

RECEIVED

Apr 24 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ISSAC MOBLEY,

APPELLANT

APPELLATE CASE NO. 2022-000450

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29221
(803) 734-3727

ATTORNEY FOR APPELLANT

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Hwy.
York, SC 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 7, 2022	1
DEFENSE REQUEST FOR BENCH TRIAL GRANTED.....	3
INDICTMENT AMENDED.....	4
PLEA OFFER REFUSED	5
PRE-TRIAL MOTION ON PRIOR BAD ACT TESTIMONY	6
PRE-TRIAL IN-CAMERA HEARING ON PRIOR BAD ACT TESTIMONY	
ERIC OLSON	
Direct Examination by Solicitor	9
Cross-Examination by Defense Counsel	16
Redirect Examination by Solicitor.....	22
THOMAS AUSTIN	
Direct Examination by Solicitor	23
Cross-Examination by Defense Counsel	28
Redirect Examination by Solicitor.....	31
Recross-Examination by Defense Counsel	33
COLLOQUY REGARDING PRIOR BAD ACT TESTIMONY.....	35
COURT’S RULING	40
PRE-TRIAL MOTIONS ON IMPEACHMENT AND CRIME SCENE EVIDENCE.....	42
PRE-TRIAL IN-CAMERA HEARING TESTIMONY ON CRIME SCENE EVIDENCE	
ERIC OLSON	
Recross-Examination by Defense Counsel.....	51
SOLICITOR WAIVES OPENING STATEMENT.....	53
DEFENSE COUNSEL WAIVES OPENING STATEMENT.....	54
TRIAL TESTIMONY	
SCOTTIE MARSENGILL	
Direct Examination by Solicitor	55

WENDY SHANER	
Direct Examination by Solicitor	61
Cross-Examination by Defense Counsel	68
THOMAS AUSTIN	
Direct Examination by Solicitor	76
MOTION TO SUPPRESS BODY-CAM VIDEO	78
COURT’S RULING	78
TRIAL TESTIMONY	
THOMAS AUSTIN (CONT’D)	
Direct Examination by Solicitor	81
Cross-Examination by Defense Counsel	87
TAYLOR ADKINS	
Direct Examination by Solicitor	93
Cross-Examination by Defense Counsel	99
STATE RESTS	104
MOTION FOR A DIRECTED VERDICT	104
COURT’S RULING	108
ADVICE OF RIGHT TO TESTIFY COLLOQUY	111
TRIAL TESTIMONY	
MICHAEL MOBLEY	
Direct Examination by Defense Counsel	114
Cross-Examination by Solicitor	124
Re-Direct Examination by Defense Counsel	128
DEFENSE RESTS	129
RENEWAL OF DEFENSE MOTIONS	130
COURT’S RULINGS	133
CLOSING ARGUMENT BY SOLICITOR	134
CLOSING ARGUMENT BY DEFENSE COUNSEL	136

CLOSING REPLY ARGUMENT BY SOLICITOR	142
VERDICT	145
SENTENCING	150

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 3 (OFFICER AUSTIN’S BODY CAM FOOTAGE)

1	I N D E X	
2		
3		
4	Proceedings	03
5		
6	Examination of Witnesses	
7		
8	Detective Eric Olson	
9	Direct Examination	09
10	Cross-Examination	16
11	ReDirect Examination	22
12		
13	Officer Thomas Austin	
14	Direct Examination	23
15	Cross-Examination	28
16	Redirect Examination	31
17	ReCross-Examination	33
18	Recall Direct Examination	77
19	Recall Cross-Examination	87
20		
21	Scottie Marsengill	
22	Direct Examination	54
23		
24	Wendy Shaner	
25	Direct Examination	60
26	Cross-Examination	68
27		
28	Officer Taylor Adkins	
29	Direct Examination	93
30	Cross-Examination	99
31		
32	Michael Issac Mobley	
33	Direct Examination	114
34	Cross-Examination	123
35	Redirect Examination	128
36		
37	Closing by the State	134
38		
39	Closing by the Defense	136
40		
41	Judge's Ruling	145
42		
43		
44		
45		
46		
47		

* * * * *

Your Honor, this indictment is 2021-GS-46-07542 that was true billed in March the 17th of this year, one count of burglary, second degree violent. The Defendant stands accused of on or about December 9th, 2021, in York County entering a building without permission at 314 Saluda Street, Rock Hill, South Carolina, belonging to Workman Oil & Wrecker Service without consent with intent to commit a

1 crime therein. Your Honor, the entering occurred in
2 the building during the nighttime hours. There's an
3 additional line in there that we would ask struck.
4 Upon a more thorough review of his criminal record,
5 it does not appear that Mr. Mobley has two or more
6 house break-in for a burglary convictions.

7 THE COURT: All right, any objection, Mr.
8 Dunn, to striking that from the indictment?

9 MR. DUNN: No, sir.

10 THE COURT: Okay, so ordered. Do we have
11 the -- I'll do it myself, do we have the -- the
12 actual original copy?

13 MR. EPTING: Madam Clerk?

14 THE COURT: Madam Clerk, do we have the
15 indictment?

16 MR. EPTING: Your Honor, we have a copy.
17 If Your Honor peruses, perhaps it'll give them a
18 little bit of time to get a copy up here.

19 THE COURT: Sure, I'll just -- if you --
20 but -- but I just -- if y'all can help me remember,
21 I need to make the handwritten change on the
22 original. All right. Thank you. All right, well,
23 let's go ahead since we started -- that was one of
24 the State's motions. We'll go ahead and work our
25 way through the State's other motions.

1 Mr. Dunn, any objection to sequestration of
2 the witnesses?

3 MR. DUNN: No, sir.

4 THE COURT: So ordered, other than the
5 victim and the case agents.

6 Mr. Dunn, the State requests that you
7 certify that you've complied with reciprocal
8 discovery.

9 MR. DUNN: I believe I have, Your Honor.

10 THE COURT: All right. And then the
11 State's asking that you say on the record that you
12 refused to plea offer. What is the plea offer, Ms.
13 Imler?

14 MS. IMLER: Your Honor, this plea offer was
15 a cap of five years for a burg., second violent.

16 THE COURT: Okay, Mr. Dunn?

17 MR. DUNN: I have relayed that offer to my
18 client, and he has indicated he did not want to take
19 it, Your Honor.

20 THE COURT: All right. The fourth one, the
21 State requests the Defendants refrain from eliciting
22 self-serving hearsay, and then, Mr. Dunn, you -- you
23 know -- you know the rules, we'll just move on on
24 that one.

25 All right, and then the last one is also on

1 the Defense list. This is the Lyle issue of the
2 prior burglary conviction, so let me hear from the
3 State on that right here.

4 MR. EPTING: Yes, Your Honor, the -- in
5 March of 2020 the Defendant broke into the exact
6 same business, what the State alleges in a very
7 specific manner.

8 THE COURT: What kind of business is it?

9 MR. EPTING: It is a -- I believe a
10 mechanic shop.

11 THE COURT: Okay.

12 MR. EPTING: Your Honor, and -- but we have
13 the witness -- we have the case agent who
14 investigated that case. That can also be an oral
15 proffer if Your Honor wishes for judicial economy to
16 hear it that way.

17 The Defendant was charged with breaking
18 into the same place March 1st, 2020. He was accused
19 of stealing -- of -- of -- of pushing out a window
20 panel and entering through a service bay door.
21 While inside, he did take a Gatorade, toilet paper
22 and other food items. He was caught on video
23 leaving and actually found on scene leaving, placed
24 under arrest at that point for burglary second and
25 the violent. Violent because it's a nighttime

1 burglary at the -- the same incident location as at
2 stake here. He subsequently pled guilty to that
3 charge and received a two-year sentence in 2021.
4 The State believes that the main -- or only
5 contention of issue -- at contention in this case is
6 the Defendant's intent. Obviously, that is a
7 grounds to introduce prior bad acts under Rule
8 404(B). Given that that is the main issue at trial,
9 we believe that the probative value of that is
10 extremely high, despite the obvious -- obviously
11 prejudicial affect the introduction of such
12 testimony would have on the fact-finder, we would
13 ask to call the case agent who investigated that
14 case as part of our case to prove that the Defendant
15 had intent to commit a crime when he committed the
16 crime at --

17 THE COURT: Calling the case agent of the
18 prior -- the burglary?

19 MR. EPTING: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. EPTING: We -- we believe that that
22 would establish that he knew that items of value
23 were stored inside, and that it -- that was more
24 likely than not, beyond a reasonable doubt, the
25 reason that he broke into that building the exact

1 same way than on the night that is before the Court
2 today at trial.

3 THE COURT: All right, let me see. All
4 right, Mr. Dunn?

5 MR. DUNN: May it please the Court, Your
6 Honor. Your Honor, before the Court makes a
7 decision on -- on whether or not that it's going to
8 be allowed under Lyles, I would like an opportunity
9 to cross-examine that -- that witness; and so if we
10 want to do it as a proffer, or just -- it's one of
11 the reasons why we asked for a bench trial, to try
12 to save time on -- on a lot of these.

13 THE COURT: Listen, why don't -- why don't
14 we just take the testimony, we'll do right now as a
15 bench trial. It -- it'll be a proffer, and then
16 I'll make a ruling one way -- we don't -- we're not
17 going to have to redo it for the jury, we'll just do
18 it one time; is that agreeable to the State?

19 MR. EPTING: It is, Your Honor.

20 THE COURT: Mr. Dunn?

21 MR. DUNN: That's -- yes, sir, I was just
22 trying to save the time -- the Court's time.

23 THE COURT: I appreciate that, okay. Let's
24 -- we'll hear about the -- let's hear from the
25 witness of the prior burglary.

1 MR. EPTING: Yes, sir, if you would, come
2 forward and be sworn, please.

3 * * * * *

4 Detective Eric Olson,
5 having been duly sworn,
6 testifies as follows:

7 * * * * *

8 DIRECT EXAMINATION

9 * * * * *

10 BY MR. EPTING:

11 Q. Good morning.

12 A. Good morning.

13 Q. Could you please state your name for
14 the record?

15 A. Eric Olson.

16 MR. EPTING: Again, for the record, I'm
17 Chris Epting for the State.

18 BY MR. EPTING:

19 Q. What is -- where do you -- where are
20 you currently employed?

21 A. Rock Hill City Police Department.

22 Q. And what do you do for Rock Hill?

23 A. I'm currently a detective for them.

24 Q. Okay. Detective, were you employed by
25 Rock Hill in March of 2020?

1 A. Yes.

2 Q. In what -- in what -- in what way were
3 you employed?

4 A. I was currently assigned to the
5 Property Crimes Division of the Detective Division.

6 Q. Did you investigate a case that
7 occurred on March of 2020 involving Workman's Oil as
8 a possible -- a possible burglary?

9 A. I did.

10 Q. Tell the Court how you first became
11 involved.

12 A. I was the on-call Detective at the
13 time, which means I work a alternate schedule, and
14 I'm on-call for anything that Patrol needs. I
15 received a call about a burglary that just occurred
16 with a suspect in custody, and I responded out to
17 assist Patrol with the investigation.

18 Q. Okay. And what -- appro -- was this
19 daytime or nighttime?

20 A. It was nighttime.

21 Q. And the incident location was at
22 Workman's Oil?

23 A. Workman's Oil at the corner of Johnston
24 and Saluda Street.

25 Q. As part of your investigation, were you

1 able to determine a possible means of entry that
2 occurred during the burglary?

3 A. Yes.

4 Q. Please tell the Court about that.

5 A. It was a paned window that's at the
6 bottom of -- of a -- like a garage work door, like
7 you see on usually large businesses.

