A You did.

8 Q And you didn't object to that, did you?

9 A I did not.

10 Q Okay. And, again, you understand that the trial
11 Judge shouldn't be vouching for the credibility of the
12 Solicitor?

13 A I did not interpret that as vouching for the
14 credibility of the Solicitor.

15 Q Okay. Well, when he tells the trial jury that he
16 doesn't believe that the Solicitor would do something
17 unethical, basically --

18 A I think he said he didn't think he would give him a
19 DVD that was recorded by him, that was not made by him. I
20 don't believe he mentioned ethics.

21 Q Okay. I am talking about, the credibility. You
22 don't think that the trial Judge was commenting on the
23 credibility of the Solicitor?

24 A I didn't take it that way, Mr. Henderson.

25 Q However it is, you didn't object to it?

1 A I did not.

2 Q Okay. You didn't ask the Court to strike that or ask
3 for a curative instruction?

4 A I did not. I am honestly in, the way the comment is
5 placed, I am not sure I even noticed the comment. I think
6 that I was more listening for the question at the end of
7 the comment and focused on an answering the Judge's
8 question.

9 Q You didn't have anybody assisting you during the
10 trial of this case?

11 A I had an assistant helping me part of the time taking
12 notes as she was available. But for the most part it was
13 just myself.

14 Q Okay. You would agree it is good to have a second
15 set of ears in the courtroom with you?

16 A Ideally, of course.

17 Q I want to turn to the seventh allegation in my
18 amended petition which corresponds with Exhibit 4 which
19 has been introduced into evidence. And that is
20 Christopher Mixon's three year driver record.

21 A Yes, sir.

22 Q Now, this document was produced to you in discovery,
23 correct?

24 A It apparently was.

25 Q Well you represent to the Court in the transcript

1 that it was produced to you in discovery?

2 A Yes, sir.

3 Q And actually you turned it over to me?

4 A Yes, sir. No, I, I, in reading your allegation,
5 please go ahead but I cannot recollect why I would not
6 have used that document to impeach Mr. Nixon.

7 Q Okay.

8 A I just cannot explain it, I would have, I do not know
9 why that was not done.

10 Q But you agree that Mr. Nixon testified, I don't have
11 a driver's license, I don't know how to drive?

12 A Yes, sir.

13 Q And the title of this document that is listed as
14 Exhibit 4 into evidence, it is called a three year driver
15 record, correct?

16 A Yes sir, it is.

17 Q It has got Mr. Nixon's driver license number on it?

18 A Yes, sir.

19 Q It has got that his driver's license is not under
20 suspension?

21 A No, sir. That is correct.

22 Q It has got, it has got he has no points against his
23 driver's license?

24 A That's correct.

25 Q No where on this does it show that this, that this

1 card is for identification issue only, is it?

2 A No, sir. It clearly says, driver's license, not
3 State identification.

4 Q Right. And, again, it looks like you were going
5 forward to use this document and the Solicitor objected,
6 correct?

7 A I cannot recollect. I am just very confused about
8 that document all together. I really am unclear about why
9 I did not introduce that.

10 Q Right. Because you had Mr. Mixon on the stand?

11 A I did.

12 Q Yeah or the Government had him on the stand and you
13 were cross-examining him. And you agree that would have
14 been very good impeachment theory?

15 A I would agree.

16 Q Okay. I will turn to the eighth allegation of my
17 amended petition. And, again, you asked, when Mr. Mixon
18 was testifying, you asked him if he was a member of the
19 Gang of Boss, that is capital B-o-s-s. Did I read that
20 correctly?

21 A Yes, sir.

22 Q Why did you ask Mr. Mixon was he a member of a gang.
23 Why on earth did you bring gang activity into these
24 allegations?

25 A It is my belief that if Mr. Mixon is a member of a

1 gang then the jury has the right to consider the fact that
2 they are hearing testimony from a known gang member.