8 Q. Are you familiar with Workman's Oil?

9 A. Yes.

10 Q. What kind of business is that?

11 A. It's a wrecker service and gas station.

12 Q. Okay. And so you said a panel was
13 missing?

14 A. Yes, a -- a window panel.

15 Q. Did it appear to have been broken, or
16 how -- how was it displaced?

17 A. It was like lodged out of the way, out
18 of the pane itself, and so it was still intact and
19 moved to the side.

20 Q. Through your investigation, were you
21 able to tell whether there was a video surveillance
22 system equipped at the Wrecker Service?

23 A. There was.

24 Q. And were you able to review videos of
25 that?

1 A. Yes.

2 Q. Tell the Court what you saw on the
3 video.

4 A. The video showed the office of the
5 business itself, and an individual, better words,
6 creeping inside, kind of hunched over, sometimes on
7 his hands and knees, going around the -- the office
8 of the -- of the business, and he's stealing items.

9 Q. Were you able to tell from the video
10 what articles of clothing that individual was
11 wearing?

12 A. Yes.

13 Q. What kind -- what -- what clothing was
14 worn?

15 A. He was wearing a hoody, I believe
16 jeans. The most distinctive item were the
17 undergarments the individual was wearing, which is
18 camouflaged like boxer shorts.

19 Q. By the time that you had arrived, had
20 Officers detained someone on-scene as a suspect?

21 A. Yes.

22 Q. Who did they detain?

23 A. Mr. Mobley.

24 Q. What was Mr. Mobley wearing?

25 A. The same thing that you saw in the

1 video, the exact same thing.

2 Q. What, if anything, was taken of during
3 while Mr. Mobley was inside that business?

4 A. It was toilet paper, boxes of soda, and
5 I believe some snacks.

6 Q. All right, are you familiar with the
7 layout of Workman's Oil?

8 A. Yes.

9 Q. Tell the Court about where that --
10 those items were kept.

11 A. They're all kept in the main office,
12 which is kind of like the -- the storefront of the
13 business. The office doubles as where they sell
14 sodas. They have a little refrigerator in there.
15 The toilet paper was located by the suspect, behind
16 the actual business counter. So -- and then the
17 sodas were there by the cooler. So you see the
18 individual that kind of -- the camera's overhead,
19 you see the individual coming through, and taking
20 all the items, and then going back out the door that
21 leads to the garage where the windowpane was
22 missing.

23 Q. Were you able to tell how Mr. Mobley
24 exited the business that night?

25 A. I didn't see it on video, but you'd

1 assume that he came out of the same window panel.

2 Q. Was he crawling when he left?

3 A. Yes.

4 Q. And he was caught on-scene, I believe
5 your testimony was?

6 A. Yes.

7 Q. At some point, did you have an
8 opportunity to speak with Mr. Mobley?

9 A. I did.

10 Q. Did you read him his Miranda rights to
11 him?

12 A. I did.

13 Q. Was that on-scene, or was that back at
14 the Station?

15 A. That was back at the Station.

16 Q. And at the Station did you read him his
17 Miranda rights?

18 A. Yes.

19 Q. Did he ask to use the bathroom?

20 A. Not that I remember, no.

21 Q. Would you have allowed him to?

22 A. Absolutely.

23 Q. Did he ask for food?

24 A. No.

25 Q. Was he promised anything?

1 A. No.

2 Q. Was he made -- was any -- were any
3 threats made to him?

4 A. No.

5 Q. Did he agree to speak with you after
6 you read him Miranda rights?

7 A. Yes.

8 Q. What, if anything, did Mr. Mobley say
9 to you about the burglary in 2020?

10 A. He said he was taking the items to sell
11 them.

12 Q. And were those items recovered?

13 A. Some of them were, yes.

14 Q. Were they returned to the victim?

15 A. Yes.

16 Q. All right.

17 MR. EPTING: Your Honor, I beg the Court's
18 indulgence.

19 (OFF RECORD)

20 MR. EPTING: And, Your Honor, if I -- if I
21 may approach?

22 THE COURT: Yes, sir.

23 MR. EPTING: I'm handing the Court what's
24 been marked for identification only as State's
25 Exhibit 5, it's the certified indictment related to

1 this incident.

2 THE COURT: All right, thank you.

3 MR. EPTING: I beg the Court's indulgence.

4 BY MR. EPTING:

5 Q. And to your knowledge, did Mr. Mobley
6 plead guilty to that charge?

7 A. Yes.

8 Q. Okay. That's all the questions I have.
9 Please answer any questions Mr. Dunn may have for
10 you.

11 THE COURT: Okay.

12 MR. DUNN: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, sir.

15 * * * * *

16 **CROSS-EXAMINATION**

17 * * * * *

18 BY MR. DUNN:

19 Q. Mr. -- Detective Olson, you're not
20 involved in this particular case, are you?

21 A. No.

22 Q. Okay. Are you still working in
23 Property Division, or are you working somewhere
24 else?

25 A. No, I work in -- I work in the same

1 Division, but now my -- my specialty is Crimes
2 against Persons.

3 Q. So back in March of 2020 you said that
4 the window got pushed out, or --

5 A. It was removed. I -- I can't tell you
6 whether it was just outside the business, or just
7 inside, it was removed from the garage door.

8 Q. It was not broken?

9 A. No.

10 Q. Do you remember which pane it was?

11 A. I do not.

12 Q. Do you remember where the pane was?

13 A. It was on the garage door that was
14 closed at the time, and it's towards the bottom of
15 the door.

16 Q. And you said that there was a video of
17 that incident from --

18 A. Yeah.

19 Q. -- from the Workman Oil?

20 A. Yes.

21 Q. And did that video actually show him
22 going in and out?

23 A. I did not see a video of him going in
24 or out.

25 Q. So we don't know how he went in or out

1 in that video, correct, or how he got in or out of
2 Work -- Workman, you're just assuming it was through
3 there?

4 A. The only thing I can testify to is that
5 the only access point to the business was that open
6 window.

7 Q. And you said of the video, so were the
8 videos of the outside of the business, or inside, or
9 both?

10 A. Inside is the ones that I reviewed that
11 are attached to my case.

12 Q. Do you remember how long he was inside
13 that business?

14 A. I can't give you an exact time. It was
15 a few minutes, pro -- probably maybe two minutes,
16 but I can't give you an exact time. It was -- it
17 was not long.

18 Q. And when he was caught, he was actually
19 not caught inside that business, correct?

20 A. Correct.

21 Q. He was caught walking away or down the
22 road somewhere?

23 A. It was about one block away, after a
24 short foot-pursuit from -- by Officers.

25 Q. And Workman Oil isn't what I would

1 characterize as downtown Rock Hill; is that your
2 assessment?

3 A. It -- I would say it's towards the
4 downtown area, but I mean that's -- it's -- it's
5 close to downtown. It's about two blocks from the
6 Police Department.

7 Q. And about a block from the Fountain
8 Inn?

9 A. Yeah.

10 Q. You said that he had taken some toilet
11 paper?

12 A. Yes, toilet paper, sodas, snacks, and I
13 believe maybe some lighters.

14 Q. How many rolls of toilet paper were --
15 was it?

16 A. What -- what I saw on the video it was
17 like a pack at the time. That's what he exited the
18 office with. I only believe he was caught with a
19 couple rolls when he was actually arrested.

20 Q. Where were those -- were those rolls
21 caught in -- were they in a backpack?

22 A. I -- I don't remember.

23 Q. And you said he took some boxes of
24 soda?

25 A. Uh-huh, yeah, it was about a couple

1 boxes -- like full 12-pack boxes of soda. That's
2 what he's seen exiting the -- the office with.

3 Q. When he was caught, did -- did they
4 find three boxes of soda on him?

5 A. No, they found a couple cans of soda, I
6 believe.

7 Q. And I think you said some snacks?

8 A. Yes.

9 Q. Were those found on him?

10 A. I don't remember.

11 Q. I believe, looking through the incident
12 report, it sound -- do you remember if he had a
13 backpack on him when he got arrested on that March
14 20th?

15 A. I do not, I was not -- I was not part
16 of the actual arrest, we'd have to talk to the
17 Officers that arrested him.

18 Q. Okay. Have you ever dealt with Mr.
19 Mobley before?

20 A. No.

21 MR. DUNN: Beg the Court's indulgence, Your
22 Honor.

23 THE COURT: Yes, sir.

24 BY MR. DUNN:

25 Q. As part of your preparation for being

1 here today, did you read over the incident report
2 from -- I'm assuming you can't remember everything
3 that happened in the last few years, right?

4 A. No, I briefly reviewed the incident
5 report. I -- most of my testimony today is by
6 memory.

7 Q. And when you -- as part of your
8 detective detectiving (phonetic), do you talk to the
9 other Officers who responded first, to see what --
10 what they know, so you kind of have an idea where
11 you're going with your --

12 A. My main interaction was with Sergeant
13 Schurig at the time. He told me what his Officers
14 found.

15 Q. So you didn't have any interactions
16 with Officer Malicki?

17 A. I -- I don't want to testify to that.
18 I may -- I may or may not have, I don't remember.

19 Q. All right. We'll move on.

20 MR. DUNN: All right, I don't have any
21 further questions for Detective Olson, Your Honor.

22 THE COURT: All right, anything else from
23 the State?

24 MR. EPTING: Very briefly.

25 THE COURT: Yes, sir.

* * * * *

REDIRECT EXAMINATION

* * * * *

BY MR. EPTING:

Q. Detective, your testimony was that the pushed-out window was the only way in or out that night?

A. From my knowledge, yes.

Q. And the Defendant, when interviewed, admitted to stealing the items that were found outside?

A. That is correct.

Q. And he said the -- that was to sell them?

A. Yes.

MR. EPTING: That all the questions I have for this witness, Your Honor.

THE COURT: All right. Anything, Mr. Dunn?

MR. DUNN: Not on redirect, Your Honor.

THE COURT: Thank you, sir, you may step down.

MR. EPTING: And, Your Honor, if it pleases the Court, I can call the -- the first responding Officer as to -- so the Court can weigh the similarities.

1 THE COURT: The facts of the current one?
2 Yeah, that'd be great, uh-huh.

3 MR. EPTING: Your Honor, the State calls
4 Officer Austin to the stand. If you would come
5 forward and be sworn, please.

6 * * * * *

7 Officer Thomas Austin,
8 Having been duly sworn,
9 testifies as follows:

10 * * * * *

11 THE COURT: Yes, ma'am, Ms. Imler?

12 MS. IMLER: May it please the Court, and
13 for the record, my name is Peri Imler with the
14 Solicitor's Office.

15 * * * * *

16 DIRECT EXAMINATION

17 * * * * *

18 BY MS. IMLER:

19 Q. Please introduce yourself to the Court,
20 and spell your last name for the record.

21 A. Thomas Austin, A-U-S-T-I-N.

22 Q. Officer Austin, where do you work?

23 A. Rock Hill Police Department.

24 Q. And what do you do for Rock Hill?

25 A. I'm a Patrol Officer under the Patrol

1 Division, respond to calls for service, enforce
2 local, state and city ordinances.

3 Q. Were you working on December 9th, 2021,
4 around 1:20 a.m. here in York County?

5 A. Yes, ma'am.

6 Q. And did you become involved in the
7 investigation of a burglary that night?

8 A. Yes, ma'am.

9 Q. And was that at Workman Oil?

10 A. Yes, ma'am.

11 Q. What have you reviewed in preparation
12 for this trial?

13 A. I've briefly reviewed my incident
14 report and my body camera.

15 Q. So I want you to walk us through that.
16 Why'd you go to Workman Oil?

17 A. We got a call for service, from a third
18 party, stating that there was an active burglary to
19 the business. We arrived on-scene, briefly met with
20 the caller, and observed -- as we were checking the
21 premises of the business, observed a glass
22 windowpane missing from the bottom of the rollup
23 garage door.

24 Q. And that's one of those garage doors
25 that have panes all the way through them, right?

1 A. Yes, ma'am.

2 Q. Now, was that pane completely removed?

3 A. Yes, ma'am, it was removed, but it was
4 still intact.

5 Q. Okay, so what'd you do next?

6 A. I -- since the building was unsecure, I
7 entered the business through that -- through that
8 windowpane.

9 Q. Did you have to crawl through it?

10 A. Yes, ma'am.

11 Q. Were you equipped with body-worn camera
12 at that time?

13 A. Yes, ma'am.

14 Q. Did it record the entire incident?

15 A. Yes, ma'am.

16 Q. So once you crawled through that
17 business -- through the window, what'd you find?

18 A. I saw Mr. Mobley laying underneath the
19 frontend of a car, attempting to hide.

20 Q. So what'd you do next?

21 A. I drew my service weapon, and gave him
22 orders to show me his hands, which he refused.

23 Q. And did anyone else follow you into
24 that building?

25 A. My trainee at the time, Officer Risher,

1 who's no longer employed with the City, as well as
2 Officer Adkins, and I believe Officer Shreiber, who
3 was her trainee at the time.

4 Q. And did he ever eventually give you his
5 hands like you asked?

6 A. He never gave them to us, we had to get
7 them.

8 Q. And after you got his hands, what
9 happened next?

10 A. We detained him and escorted him out of
11 the business.

12 Q. Now, did he take anything at that point
13 in time?

14 A. No, ma'am.

15 Q. And how quickly did you respond after
16 that 911 call came in?

17 A. It was a very short -- I was a block
18 away when the call came in, so when I saw it pop up
19 on my computer in my car, I went directly there.

20 Q. Okay.

21 A. So within maybe a couple minutes, at
22 most.

23 Q. And did you hear anything while you
24 were in there?

25 A. I didn't hear anything. I did not hear

1 anything --

2 Q. Okay.

3 A. -- that I can recall.

4 Q. So after you detained him, what
5 happened next?

6 A. We escorted him out of the business,
7 and asked him for his name, date of birth, any
8 identifying information, because I wasn't familiar
9 with him at that time, and he refused to speak to
10 us.

11 Q. Okay. And so was he placed under
12 arrest at that time?

13 A. He was placed under arrest at that time
14 for -- he was placed under arrest at that time for
15 failure to identify, and then he eventually gave us
16 the name of Mike. And then through my -- through my
17 CAD system in my car, I was able to determine Mike
18 as Michael Mobley.

19 Q. And is Michael Mobley present in the
20 courtroom today?

21 A. Yes, ma'am.

22 Q. Can you identify him for the record
23 specifying what color shirt he's wearing?

24 A. The Defendant's wearing, I believe, a
25 yellow shirt.

1 Q. So just to recap, you were called out
2 to the scene, you saw a broken window in the corner
3 of the service garage bay. You had to crawl through
4 it to get in, and that's when you encountered
5 Michael Mobley just a few minutes after that 911
6 call?

7 A. Yes, ma'am.

8 MS. IMLER: No further questions from the
9 State.

10 THE COURT: Mr. Dunn?

11 MR. DUNN: May it please the Court, Your
12 Honor.

13 * * * * *

14 **CROSS-EXAMINATION**

15 * * * * *

16 BY MR. DUNN:

17 Q. You didn't find a bag on Mr. Mobley,
18 correct?

19 A. Not that I recall.

20 Q. And you didn't find a bag that probably
21 belonged to Mr. Mobley inside the Workman service
22 bay either, correct?

23 A. Not that I recall.

24 Q. And when you said that he only gave you
25 Mike, that's not entirely correct, is it?

1 A. We asked him about six times what his
2 name was, and all six times, up until the very end,
3 after he was placed under arrest is when we got him
4 to tell us who he was.

5 Q. Isn't it more like after you threatened
6 to hold him for 72 hours until you run his
7 fingerprints, and at that point --

8 A. It --

9 Q. -- he finally gave you his name of
10 Michael Mobley?

11 A. It can take up to 72 hours to get his
12 prints to come back, and so since he's under arrest,
13 we can hold him for that long.

14 Q. I understand, but that's what you
15 threatened him with if he didn't give you his name,
16 correct?

17 A. Absolutely.

18 Q. And he, eventually, gave you both his
19 first and his last name so that you could run him
20 through the system?

21 A. Yes, sir.

22 Q. And he gave you his date of birth,
23 correct?

24 A. He confirmed what I asked him.

25 Q. Do -- as part of the -- you didn't

1 really hang around for the investigation, if I
2 remember correctly, correct? I mean you took -- you
3 took Mr. Mobley to the Police Station pretty soon
4 after the arrest was made?

5 A. Correct.

6 Q. And you didn't go back to Workman?

7 A. No, sir, my Lieutenant and Officer
8 Adkins were on-scene.

9 Q. Somebody else was handling that as far
10 as what the details of what happened, or may -- may
11 have happened?

12 A. Yes, sir.

13 Q. So you don't know if anything was taken
14 that night?

15 A. I don't believe anything was taken.

16 Q. Okay. Do you remember what he was
17 wearing?

18 A. I believe it was dark in color -- I
19 believe hooded sweatshirt and blue jeans.

20 Q. All right. This happened in December,
21 right?

22 A. Yes, sir.

23 Q. Was it cold outside that night?

24 A. Yes, sir.

25 Q. I guess as expected in December?

1 A. Absolutely.

2 Q. And you found him laying underneath the
3 front of the car that was in the service bay, right?

4 A. Yes, sir.

5 Q. Was he sleeping?

6 A. He -- I believe he was trying to act as
7 if he was asleep, but I don't believe you can fall
8 asleep within four minutes, which is, approximately,
9 the amount of time it took us to respond.

10 MR. DUNN: I don't have any further
11 questions for the Officer, Your Honor.

12 THE COURT: Anything from the State?

13 MS. IMLER: Briefly, Your Honor.

14 THE COURT: All right.

15 * * * * *

16 **REDIRECT EXAMINATION**

17 * * * * *

18 BY MS. IMLER:

19 Q. Officer Adkins -- or, excuse me,
20 Officer Austin, earlier you mentioned that you spoke
21 to someone when you arrived?

22 A. Yes, ma'am.

23 Q. Now, were you right outside that window
24 that was open?

25 A. Yes, ma'am.

1 Q. So someone inside could probably have
2 heard you, right?

3 A. Yes, ma'am.

4 Q. Now, when you responded to Workman Oil,
5 is that in the area where you normally work?

6 A. Yes, ma'am.

7 Q. Do you know Workman Oil?

8 A. Yes, ma'am.

9 Q. Do they sell things other than car
10 parts there?

11 A. They have sort of a mechanic shop, they
12 run a tow service, they sell gasoline, and then they
13 have a small -- I guess you'd call it a convenience
14 store section inside the office.

15 Q. And what do they sell in that small
16 convenience store?

17 A. Ice cream, soda, candy bars.

18 Q. So it's a place where goods other than
19 car parts are stored, right?

20 A. Yes, ma'am.

21 Q. Now, lastly, I want to ask you a little
22 bit about when you were asking him for his name.

23 A. Uh-huh.

24 Q. Is that a routine question that you ask
25 people?

1 A. Yes, ma'am.

2 Q. Did he, eventually, give you his name?

3 A. Eventually, he confirmed what his name
4 was.

5 Q. And that's not a threat, it's
6 procedure, right?

7 A. Yes, ma'am.

8 MS. IMLER: All right, no further questions
9 for this witness.

10 THE COURT: Anything, Mr. Dunn?

11 MR. DUNN: Yes, sir.

12 * * * * *

13 **RECROSS-EXAMINATION**

14 * * * * *

15 BY MR. DUNN:

16 Q. Not to kick a dead horse, sir, Officer
17 Austin, but the -- the window that was out was on
18 the ground, correct? It was the bottom one?

19 A. It was on the ground level, yes, sir.

20 Q. And it was about -- I don't know, maybe
21 a 2x2 or 3x3 piece of paned glass, something like
22 that?

23 A. Approximately. I had to crawl through
24 it.

25 Q. And you had -- you crawled through it,

1 right? You were able to fit and -- and the other
2 Officers were able to fit, right?

3 A. Absolutely.

4 Q. So -- but he was found on the -- and
5 there was a car right behind that -- that, right?

6 A. Yes, sir.

7 Q. Inside that particular garage bay, and
8 there's -- I think there's two bays there, right?

9 A. Yes, sir, I believe so.

10 Q. And you were -- I think you were in the
11 right-hand one?

12 A. Yes, sir.

13 Q. And Mr. Mobley was at the front of that
14 car, right?

15 A. He was directly -- if I'm looking
16 underneath the cars, as I'm crawling through, he's
17 directly underneath the other end of the car.

18 Q. All right. On the other end of the
19 car? The frontend of the car?

20 A. Yes, sir.

21 Q. And the backend of the car is against
22 the door?

23 A. Yes, sir.

24 Q. Was his head at the driver's end, or
25 was his head facing back towards the -- the back of

1 the car?

2 A. It was laying this way. So if the
3 car's this way, he's laying this way.

4 Q. And the only reason why I ask you all
5 these questions is -- is, the Solicitor asked you,
6 if -- if he could have heard you, but the reality
7 is, you don't know really know if he heard you or
8 not, right?

9 A. No idea.

10 Q. Or heard anybody out there, quite
11 frankly, right?

12 A. I can't say what he did or did not
13 hear.

14 MR. DUNN: I have no further questions,
15 Your Honor.

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

18 MS. IMLER: Nothing further, your Honor.

19 THE COURT: Thank you, Officer.

20 WITNESS: Thank you.

21 THE COURT: All right.

22 Argument from the State on the Lyle issue?

23 MR. EPTING: Your Honor, as -- as stated
24 before, it does appear from this case that there's
25 not a contention that -- that he was inside a

1 building that belonged to someone else, that it was
2 the nighttime hours, that this building was where
3 goods were stored. And it may -- the only issue it
4 seems outside of proving the elements of burglary in
5 this case is going to be intent. We think it is
6 extremely probative that this Defendant was not only
7 arrested, and not only found entering a very similar
8 way, but actually pled guilty to breaking into that
9 exact same business. And the MO, according to the
10 test -- detective -- lead detective, who testified,
11 by pushing out a window, and stealing goods and
12 snacks that are also present the night that this
13 burglary that is before the Court today happened.
14 We understand that it's prejudicial, however, we
15 believe that's exactly what 404(B) is intended for.
16 And we believe it's important for the factfinder in
17 this case to prove that the Defendant had stolen
18 items from this place in a relatively short amount
19 of time before this incident happened. The same
20 type of items, given that he did not have time to
21 complete his burglaries by the time that the Police
22 arrived. We anticipate without that, the Defense
23 will be able to argue that the State cannot show
24 intent due to the fact that he had no items with
25 him, so extremely probative in the State's opinion

1 is the fact that he had broken into the same
2 building, and stolen the same items that -- that
3 were -- similar items that were found inside the
4 business that night.