3 Q Where did you get information that there was a gang
4 out here called the Boss?

5 A Mr. Odom.

6 Q He said there is a gang out here called Boss?

7 A Yes, sir. He told me that Mr. Mixon was a member of
8 it.

9 Q Okay. And, again, I am just -- so it is your
10 testimony that you think one grounds of impeachment is
11 because somebody is a member of a gang?

12 A No, sir. It was one of those questions where I
13 wasn't really sure what it would produce. And I probably
14 should not have asked it. However, Mr. Odom seemed very
15 confident that if I could get Mr. Mixon talking about the
16 gang that he would basically flub his testimony.

17 Q One of these things I had an old lawyer tell me years
18 ago. Don't ever ask a question you don't know the answer
19 to.

20 A And I have been told the same thing, Mr. Henderson,
21 and this is one of those questions that proves it.

22 Q And you agree, later on in the trial that the Deputy
23 or Detective Tyrone Goggins kind of crams that up -- Mr.
24 Odom. Is that correct?

25 A Yes.

1 Q Okay. Because he actually gave his testimony that,
2 he said the only Boss he knows about is Mr. Odom. That is
3 his nickname?

4 A Yes, sir.

5 Q And you didn't object to that, did you?

6 A No, sir.

7 Q It is clearly hearsay?

8 A I can't tell you why I didn't object to it, I don't
9 know.

10 Q Okay. I want to turn to the ninth allegation of my
11 amended petition. And I want to call your attention to
12 Exhibit 5 which has been introduced into evidence by
13 consent. Are you familiar with this document?

14 A Yes, sir. The DMV record.

15 Q Right. It is a document that is titled North
16 Carolina Vehicle Registration System. Did I read that
17 correctly?

18 A I believe so.

19 Q And it says on that document that Mr. Odom is the
20 owner of a car, correct?

21 A Yes, sir.

22 Q The police officer who was investigating this case
23 moved to enter that document into evidence. Is that
24 correct?

25 A I believe so.

1 Q And you didn't object?

2 A I did not.

3 Q Let me ask you. Prior to trial you had this document
4 in your possession, I assume in discovery responses?

5 A I did.

6 Q What step or what research had you taken in order to
7 be able to come back, the Government, trying to introduce
8 this document into evidence?

9 A I don't recollect.

10 Q Again, you agree that this document wasn't created by
11 the Clinton Police Department?

12 A No, sir.

13 Q It wasn't maintained in the ordinary course of
14 business by the Clinton Police Department?

15 A No, sir. There was some type of discussion regarding
16 that -- prior to trial. There was some type of testimony
17 or, there was some type of discussion prior to trial about
18 the stipulation of the admittance of that document and
19 another document. And I am assuming there was a strategic
20 reason for it but this many years later I cannot recollect
21 what that reason might have been.

22 Q What on earth, strategic reason could there be for
23 you to consent to the Government's theory of the case that
24 Mr. Odom owned the vehicle?

25 A I do not recollect, Mr. Henderson. The only thing I

1 could think of this many years later is that we might have
2 had the trial postponed but I just cannot recollect. I
3 agree with you that, that is something that I could have
4 done but I did not do it.

5 Q And you agree with me that after you consented to
6 this document coming into evidence, the State possibly
7 after the fact kept beating Mr. Odom over the head saying
8 it is Odom's car?

9 A They did.

10 Q I mean, obviously, I mean that, don't you think that
11 Mr. Odom was severely hassled and punished by you
12 consenting to that car, consenting to him owning the car?

13 A It did not help Mr. Odom's case.

14 Q Right. And you agree that the Government did not
15 bring in anybody from North Carolina who could have gotten
16 this document --

17 A They did not.

18 Q Okay. And you could have demanded that they do that,
19 you understand that?

20 A I do.

21 Q Okay. I would turn to my tenth allegation in the
22 amended petition.

23 A Yes, sir.

24 Q And I am going off of Exhibit 6 which has been
25 entered into evidence by consent of the parties. Were you

1 familiar with this document?

2 A Yes, sir.

3 Q Okay. And I will represent to you that when the
4 Government tried to put this document into evidence you
5 objected and your objection is relevant. Is that correct?