5 THE COURT: All right. Mr. Dunn?

6 MR. DUNN: And may it please the Court,
7 Your Honor?

8 THE COURT: Yes, sir.

9 MR. DUNN: Your Honor, I would argue that
10 there's not enough similar -- I really have two
11 arguments. One is that there's not enough
12 similarities between what happened on March the 20th
13 of 2020 -- I think it was March the 20th of 2020,
14 and -- and December the 9th of 2020 -- 2021.
15 Specifically, the -- Detective Olson testified that
16 it was a -- it was a -- basically, a quick smash and
17 grab, that he was in there quick, and he was in
18 there quick, and he was out quick, and he -- he had
19 taken stuff with him. Officer Austin also argued
20 that it was quick, but, you know, that he was in
21 there, you know, for a few minutes before they
22 responded. Well, if -- if -- if, you know, we're
23 trying to argue similarities, you know, his MO would
24 -- should have been, that he would have gone in
25 there quickly and left quickly. In reality what we

1 have is on December 9th he went in there, stayed in
2 there, and he didn't leave quickly. And I argue --
3 or I would argue it's, you know, why that is, you
4 know, is -- is going to be at the crux, but -- so
5 that would be the first one. The second one, he
6 took a bunch of things on the first one, and was
7 carrying them, and they found him with them. I -- I
8 would argue that he probably wasn't carrying them
9 like this as he was running away, he probably had a
10 bag with him. One doesn't carry three boxes of
11 soda, and toilet paper, and everything else willy-
12 nilly, in trying to get down the road because that's
13 -- you're going to be grabbed -- you're going to be
14 calling attention to yourself; and if you get
15 caught, you're not going to be able to run very well
16 like that, I mean that's just -- and in this -- in
17 this -- our instance here, there's no bag recovered.
18 And I would argue that if -- if he was going in
19 there with the intent to steal stuff, like they said
20 he did the first time to go in and steal stuff to
21 sell, that he would have taken something with him to
22 carry away those objects or those items. Because
23 what good does it do to go in there and steal stuff
24 to sell, if you can't carry them away, because
25 taking two or three Honey Buns isn't -- there's not

1 a whole lot of resale value in a couple Honey Buns
2 and a couple cans of soda. And -- and for that
3 reason, Your Honor, I would argue just that there's
4 not enough similarities between the two. Even if
5 the Court decides that there is enough similarities,
6 I would argue that the prejudicial value way
7 outweighs the probative value on this. You know,
8 but for the fact that they can try to argue what he
9 did a year and a half earlier was the reason why he
10 was back there that night, it just basically poisons
11 the -- the fact-finder's mind as to why he was in
12 there. And -- and, you know, overwhelming
13 prejudices the fact-finder's mind as to what the
14 intent would be. I think the State should bear the
15 burden of proving that there was some kind of
16 intent, that something was done while inside that
17 building, and not just the fact that he was in there
18 in nighttime hours. We concede he was in there, we
19 concede he wasn't supposed to be there, we concede
20 that it was nighttime hours, and all of that -- all
21 of that's conceded. What's not conceded is his
22 intent while he was in there. And -- and I don't
23 think there's enough similarities between what
24 happened in this -- in March of 2020 versus what
25 happened in December of 2021, for there -- for --

1 for Lyles to apply; and if there is, I certainly
2 think it's -- it's way more prejudicial than
3 probative, your Honor.

4 THE COURT: All right.

5 MR. EPTING: Very briefly, Your Honor, I
6 think the hallmark of this is, that the individual
7 -- Mr. Mobley both times knew that this window,
8 despite being plexiglass, shatterproof, were flimsy
9 enough to be pushed in by hand. In both cases, none
10 of them were broken. Neither Officer test -- both
11 Officers testified that they were intact, however,
12 pushed out of the frame, and on the ground beside.
13 We think that is -- is very important given that
14 that's how he entered both times. Again, Your
15 Honor, he knows there's stuff in there. We know
16 that he wants those things by virtue of kind of
17 having stolen them for purpose of sale before. The
18 fact that he was not able to steal those things
19 because Officers arrived much quicker this time than
20 they did the first time, the conviction for which
21 the Defendant pled, we would argue is the reason why
22 he did not have anything in his hands when they came
23 in.

24 THE COURT: I'm going to allow the evidence
25 in. The basis for my ruling is that this is -- that

1 the similarity is incredibly close. I mean it's the
2 strongest connection nearly possible. They're both
3 at night, it's the same business, the same person,
4 same manner of entry. I mean I don't know how much
5 closer you could get -- you could get on that. And
6 then that there's no issue with proving the first
7 burglary, there's -- we have a certified copy of the
8 conviction. The Defendant pled guilty, it wasn't
9 even a trial. So there's, you know, there's clearly
10 clear and convincing evidence of the prior offense,
11 so I -- I think it is prejudicial, but it's not
12 unfairly prejudicial, and the probative value on the
13 issue of intent far outweighs any -- any danger of
14 unfair prejudice, so I'm going to permit the
15 evidence.

16 MR. EPTING: Thank you, Your Honor.

17 THE COURT: Uh-huh.

18 MR. EPTING: And we've provided a copy of
19 the true bill of indictment, and we ask that that
20 sentence be struck. And in addition, I believe it
21 would likely be better, as far as doing the record,
22 if we made State's -- what's marked by DS State's 5,
23 Court's Exhibit 1 --

24 THE COURT: All right.

25 MR. EPTING: -- given Your Honor's Lyle

1 ruling, and we would not introduce that as evidence.

2 THE COURT: All right.

3 MR. EPTING: Since it's the only
4 (inaudible).

5 THE COURT: All right. And I've just made
6 the handwritten change we all agreed to. I deleted
7 the sentence about conviction -- convicted of two or
8 more house break-in or burglaries from the
9 indictment, so that change. And then we'll make the
10 certified copy Court's Exhibit 1, if you don't mind
11 handing that to the Court Reporter, please?

12 MR. EPTING: Yes, Your Honor.
13 (Whereupon, Court's Exhibit Number 1 is marked and
14 introduced for the record.)

15 THE COURT: All right. I believe that
16 concludes the State's motion in limine; is that
17 correct, motions in limine?

18 MR. EPTING: Yes, Your Honor.

19 THE COURT: All right. Turning to
20 Defendant's motions, Ms. Imler and Mr. Epting, have
21 y'all complied with your Rule 5 and Brady
22 requirements?

23 MS. IMLER: Yes, Your Honor.

24 THE COURT: Okay. Is the Jackson
25 (inaudible) a no issue, Mr. Dunn?

1 MR. DUNN: I don't think there -- this is
2 -- this is my -- this is my boilerplate one. I --

3 THE COURT: Oh, gotcha.

4 MR. DUNN: I like to cover everything, just
5 to make sure it's on the record for appeal purposes,
6 and PCR purposes.

7 MR. EPTING: I don't believe there is. I
8 believe there are statements consistent with what
9 Your Honor heard in pretrial. That they asked him
10 his name, and he states his name, at some point, but
11 we don't have statements like we have --

12 MR. DUNN: I don't believe there's a con --

13 MR. EPTING: -- from the prior case.

14 MR. DUNN: I don't believe there's a
15 confession in this case, Your Honor.

16 MR. EPTING: There's not.

17 THE COURT: Okay, what about impeachment if
18 the Defendant chooses to testify? Any convictions?

19 MR. EPTING: He does, Your Honor. We have
20 a 2018 conviction for petty larceny, a 2018
21 conviction for a stolen pistol, there's also another
22 petty larceny, the conviction that is Court's
23 Exhibit 1, and a shoplifting conviction in 2021. We
24 believe the shopliftings and the petty larcenies
25 would be crimes of dishonesty, and we believe that

1 weapons charges and the burglary charge would be a
2 crime that carries over a year under 609 and is
3 subject to impeachment.

4 THE COURT: And they're all within the ten-
5 year window?

6 MR. EPTING: They are, Your Honor, the 2018
7 to 2020.

8 THE COURT: Okay. Any argument on those,
9 Mr. Dunn?

10 MR. DUNN: I don't think I have any
11 arguments. I don't think I have any legal arguments
12 on those, Your Honor.

13 THE COURT: All right. Motion to require
14 the -- the State to provide rap sheets for the
15 State's lay witnesses.

16 MR. EPTING: Your Honor, we have only one
17 lay witness, and we did run a criminal history
18 check. I've allowed Mr. Dunn to review that during
19 pre-trial. We didn't get that to him --

20 THE COURT: All right.

21 MR. EPTING: -- today, and I apologize
22 about that.

23 MR. DUNN: I don't believe --

24 THE COURT: All right.

25 MR. DUNN: -- there's anything on that

1 that's used for impeachment purposes anyways, Your
2 Honor.

3 MR. EPTING: I concur with that, Your
4 Honor.

5 THE COURT: Okay. All right.

6 MR. DUNN: But I did see it.

7 THE COURT: Thank you, Counsel. Defense
8 asks the State to reveal if any potential witnesses
9 have given subsequent oral statements that differ
10 from the statements already provided to the Defense.

11 MR. EPTING: We haven't been given notice
12 of statements, Your Honor.

13 THE COURT: All right.

14 MR. DUNN: Specifically, on that one, Your
15 Honor, just -- it -- it goes back to that intent
16 issue. I mean that night it was very clear that
17 everybody says nothing was stolen. I just want to
18 make sure that nothing has come up in the last five
19 months or four months since then.

20 THE COURT: And then any Neil v. Biggers
21 issue with identification?

22 MR. EPTING: I -- I don't believe that
23 there was an identification that will be subject to
24 a Neil v. Biggers analysis.

25 THE COURT: He was -- the Defendant was

1 arrested inside the building; is that correct?

2 MR. EPTING: He was, Your Honor.

3 THE COURT: Okay.

4 MR. EPTING: The victim in this case is
5 both the victim, and she -- the same owner from
6 both, should an identification be made that way as
7 well.

8 THE COURT: Okay. Mr. Dunn, just for the
9 -- to make sure the record's clear, are you
10 conceding the other elements of burglary other than
11 the intent?

12 MR. DUNN: Your Honor, yes, sir, I mean
13 there's -- there's no doubt it was at night, and
14 there's no doubt that he's in a building. I mean
15 their witnesses, I'm sure, are going to say that he
16 wasn't supposed to be there.

17 THE COURT: Okay. So are we stipulating
18 that -- that -- that the other elements are
19 satisfied?

20 MR. DUNN: This really comes down to
21 whether or not this is a glorified trespass or a
22 burglary, --

23 THE COURT: All right.

24 MR. DUNN: -- Your Honor.

25 THE COURT: Well, that's going to make the

1 trial very easy, all right?

2 MR. DUNN: Yes, sir.

3 THE COURT: All right, Counsel, do y'all
4 want a break, before we actually get rolling? It's
5 quarter to 11:00, or we can, you know, we can start.

6 MS. IMLER: Briefly, we ask for a five-
7 minute break, Your Honor.

8 THE COURT: Sure, that'll be fine. We'll
9 be in recess for a break.

10 (Whereupon, Court takes a brief recess.)

11 MR. DUNN: Your Honor, if -- the Solicitor
12 and I met during the break. I was going back over
13 my client's rap sheet for purposes of impeachment,
14 and the State had mentioned that one of the -- the
15 charges that could be used for impeachment purposes
16 was a stolen gun --

17 THE COURT: Right.

18 MR. DUNN: -- back in 2018. Upon further
19 review of the way the rap sheet, it looks like he
20 was actually found not -- that case was actually
21 dismissed.

22 THE COURT: All right.

23 MR. DUNN: So we just --

24 THE COURT: I assume no objection from the
25 State that would not --

1 MR. EPTING: No, Your Honor, it's -- it's
2 unclear from the rap sheet exactly what that was,
3 but we're going to give him the benefit of the
4 doubt, and just not ask that question, should he
5 decide to testify.

6 THE COURT: Mr. Epting, something is
7 strange with your microphone, it has a really weird
8 -- is that one wired, or is that wireless?

9 MR. EPTING: It's wired. Is it tinny?

10 THE COURT: It's really tinny, yeah.

11 MR. EPTING: You -- the microphone over
12 here?

13 THE COURT: Well, I was going to say can
14 you -- can you use the wireless one there? It might
15 be -- because it -- I mean I can hear you, but it
16 sounds really odd.

17 MR. DUNN: We did a murder trial a couple
18 weeks ago, and this one was extremely tinny the
19 entire trial.

20 THE COURT: Okay.

21 (Whereupon, discussion concerning
22 microphone takes place.)

23 MR. EPTING: I'm just going to turn that
24 one off, if I need to speak, I'll either use the one
25 next to Ms. Imler or use this one.

1 THE COURT: Okay. And just so there's no
2 question at all, so we're stipulating to all the
3 elements of burglary other than intent to commit
4 another crime; is that correct, Mr. Dunn?

5 MR. DUNN: Yes, sir.

6 THE COURT: Mr. Epting?

7 MR. DUNN: Yes, Your Honor.

8 THE COURT: All right.

9 MR. EPTING: Your Honor, we believe that
10 Detective Olson's testimony, should he be called as
11 a witness, would be the exact same, as it was at
12 pretrial. Could we substitute his pretrial
13 testimony to what he would testify?

14 THE COURT: Any objection, Mr. Dunn?

15 MR. DUNN: No, sir. My recollection of --
16 just through the case file is, he made the arrest,
17 and then he left with Mr. Mobley pretty soon after
18 the -- after the arrest. Him and another Officer
19 took Mr. Mobley back to the -- the Police Station
20 for processing; and so I -- I don't think he had --
21 would have anything further to --

22 MR. EPTING: I -- I don't think Olson was
23 involved in -- in the case.

24 MR. DUNN: I'm -- I'm sorry, I was thinking
25 Austin. Olson, I have no problem with.

1 MR. EPTING: Detective Olson --

2 THE COURT: Yeah.

3 MR. EPTING: -- we may recall, since he was
4 intrical to --

5 THE COURT: Okay.

6 MR. DUNN: No, that's fine.

7 THE COURT: So any -- no objection on you
8 substituting Olson's pretrial testimony?

9 MR. DUNN: I don't have any problem
10 substituting. I have one question for him that I
11 want to try to get in.

12 THE COURT: Okay, well, why don't we just
13 put him back on the stand real quick for the one
14 question. It's -- it's --

15 MR. DUNN: I mean -- and he may not be able
16 to answer. I mean the prior -- the prior police
17 report says -- distinctly says that there was a
18 black duffle bag found. I just want to -- I'm
19 trying to -- I would like that evidence.

20 THE COURT: Let's -- let's go and clear
21 that up.

22 MR. EPTING: Yes, Your Honor.

23 And, Your Honor, for purposes of Defense --
24 Defense's question, we're recalling Detective Olson,
25 I believe he's still under oath.

1 THE COURT: All right.

2 MR. DUNN: And -- and for the record, Your
3 Honor, I have no problem stipulating to all his
4 other testimony coming back, you know, and being
5 used for the purposes of the case-in-chief.

6 THE COURT: All right, so that makes it
7 easy. Thank you, Counsel.

8 MR. DUNN: Yes, I just have my --

9 THE COURT: Any questions the State wants
10 to ask before Mr. Dunn asks about this --

11 MR. EPTING: No, Your Honor.

12 THE COURT: Okay, Mr. Dunn, all yours.

13 * * * * *

14 Recall of

15 Detective Eric Olson,

16 previously sworn,

17 testifies as follows:

18 * * * * *

19 RECROSS EXAMINATION

20 * * * * *

21 BY MR. DUNN:

22 Q. So I have one question for you,
23 Detective Olson. I was going back, and I'm looking
24 at this police report. It -- it's very common to
25 make police reports as -- as part of your -- a case,

1 correct?

2 A. Yeah.

3 Q. And -- and in my dealings with Rock
4 Hill City Court, it seems like every officer kind of
5 is able to put their own -- their own little
6 commentary into the police report, is that --
7 that's --

8 A. Yeah, in the form of case notes or
9 supplemental reports.

10 Q. And the reason why I ask is, I'm
11 looking at this police report from March the 1st of
12 2020, and -- and do you know who Ronald Malicki is?

13 A. I do.

14 Q. Is he -- is he a Patrol Officer?

15 A. He was at the time.

16 Q. All right, so he would have been one --
17 one of the first responders to an -- an incident
18 probably or responded at some point during that?

19 A. If his name's on the report, then yeah.

20 Q. Is -- in his report he -- and that
21 March '20, he -- he mentions that they had found a
22 -- a black duffle bag with some items in it, and the
23 items were sort of the same items that you mentioned
24 earlier.

25 A. Okay.

1 Q. You don't remember there being a black
2 duffle bag, or -- or looking at a black duffle bag?

3 A. I -- all -- all I remember from -- from
4 that incident is, the information that was provided
5 to me by his Sergeant, Sergeant Schurig, which was
6 that the items were found on his person, or nearby
7 his person, the same items that were stolen.

8 Q. And so you can't really testify to the
9 truthfulness of whether or not he would -- the
10 Officer was truthful in his police report, right?

11 A. I cannot testify to anything that
12 Officer Malicki did or wrote.

13 Q. He's not here, is he?

14 A. No, he is not.

15 MR. DUNN: I -- I have no further
16 questions, Your Honor.

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

19 MR. EPTING: No, Your Honor.

20 THE COURT: Thank you, Detective. Would
21 y'all like kind of an opening kind of argument, or
22 -- it's up to y'all.

23 MS. IMLER: Your Honor, I believe that our
24 open has kind of been handled through pretrial, so
25 the State waives open.

1 THE COURT: Okay. Mr. Dunn, would you like
2 any kind of sum -- sum -- summary?

3 MR. DUNN: No, sir, unless the Court feels
4 like it needs some kind of a background, I think
5 this is pretty cut and dry, and we pre-trialed this
6 a little bit last week to give the Court an idea of
7 what we're arguing.

8 THE COURT: And I appreciate it. Y'all
9 have mirrored the issues very nicely, so I -- I
10 don't feel like I need it, but I wanted to give
11 y'all the option if you want it. Okay. All right,
12 State, call your next witness.

13 MS. IMLER: Your Honor, the State calls
14 Scottie Marsengill to the stand. May we go grab her
15 really quick?

16 THE COURT: Yes, ma'am.

17 MADAM CLERK: Raise your right hand.

18 * * * * *

19 **Scottie Marsengill,**
20 **having been duly sworn,**
21 **testifies as follows:**

22 * * * * *

23 **DIRECT EXAMINATION**

24 * * * * *

25 BY MS. IMLER:

1 Q. Good morning.

2 A. Good morning.

3 Q. Can you please introduce yourself to
4 the Court, and spell your last name for the record?

5 A. Yes, ma'am, Scottie Marsengill, M-A-R-
6 S-E-N-G-I-L-L.

7 Q. Ms. Marsengill, what do you do for a
8 living?

9 A. I am the Communications Manager for
10 Rock Hill Police Department.

11 Q. And how long have you worked for the
12 Rock Hill Police Department?

13 A. Since January of 2009.

14 Q. And what are some of your
15 responsibilities as Communications Director?

16 A. I maintain the recording system that is
17 housed with the County, I also take calls for
18 service, quality control, things of that nature;
19 and I also work on the Station when I'm needed.

20 Q. Do you do anything with 911 calls?

21 A. I do. I review requested 911 calls for
22 the Solicitor's Office, for forwarding requests,
23 things like that.

24 Q. When your office receives 911 calls,
25 what do y'all do with them?

1 A. They're housed on the County's
2 recording system for future use for a specified
3 amount of time.

4 Q. And how do they make their way over to
5 the Solicitor's Office?

6 A. Generally, I get requests through email
7 from someone at the Solicitor's Office, and I just
8 pull the recordings down, and send them over secured
9 email or burn copies.

10 Q. And in between storing those calls and
11 sending them over to the Solicitor's Office, are
12 they ever changed or altered for any reason?

13 A. The only information that's ever pulled
14 from the recordings, they're redacted for specific
15 information specified by FOIA law.

16 Q. Now, are you aware of a 911 call placed
17 on December 9th, 2021, around 1:20 a.m.?

18 A. I was not there personally, but I was
19 requested to pull that recording for the Solicitor's
20 Office.

21 Q. And did you pull that call?

22 A. I did.

23 Q. And have you had a chance to review
24 that 911 call as it exists in your internal system?

25 A. I did.

1 Q. And would you recognize it if I played
2 it for you?

3 A. Yes, ma'am.

4 MS. IMLER: Your Honor, I am approaching
5 the witness with what has been pre-marked for
6 identification purposes as State's Exhibit 2.

7 THE COURT: All right.

8 MS. IMLER: Let me show it to Jeff real
9 quick. I'm showing to opposing Counsel.

10 MR. DUNN: Your Honor, I don't have any
11 problems with that. I have problems with that, the
12 -- the call in general. I have an objection to it.

13 THE COURT: Yeah, I'm -- I'm sorry, I'm not
14 following you, you don't -- you don't --

15 MR. DUNN: Your Honor, I mean for purposes
16 of looking at that, I'm fine with it, but if she's
17 trying to introduce it into evidence, I -- I have an
18 objection.

19 THE COURT: Okay. Well, are you ready to
20 -- are you ready to play it, Ms. Imler?

21 MS. IMLER: After Ms. Marsengill identifies
22 it, yes.

23 THE COURT: Okay, so let's go ahead and get
24 it identified.

25 BY MS. IMLER:

1 Q. Do you recognize what I'm showing you?

2 A. Yes, ma'am.

3 Q. And what is it?

4 A. It is a burned copy of the call
5 requested by the Solicitor's Office.

6 Q. And how do you know that?

7 A. I was the one who pulled the call down.

8 Q. Is it a fair and accurate copy of that
9 phone call?

10 A. Yes, ma'am.

11 MS. IMLER: Now, at this time, oh, excuse
12 me, at this time the State moves to admit what has
13 been pre-marked for identification purposes as
14 Exhibit 2 into evidence.

15 MR. DUNN: Your Honor, --

16 THE COURT: Mr. Dunn?

17 MR. DUNN: -- my -- I would object that
18 it's hearsay. That whatever's on that would --
19 obviously, would have been made by an individual.
20 That individual could be called as a witness to
21 testify to what he -- he or -- I'm assuming it's a
22 he, since I -- I think I know what the call's about,
23 he could testify to what's on that, what he told the
24 police, and -- and then that way he'd be subject to
25 cross-examination, as well, as opposed to just

1 playing the 911 call, where -- I -- so I -- I'm --
2 I just object to it, Your Honor.

3 THE COURT: Ms. Imler?

4 MS. IMLER: Your Honor, as to the hearsay
5 contained in this call, well, let me start back and
6 go more narrow.

7 As to the call itself, this is a regularly
8 kept business record. We've heard from Ms.
9 Marsengill that this is regularly kept on the
10 servers at Rock Hill PD. She is the custodian of
11 that record. As to the hearsay say inside of this
12 call, we believe it to be an excited utterance, and
13 -- well, more so, a (inaudible) impression. The
14 caller is telling the Dispatcher exactly what's
15 going on at the time of the call. And going toward
16 the Crawford issue brought up by Ms. -- by Mr. Dunn,
17 this is in the course of an ongoing emergency, so we
18 do believe that it gets around the confrontation
19 clause.

20 THE COURT: All right, I'm -- I'm going to
21 rule for the State, I'm going to allow it.

22 MS. IMLER: Permission to publish?

23 THE COURT: You may publish.

24 MR. EPTING: Your Honor, the State moves
25 for State's Exhibit 2 to be entered into evidence.

1 THE COURT: It's in evidence over the
2 objection.

3 (Whereupon, State's Exhibit Number 2 was pre-marked
4 and is entered into evidence without objection.)