6 A Yes, sir.

7 Q And you did not object to this document being
8 hearsay?

9 A I don't believe I did.

10 Q But I will represent to you that you didn't. And you
11 would agree with me that the State didn't call anybody
12 from DMV to get this document into evidence?

13 A They did not.

14 Q And, again, the Government used this document in
15 order to go where Mr. Odom's lives at in South Carolina?

16 A Yes.

17 Q Okay. And, again, you consented, well you objected
18 but it was not coming in on relevance and the Court
19 overruled you. Correct?

20 A Yes, sir.

21 Q And isn't it fair to say that after this document
22 came into evidence with Mr. Odom's address on it that the
23 State continuously referenced, not only Mr. Odom owning
24 the car but the car being found at Mr. Odom's Barnwell
25 address?

1 A Yes, sir.

2 Q And, again, that didn't help Mr. Odom's case, did it?

3 A No, sir.

4 Q Okay.

5 A And I believe, the only thing I can think of is
6 simply just not wanting to draw more attention to the
7 documents. Although in hindsight probably not the best
8 idea but that would be the only reasoning I could think of
9 at this state.

10 Q If the documents are into evidence, how would he draw
11 more attention to them?

12 A I was referencing the arguments, Mr. Henderson.

13 Q You could have asked the Court to remove the jury.

14 A Yes sir, I could have.

15 Q You could have gone up and did a sidebar?

16 A Yes sir, I could have.

17 Q Those of us who remember O.J. Simpson. Okay, you
18 didn't do that, did you?

19 A I did not.

20 Q Would you agree with me, we talked about Mr. Mixon's
21 testimony, correct?

22 A We did.

23 Q And Mr. Mixon basically hung Mr. Odom out to dry?

24 A He did.

25 Q Accused him of everything under the sun?

1 A That's my recollection.

2 Q You would agree with me that Mr. Mixon's testimony
3 was bolstered and strengthened by that North Carolina DMV
4 document and that South Carolina DMV document?

5 A I think that is a legal conclusion, Mr. Henderson. I
6 agree that it could be interpreted that way.

7 Q Let me ask you. Would you have rather been trying
8 this case on Mr. Mixon's word or Mr. Mixon's word from
9 North Carolina DMV to South Carolina DMV?

10 A Mr. Henderson, I have agreed with you that I failed
11 to enter those documents and I have explained that I do
12 not recollect my exact reasoning.

13 Q Okay. But you agree that you should have objected to
14 both of them?

15 A I agree I could have. Without being able to rewind
16 time I do not know if I should have or not.

17 Q Okay. I am going to turn to the eleventh allegation
18 in the amended petition. And this is Exhibit 7 which has
19 come into evidence by agreement of the parties. Are you
20 familiar with this document?

21 A Are you talking about Mr. Odom's record?

22 Q Absolutely.

23 A Yes, sir.

24 Q Okay. I just want to cover some issues that are in
25 the transcript. On page 321 of the trial transcript, you

1 talk about that Mr. Odom had a CSC conviction from 2002?

2 A All right.

3 Q Is that correct?

4 A If that is what the transcript says, yes sir.

5 Q Okay. And you told the trial Judge that you thought
6 that was a crime of moral turpitude and that was one of
7 the reasons you advised him not to take the stand?

8 A Yes, sir.

9 Q And you understand that crime of moral turpitude is
10 not a relevant standard on judging prior convictions?

11 A If you say so, Mr. Henderson. It has been a while
12 since I have done any research in that area. I know that
13 both I and Mr. Odom's prior attorneys had done extensive
14 research on that in Mr. Odom's case. But I don't
15 recollect exactly what the research was.

16 Q And you would agree with me too, that the role
17 governing prior convictions deals with if a conviction, if
18 the sentence ended outside of 10 years, correct?

19 A In general, yes sir.

20 Q Right. And I just want to, let's turn through this
21 Exhibit number 7. And going toward the back of it, we are
22 going to come to a document, probably two-thirds of the
23 way through. It is Barnwell County Second Judicial
24 Circuit, Public Index document.

25 A I am sorry, Mr. Henderson. I am looking for that