5 MR. EPTING: Thank you, Your Honor.

6 (AUDIO IS PLAYED IN THE COURTROOM)

7 BY MS. IMLER:

8 Q. The State has no further questions.
9 Scottie, if you could just answer anything that the
10 Defense wants to ask.

11 A. Okay.

12 MR. DUNN: No questions, Your Honor.

13 THE COURT: All right. Thank you, ma'am,
14 you can step down.

15 MS. IMLER: Your Honor, the State calls
16 Wendy Shaner to the stand.

17 THE COURT: Okay.

18 * * * * *

19 Wendy Shaner,
20 having been duly sworn,
21 testifies as follows:

22 * * * * *

23 DIRECT EXAMINATION

24 * * * * *

25 BY MS. IMLER:

1 Q. Good morning.

2 A. Good morning.

3 Q. Please introduce yourself to the Court.

4 A. My name's Wendy Workman-Shaner.

5 Q. Would you spell your last name for the
6 record, please?

7 A. It's S-H-A-N-E-R.

8 Q. What do you do for a living, Wendy?

9 A. I am owner/manager of Workman Oil &
10 Wrecker Service.

11 Q. And what are some of your
12 responsibilities as owner/manager?

13 A. I take care of the billing, I dispatch
14 calls for the wrecker service. I do the tickets for
15 the auto mechanic work, and a little bit of this,
16 and that, and everything.

17 Q. You wear a lot of hats.

18 A. I do. I do.

19 Q. Now, I want to talk a little bit about
20 Workman Oil.

21 A. Okay.

22 Q. Where is it located?

23 A. It's 314 Saluda Street.

24 Q. Is that here in York County?

25 A. Yes, ma'am. About a block from the

1 Police Department.

2 Q. Okay. And what kind of business is
3 Workman Oil?

4 A. Well, we do mechanic work, wrecker
5 service, and we have gas, tire work, anything pretty
6 much that has to do with an automobile.

7 Q. Do y'all do anything else?

8 A. No.

9 Q. Okay. So just so we're clear, Workman
10 Oil is in its own self-contained building, right?

11 A. Correct.

12 Q. And, you know, we've heard a little bit
13 that they have a small convenience store; is that
14 true?

15 A. It's not really a convenience store.
16 We have canned drinks that we've always kept for 50
17 cent, just for customers that are sitting out
18 waiting on an oil change, and we have some chips,
19 just a -- a little rack of chips and things, so it's
20 not really a convenience store-like.

21 Q. So just snacks and drinks and things?

22 A. That's it.

23 Q. -- like that?

24 A. Uh-huh.

25 Q. Okay. Now, I want to talk to you a

1 little bit about why we're here today.

2 A. Sure.

3 Q. When'd you first learn about an
4 incident that happened around December 9th of 2021?

5 A. The next -- well, it would have been
6 December the 9th, that morning.

7 Q. And about what time did you learn about
8 it?

9 A. It probably would have been about 8:00
10 that morning.

11 Q. Okay. And how did you learn about
12 that?

13 A. My dad.

14 Q. Who's your dad?

15 A. Hal Workman, Rich Workman.

16 Q. And what does he do for Workman Oil?

17 A. He's the owner. He don't do a whole
18 lot, but answer the phones nowadays. He's done gone
19 on up there in age.

20 Q. So you help him out?

21 A. A lot.

22 Q. Now, you mentioned that you learned
23 about it on December 9th at about 8:00 a.m. Who
24 told you about it?

25 A. He did, Mr. Workman, my dad.

1 Q. And how did he learn about it?

2 MR. DUNN: Objection.

3 BY WITNESS:

4 A. Through Timmy, through the --

5 THE COURT: Hold on, hold on.

6 BY WITNESS:

7 A. -- phone call to 911.

8 THE COURT: Ma'am, hold on, hold on. Yes,
9 sir.

10 MR. DUNN: Objection, Your Honor, that
11 calls for speculation on her part. And if it's not,
12 then it's hearsay as far as how she gets to it.

13 THE COURT: I'm going to sustain the
14 objection to that question.

15 BY MS. IMLER:

16 Q. Do you know if the 911 call was placed?

17 A. Yes.

18 Q. And have you reviewed that 911 call
19 before coming here today?

20 A. Yes, I have.

21 MS. IMLER: Your Honor, I'd like to play
22 this witness what's been entered into evidence as
23 State's Exhibit 2, but she's been in this Courtroom,
24 and she's heard it.

25 THE COURT: Okay.

1 MS. IMLER: For the convenience of the
2 Court, I can skip that.

3 THE COURT: Anybody want it replayed? Mr.
4 Dunn?

5 MR. DUNN: No, Your Honor.

6 THE COURT: All right, we can skip it.

7 BY MS. IMLER:

8 Q. Wendy, did you recognize the voice of
9 that caller that we heard a little bit ago?

10 A. Definitely.

11 Q. How'd you recognize that voice?

12 A. It's Timothy King, he is our -- kind of
13 our little -- I guess he's our do boy. He goes and
14 does errands, and things like that for us, but he
15 was staying out in the van there in the parking lot.

16 Q. Now, why was he staying in the van in
17 y'all's parking lot?

18 A. He had a home, but he's got an aunt
19 that he doesn't like, so he'll go home sometimes,
20 and stay there sometimes; but he watches out for the
21 place when he's there.

22 Q. Did Tim King have permission to let
23 anyone into Workman Oil that night?

24 A. Oh, no, ma'am.

25 Q. Was anyone supposed to be in the

1 business that night?

2 A. No, ma'am. The only one that has keys
3 is me and my dad.

4 Q. Now, do you know who was in the
5 business that night?

6 A. No one. Well, there wasn't supposed to
7 be.

8 Q. Now, as owner, do you know if any
9 damage was done to the buildings there?

10 A. Just the -- the window.

11 Q. And was it like that when you left the
12 night before?

13 A. No, ma'am.

14 Q. And what kind of window is that?

15 A. It's a plexiglass. It used to be glass
16 until it was broken several other times.

17 Q. And so with a plexiglass window, how
18 did an individual remove it?

19 A. Just -- you can -- it's very easy to
20 pop out, uh-huh.

21 Q. Now, Wendy, who is Michael Mobley?

22 A. The -- the -- guy in the Courtroom.

23 Q. Are you familiar with him?

24 A. Somewhat, yes.

25 Q. Are you familiar with another incident

1 in March 2020 --

2 A. Yes, ma'am.

3 Q. -- that involved Mr. Mobley?

4 A. Uh-huh.

5 Q. What do you know about that incident?

6 A. That incident, he broke in several
7 times that week, but they got him that night.

8 MR. DUNN: Objection, I think there's more
9 -- there's more contained in that sentence than just
10 March the --

11 THE COURT: I'm going to sustain the
12 objection to the other incidents.

13 BY WITNESS:

14 A. Oh okay.

15 THE COURT: Absent any further foundation
16 from the State.

17 BY MS. IMLER:

18 Q. Wendy, how did he break into Workman
19 Oil on March the 1st?

20 A. The same way, through the same window.

21 Q. Did he take anything from Workman Oil?

22 A. Yes.

23 Q. What did he take?

24 A. Cigarettes, 12-packs of drinks, chips,
25 Gatorades. He even got bags out from underneath the

1 counter to put things in, so it was a good bit of
2 stuff, toilet paper.

3 Q. Did you get any of those items back?

4 A. We did. We did get a few.

5 MS. IMLER: Wendy, I don't have any more
6 questions for you right now, but if Mr. Dunn does,
7 please answer them for him.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Dunn?

10 MR. DUNN: May it please the Court, Your
11 Honor.

12 * * * * *

13 **CROSS-EXAMINATION**

14 * * * * *

15 BY MR. DUNN:

16 Q. There's video recording devices at --
17 at Workman Oil?

18 A. Yes.

19 Q. Are they on the inside, outside, or
20 both?

21 A. Both.

22 Q. All right. And on the inside, where
23 are they in the building?

24 A. They are through the office, through
25 the bay, everywhere.

1 Q. How many cameras are on the inside; do
2 you know?

3 A. Oh, I've probably got two, four,
4 probably six in the inside.

5 Q. And when we say inside, there's like a
6 little office, and there's a bay, right? There's --

7 A. Yeah, there's a two-gar -- car bay
8 there, uh-huh.

9 Q. I'm assuming there's a bathroom and
10 some storage there in there, too?

11 A. The bathroom's on the outside of the
12 building.

13 Q. As far as on the inside and on the
14 office, there's a -- there's a camera in the office?

15 A. Yes.

16 Q. All right.

17 A. There's two.

18 Q. And I believe the testimony -- I
19 believe you were in here, the testimony from
20 Detective Olson was back in March of 2020, they
21 actually looked at some video?

22 A. Yes.

23 Q. I'm assuming you helped provide that to
24 them?

25 A. Yes.

1 Q. And that's where -- and -- and you were
2 able to see what was going on in the building?

3 A. Uh-huh, exactly.

4 Q. On the outside, where are the video
5 cameras?

6 A. They're facing the bays. They're
7 facing the gas pumps. The whole parking lot's
8 covered.

9 Q. I guess what I should --

10 A. Front and back.

11 Q. I'm sorry, let me ask it this way. If
12 -- if you're looking your -- your video camera
13 display feed, can you -- on one of your video
14 cameras can you actually see the bay door?

15 A. Right, yes.

16 Q. And when you're looking at the bay
17 feed, or your video feed, you can actually see what
18 goes on in the office?

19 A. Yes.

20 Q. It's not a very big office, right?

21 A. No.

22 Q. It's a pretty small --

23 A. Uh-uh.

24 Q. And there's a counter in there, right?

25 A. Yes. It's a desk and a little counter

1 that holds the gas computer.

2 Q. When you walk in from the -- from the
3 garage, I think there's a door to the outside on you
4 right-hand side, right?

5 A. Uh-huh.

6 Q. And next to that in between the wall
7 and door I think is where you keep your snacks and
8 your chips; is that right?

9 A. No, that's the air conditioner back
10 there. You have to actually come on into the
11 office, and right in front of the desk the chips are
12 over to the left of -- would be on the left of you.

13 Q. Coming in from the bay?

14 A. Uh-huh.

15 Q. And then I think there's like a desk,
16 or something?

17 A. Yeah.

18 Q. All right.

19 A. Uh-huh.

20 Q. And the desk is where you're sitting.
21 There's lots of papers and --

22 A. Yes.

23 Q. -- all that stuff in there, right?

24 A. Yes.

25 Q. And December the 9th, did you ever show

1 any video from what happened inside that to the
2 Police Officers?

3 A. December the 9th?

4 Q. The video where --

5 A. Yes, he did -- they did review the
6 video.

7 Q. Did they take it with them?

8 A. Shoot, I think they did, I'm not real
9 sure. We couldn't get it to program ourself, so it
10 must have been -- I think it was the day that I was
11 off, but I'm pretty sure somebody come up there from
12 the Police Department and got the -- got it.

13 Q. So you never gave the video to the
14 Police Officers?

15 A. No, I showed them the video, but then
16 we couldn't, like I said, couldn't get it to tape,
17 so they come back.

18 Q. And if we're looking in those videos,
19 we would see what a person does inside the bay as
20 well, correct?

21 A. Right, correct.

22 Q. If someone's walking around the bay, we
23 could see that?

24 A. Right, yes.

25 Q. If somebody walks into an office, we

1 could see that?

2 A. Yes.

3 Q. All right, and as far as December 9th,
4 you weren't there, so what happened you -- I mean
5 you can only go off of what you see on --

6 A. Correct.

7 Q. -- video, or what people tell you,
8 right?

9 A. Yeah.

10 Q. The same with this March the 20th of
11 last year, you weren't there, right?

12 A. No, I was not there.

13 Q. Did you come to Court for that?

14 A. No, uh-uh.

15 Q. So what, you know, as far as the
16 outcome of what happened with all that, you're just
17 going off of what other people told you?

18 A. As far as what?

19 Q. How that case was resolved? Somebody
20 told you it was resolved, and -- but you didn't --
21 you weren't actually in this room or the room next
22 door watching it?

23 A. No, I was not.

24 MR. DUNN: All right, Your Honor, I
25 don't --

1 BY MR. DUNN:

2 Q. You mentioned a bag. Was -- was that
3 bag from the March 9th incident?

4 A. I'm not sure. I haven't heard anything
5 about a bag --

6 Q. I thought you said --

7 A. -- at this time.

8 Q. I thought you said there was some bag
9 underneath the counter, or --

10 A. Oh, he had grabbed some -- we have --
11 we keep like little grocery bags for customers, if
12 they get like several drinks, and he had grabbed
13 bags from underneath there to put his stuff that he
14 got in there.

15 Q. This is back in 2020 though, right?

16 A. Right, yes. He didn't make it into the
17 office this last time.

18 Q. I was driving by your office the other
19 day, there's a sign out on the sign -- on the side
20 -- on the Saluda side that says, "Police Impound
21 Lot."

22 A. Uh-huh.

23 Q. Do y'all still do Police impound?

24 A. We do.

25 Q. And they bring their cars to them all

1 the time, or sometimes?

2 A. Who?

3 Q. The Police.

4 A. We do the City's and Highway Patrol and
5 County rotation.

6 Q. And you're still on that rotation?

7 A. Yes.

8 MR. DUNN: I don't have any further
9 questions, Your Honor.

10 THE COURT: All right. Anything from the
11 State?

12 MS. IMLER: No redirect, Your Honor, just
13 that this witness may be allowed to step down.

14 THE COURT: All right. Thank you, ma'am,
15 you can step down.

16 WITNESS: Thank you.

17 MS. IMLER: Your Honor, I believe this
18 witness may wish to be excused.

19 THE COURT: Any objection, Mr. Dunn, to
20 excusing this witness?

21 MR. DUNN: Are you talking about Ms.
22 Mobley? I mean she's the victim, she can come or go
23 as she pleases.

24 THE COURT: Ms. Shaner, I think, yeah.

25 MR. DUNN: Or -- or, I'm sorry, Ms. Shaner.

1 I mean I have no objection. I think, as a victim,
2 she's entitled to be here or not, Your Honor.

3 MR. EPTING: Your Honor, I believe she's
4 going to exercise her right to be excused.

5 THE COURT: All right. The State can call
6 your next witness.

7 MS. IMLER: If we can have a brief moment
8 to chat with my co-counsel, Your Honor.

9 MR. EPTING: Beg the Court's indulgence.

10 THE COURT: Certainly.

11 MS. IMLER: Your Honor, at this time the
12 State calls Officer Austin to the stand.

13 THE COURT: All right. Officer Austin,
14 you're still under oath, you can just have a seat.

15 * * * * *

16 **Officer Thomas Austin,**

17 **previously sworn,**

18 **testifies as follows:**

19 * * * * *

20 MR. EPTING: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 MR. EPTING: Madam Court Reporter, our
23 previous exhibit, what was -- how was that marked?

24 THE COURT: Two.

25 MR. EPTING: Two?

1 THE COURT: Yeah, State's 2.

2 * * * * *

3 DIRECT EXAMINATION

4 * * * * *

5 BY MS. IMLER:

6 Q. Hello there, Officer Austin.

7 A. Good morning.

8 Q. I want to talk a little bit more about
9 what happened on December 9, 2021. Walk us through
10 what happened at Workman Oil.

11 A. We arrived on-scene after getting a 911
12 call for burglary to a business. I spoke briefly
13 with the Complainant, the initial caller. Observed
14 the glass missing, being pushed out of the bottom
15 level of the windows on the bay door. We crawled
16 through. Mr. Mobley was inside. We detained him,
17 we escorted him out.

18 Q. Now, were you equipped with body-worn
19 camera on December 9th, 2021?

20 A. Yes, ma'am.

21 Q. Would you recognize footage from that
22 if I showed it to you?

23 A. Yes, ma'am.

24 MS. IMLER: Your Honor, I am showing
25 opposing counsel what's been pre-marked for

1 identification purposes, as State's Exhibit 3.

2 MR. DUNN: I'll trust her, Your Honor.

3 THE COURT: All right.

4 MS. IMLER: May I approach the witness?

5 THE COURT: You may.

6 BY MS. IMLER:

7 Q. Officer Austin, what have I just handed
8 you?

9 A. The disk containing my body camera.

10 Q. And how do you know that?

11 A. I've watched it and signed it.

12 Q. And is it a fair and accurate copy of
13 your body camera?

14 A. Yes, ma'am, it was on my chest.

15 MS. IMLER: Your Honor, at this time the
16 State moves to enter Exhibit 3 into evidence.

17 THE COURT: Any objection, Mr. Dunn?

18 MR. DUNN: Your Honor, I would object. I
19 -- I think that whatever is contained on his body-
20 cam he can testify to and then be subject to cross-
21 examination. I'm not sure how it really adds to the
22 trial at all.

23 THE COURT: I'm going to overrule that
24 objection. State's 3 is admitted over objection.

25 (Whereupon, State's Exhibit Number 3 is premarked

1 and entered into the record without objection.)

2 MR. EPTING: Permission to publish, Your
3 Honor?

4 THE COURT: You may publish.

5 BY MS. IMLER:

6 Q. Officer Austin, I just want to watch
7 the beginning of this video with you so we can all
8 see exactly what you observed that night.

9 MR. DUNN: Can I inquire as to whether or
10 not we're watching the entire hour and a half of his
11 body-cam, or just bits and pieces of it?

12 MS. IMLER: Your Honor --

13 MR. DUNN: Just bits and pieces? Okay. I
14 just --

15 MS. IMLER: Just bits and pieces. I value
16 your lunchbreak, Jeff.

17 MR. EPTING: All right, with the Court's
18 permission I'm going to start it at 1:56.

19 (VIDEO WAS PLAYED IN COURTROOM)

20 MR. DUNN: Your Honor, just one second.

21 THE COURT: Okay.

22 MR. DUNN: At some point he makes -- this
23 witness makes what I would consider a hearsay
24 statement that it -- it's probably also a Lyles
25 violation, so I -- I mean that's -- and I don't know

1 if we're going to go over that part of the video or
2 not as we're watching through this, but he -- he --
3 he identifies Mr. Mobley at some point and makes
4 some comments about Mr. Mobley. And I would argue
5 that that -- what's contained in that statement on
6 this video would -- would be hearsay.

7 THE COURT: I mean what -- what does he
8 say?

9 MR. DUNN: As trier of the law, what he
10 says is, "I mean he's been in this building before,
11 this ain't his first time," or something along those
12 lines, where it implies -- I mean it's a Lyles type
13 of violation, where it's prior bad acts of -- of Mr.
14 Mobley being inside the business.

15 THE COURT: Is it right now, or is it after
16 the Officers come back out with Mr. Mobley in
17 custody?

18 MR. DUNN: No, Your Honor, it's -- it's in
19 there somewhere. I just wanted the Court to be
20 aware of that, and I -- I would consider that part
21 of this video to be an objection, Your Honor.

22 THE COURT: Okay, but I mean I -- I --
23 without knowing anymore, I will sustain that
24 objection, but let's just -- Ms. Imler, do you know
25 the top -- part he's talking about?

1 MS. IMLER: Your Honor, I believe that is
2 after what we intend to introduce at this time.

3 THE COURT: Okay, that wasn't --

4 MS. IMLER: If it does come up in the parts
5 that we are intending to introduce, because I know
6 there are some side conversations, I'm happy for Mr.
7 Dunn to re-raise his objection.

8 THE COURT: Okay, go ahead and play it,
9 yeah.

10 (VIDEO PLAYED IN COURTROOM)

11 BY MS. IMLER:

12 Q. All right, so just a few questions
13 about we just saw. Why were y'all looking around
14 the building with flashlights?

15 A. See if we saw anything -- anybody
16 inside through the windows.

17 Q. And why did you ask if there was a back
18 door?

19 A. To see if there's another route to get
20 out of the business.

21 Q. Now, how'd you eventually get into
22 Workman Oil?

23 A. Crawled through the window, the same
24 way Mr. Mobley did.

25 THE COURT: Officer, I'm not sure the

1 microphone is picking you up. Can you sit a little
2 closer to the mic?

3 BY WITNESS:

4 A. I crawled through the window --

5 THE COURT: That's better.

6 BY WITNESS:

7 A. I crawled through the window the same
8 way Mr. Mobley did.

9 Q. And did anyone else crawl through after
10 you?

11 A. Not initially, but once they heard me
12 giving the Defendant commands, then they followed --
13 they filed in.

14 Q. Now, I'd like to direct your attention
15 back to Exhibit 3. We'll play Exhibit 3.

16 (VIDEO PLAYED IN THE COURTROOM)

17 BY MS. IMLER:

18 Q. All right, so we saw you have to pull
19 him from underneath that car, right?

20 A. Yes, ma'am.

21 Q. And what'd you ask him several times?

22 A. Stand up, show me your hands, give me
23 your hands.

24 Q. And at what point --

25 A. I just asked him the first time,

1 "What's your name?"

2 Q. At what point did he give you his
3 hands?

4 A. When I reached underneath his body and
5 pulled his hands out.

6 Q. And what did you tell him about why
7 y'all were called out?

8 A. I told him exactly why we were called
9 out there for, burglary to the business, and he's
10 inside the business that's closed, and the owner's
11 not there.

12 Q. And at that point did you detain him?

13 A. Absolutely.

14 Q. And after you detained him, what
15 happened next?

16 A. I could visibly see a knife, so just
17 for safety reasons, I removed the knife from his
18 person. And then I believe that was Officer Adkins,
19 she finished clearing the rest of the business to
20 make sure no one else was inside.

21 Q. And where'd you take him after you
22 detained him?

23 A. Up to my -- I believe we -- we were
24 going to try to take him out that front door, but I
25 believe we ended up opening that garage door, and

1 taking him out that garage door.

2 Q. Did you ask him anything after you
3 detained him?

4 A. "What's your name?"

5 Q. Did he answer you?

6 A. No, ma'am.

7 Q. What happened after that?

8 A. Walked him outside. We kept talking to
9 him, I tried talking to him, other Officers tried
10 talking to him to figure out who he was, what he was
11 doing, all that sort of stuff.

12 Q. And is that procedure for y'all?

13 A. Absolutely. It's an ongoing
14 investigation at that point.

15 Q. And after y'all finally got his name,
16 what happened after that?

17 A. We saw the prior burglary that we've
18 already discussed, and determined his intent, with
19 it being the same business, the same method of
20 entry, that sort of thing, and placed him under
21 arrest for not identifying himself, and for the
22 burglary.

23 Q. Now, I want to talk a little bit about
24 this individual that you arrested. Did you
25 encounter Michael Mobley that night?

1 A. Yes, ma'am.

2 Q. Is he present in the Courtroom?

3 A. Yes, ma'am.

4 Q. Can you point him out to us, and
5 identify what color he's wearing, for the record?

6 A. The Defendant with the yellow YCDC
7 jumpsuit.

8 MS. IMLER: Let the record reflect that
9 this witness has identified the Defendant as Michael
10 Mobley.

11 THE COURT: Record will so reflect.

12 BY MS. IMLER:

13 Q. Now, earlier, you mentioned you
14 regularly work in this area?

15 A. Yes, ma'am.

16 Q. And do you know about a -- about where
17 [REDACTED] East Moore Street is?

18 A. Yes, ma'am.

19 Q. How far is that from Workman Oil?

20 A. It's within a half mile.

21 Q. And you mentioned that you arrested Mr.
22 Mobley. When you arrest defendants, they normally
23 list an emergency contact on the report?

24 A. Yes, ma'am, they list an emergency
25 contact and their home address or where they receive

1 mail.

2 Q. Did this Defendant list an emergency
3 contract -- contact?

4 A. Yes, ma'am.

5 Q. Did you have an opportunity to review
6 that before trial today?

7 A. I believe it was his grandmother, and
8 she lives in the [REDACTED] block of East Moore Street.

9 MS. IMLER: Thank you, Officer Austin,
10 please answer any questions that Mr. Dunn has for
11 you.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: I just -- Officer, I just had
14 one question.

15 BY WITNESS:

16 A. Yes.

17 Q. I -- I thought I heard on the video
18 that -- as you were pulling the Defendant up, that
19 he said he worked at the business; did I hear that
20 correctly?

21 A. Yes, sir.

22 Q. Okay.

23 MR. DUNN: May it please the Court, Your
24 Honor?

25 THE COURT: Yes, sir.

* * * * *

CROSS-EXAMINATION

* * * * *

BY MR. DUNN:

Q. So you got him out of the front of the police car, correct -- or out -- you got him out from underneath the front of the car that was in the --

A. Yes, sir.

Q. -- the bay.

A. I wouldn't say he was completely underneath it, but he was sort of underneath it.

Q. And it sounded like when y'all -- when you first went in there, it sounded like there was music playing, right?

A. Very loud music.

Q. Very loud music, which leads me back to the question I had with you before, during our proffer, when -- when you said that -- that -- you said that somebody could have heard what you were talking with -- talking about with -- with Mr. Tim when he came and met with you.

A. Yes, sir.

Q. The reality is, there was a lot of music going on inside, that would, quite frankly,

1 interfere with what's going on -- it would interfere
2 with the ability of the person to -- would interfere
3 with the person's ability to hear what was going on
4 inside the building, right?

5 A. It would also interfere with the
6 person's ability to sleep, as well, sir.

7 Q. Do you have teenagers?

8 A. No, sir.

9 THE COURT: Officer, what was the source --
10 I should have asked that earlier, what was the
11 source of the music that we heard on the video?

12 BY WITNESS: I believe they have some sort
13 of stereo system inside that business for -- I guess
14 when they're working on cars, but I'm not 100
15 percent sure.

16 THE COURT: Thank you.

17 BY MR. DUNN:

18 Q. The police report that we have seen
19 generated in this, are -- are you the one that
20 generated that police report, or is that somebody
21 else that started that and you just added to it?

22 A. No, sir, me and Officer Adkins both
23 worked on that police report.

24 Q. Because I think you're listed as the
25 case agent, right?

1 A. Yes, sir.

2 Q. And a -- a part of it, there's a --
3 there's a part of it that says, "Summary." Is that
4 your doing, or somebody else's doing?

5 A. The General Sessions manual?

6 MR. DUNN: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes, sir.

9 BY MR. DUNN:

10 Q. I'm -- I'm giving you what -- what has
11 been given to me by the Solicitor's Office.

12 A. No, absolutely.

13 Q. Do you agree this -- this particular
14 says one of three, two of three, and three of three.

15 A. (Reviews document.) Yes, sir. I -- I
16 typed this narrative.

17 Q. All right, and the -- I just want to
18 direct your attention to the bottom of the second
19 page, and it might be picked up (inaudible) for
20 example. The bottom of the page is marked two of
21 three. At the very -- I think it might, in fact, be
22 the last line. It says something about, "He
23 identified himself as Mike, and then he identified
24 himself as Mike Mobley;" is that right?

25 A. Yes, sir.

1 Q. All right. And that was done before --
2 that was voluntarily done by him, correct?

3 A. Yes, sir.

4 Q. Okay. I want to make sure. It's fair
5 to say that he was very uncooperative at the
6 beginning, right?

7 A. Absolutely.

8 Q. But by the end of him being in
9 handcuffs, he -- he -- he gave you the information
10 you needed to run his background?

11 A. By then.

12 Q. All right. And we -- the video
13 disappeared, we -- we turned the video off, but it's
14 -- you can leave it off, you can leave it off. It
15 doesn't take that long before after all this for you
16 -- you take him to the Police Station pretty
17 quickly, right?

18 A. Yes, sir.

19 Q. And I think I asked you this before,
20 but I just want to make sure we're clear. You don't
21 do any further investigation at the scene once you
22 take him to -- to the Police Station, right?

23 A. I myself do not.

24 Q. Right. And they call a detective, and
25 there's some --

1 A. I believe Officer Adkins did the
2 investigation at the scene since we already had the
3 sub -- the suspect in custody.

4 Q. And there -- there was a whole bunch of
5 cops there that night, right?

6 A. Yes, sir.

7 Q. But that was no longer your problem,
8 your problem was taking him to the --

9 A. Yes, sir.

10 Q. -- Police Station? All right. And I
11 believe your testimony earlier in the proffer was,
12 just that you had -- you'd hadn't had prior dealings
13 with Mr. Mobley?

14 A. No, sir, I don't believe I have, not
15 that I can recall.

16 Q. All right.

17 MR. DUNN: I don't have any further
18 questions for the Officer, Your Honor.

19 THE COURT: Any redirect.

20 MS. IMLER: None, Your Honor, we just ask
21 that this witness may be allowed to step down.

22 THE COURT: All right, you can step down.

23 Thank you, sir. Ms. Imler, it's still only 20
24 minutes to 12:00. I would say call your next
25 witness, unless it's going to be a very lengthy one.

1 MS. IMLER: I don't believe it should be
2 too lengthy, Your Honor.

3 THE COURT: Okay.

4 MS. IMLER: The State calls Officer Adkins
5 to the stand.

6 MR. DUNN: Yeah, we weren't given the
7 witnesses. How many witnessed do we -- are we going
8 to have?

9 THE COURT: They -- they gave me a witness
10 list. Mr. Dunn, here you go.

11 MR. DUNN: I just -- I don't need it, I
12 just want to know.

13 MS. IMLER: We've only got six, Your Honor.

14 MR. DUNN: It's Your Honor's Courtroom, you
15 can just power through as long as you need to, Your
16 Honor.

17 THE COURT: You mean rather than -- yeah.

18 MR. DUNN: It's your Courtroom, I'm in no
19 rush for break is all I'm saying.

20 THE COURT: All right, that -- yeah.

21 * * * * *

22 **Officer Taylor Adkins,**
23 **having been duly sworn,**
24 **testifies as follows:**

25 * * * * *

Q. Did you become involved in the investigation at Workman Oil on December 9th, 2021?

1 A. Yes, ma'am.

2 Q. I'd like you to walk us through that
3 night. Why'd you go out to Workman Oil?

4 A. We got a call for service in reference
5 to a burglary to the business. Arrived on-scene,
6 got out of my car, heard music coming from the
7 business. I observed that one of the garage bays
8 had an open window, it appeared to have been
9 removed. I then started looking around the
10 business, checking to see if I could see anybody
11 inside. We saw the caller. He came out and talked
12 to us, explained to us what he saw or saw and heard.
13 Myself and Officer Austin continued speaking with
14 him, and then Officer Austin went through the
15 window. As Officer Austin was going through the
16 window, I heard him start speaking to someone. He
17 told that subject to show him his hands. I then
18 directed Officer Austin's trainee to enter the
19 building behind him, and that is when I entered
20 behind them. The -- we then continued telling the
21 subject to show us his hands. At that time, Officer
22 Austin was able to grab his arms, and we were able
23 to get him detained. I then moved to behind Officer
24 Austin and cleared a room that was in the back
25 behind them. I came back out. We were able then to

1 get the subject to the front of the garage door, and
2 I tried to see if the front door was open, it was
3 not. We then opened the garage door, got him
4 outside, began talking to him. I asked him what his
5 name was several times, he would not tell me.
6 Ultimately, I told him he was going to be placed
7 under arrest. And then Officer Austin began
8 speaking with him, trying to get his name. He
9 eventually told us his name was Mike Mobley.
10 Officer Austin specified, "Is it Michael Mobley?"
11 He said, "Yes." He was able to locate that name in
12 the system. I then began taking pictures of the
13 incident scene, the windowpane, where we located him
14 in the business, and then I stood by for the
15 business owner to get on-scene, and I got witness
16 statements, and the victim's statement.

17 Q. Now, were you wearing body-worn camera?

18 A. Yes, I was.

19 Q. Was it capable of capturing audio,
20 video and still photography at that time?

21 A. Yes.

22 Q. Would you recognize those -- have you
23 reviewed those photos prior to trial?

24 A. Yes, I have.

25 Q. Would you recognize one if I showed it

1 to you?

2 A. Yes, ma'am.

3 MS. IMLER: Your Honor, at this time I'm
4 approaching opposing counsel with what has been pre-
5 marked, for identification purposes, as State's
6 Exhibit 4.

7 THE COURT: All right.

8 MS. IMLER: May I approach the witness?

9 THE COURT: You may.

10 BY MS. IMLER:

11 Q. And, Officer Adkins, what have I just
12 handed you?

13 A. A picture of the garage bay with the
14 open window.

15 Q. And how do you know that?

16 A. It's off of my body-cam footage.

17 Q. Is it a fair and accurate
18 representation of a still shot from your body-cam
19 footage on December 9th, 2021?

20 A. Yes.

21 MS. IMLER: Your Honor, at this time, the
22 State moves to enter Exhibit 3 into evidence.

23 THE COURT: Any -- Exhibit 4 I think
24 actually, right?

25 MS. IMLER: Yes, Your Honor.

1 THE COURT: Okay. Any objection?

2 MR. DUNN: No, sir.

3 THE COURT: Entered into evidence without
4 objection, State's 4.

5 (Whereupon, State's Exhibit Number 4 was pre-marked
6 and entered into evidence without objection.)

7 BY MS. IMLER:

8 Q. And, Officer Adkins, where was this
9 window?

10 A. It was in the middle of the building at
11 the bottom of the garage door bay, so you could see
12 it directly as soon as you stood in front of the
13 building.

14 Q. Do you know how this window was
15 removed?

16 A. It appeared to be pushed out, like it
17 was pushed in.

18 Q. Now, how'd y'all approach that window?

19 A. We walked straight towards it. As far
20 as like going in, or --

21 Q. Sure, how did you get in?

22 A. We had to get down on our hands and
23 knees and crawl through.

24 Q. And you mentioned earlier that you
25 followed Officer Austin and his trainee in?

1 A. Yes.

2 Q. And once you got inside, what'd you
3 see?

4 A. There -- tool stuff everywhere, the
5 subject laying on the floor. I heard the music, it
6 was even louder. Then when I went into the -- the
7 room behind Officer Austin, there was stuff
8 everywhere.

9 Q. And you mentioned that you cleared a
10 room.

11 A. Yes.

12 Q. What does that mean?

13 A. Made sure that it was save, there was
14 no other persons inside, no weapons available.

15 Q. And was the Defendant the only person
16 inside?

17 A. Yes.

18 Q. Now, Officer Adkins, did you encounter
19 a Michael Mobley that night?

20 A. Yes.

21 Q. Is Michael Mobley present in this
22 Courtroom?

23 A. Yes.

24 Q. Can you identify him for us, specifying
25 what color shirt he's wearing?

1 A. He's sitting right over there with the
2 yellow shirt on.

3 MS. IMLER: Let the record reflect that
4 this Officer has identified the Defendant as Michael
5 Mobley.

6 THE COURT: The record will so reflect.

7 MS. IMLER: Officer Adkins, I don't have
8 any further questions for you at this time, but
9 please answer anything that Jeff Dunn may have for
10 you.

11 THE COURT: Mr. Dunn?

12 MR. DUNN: May I confer with my co-counsel
13 for a second, Your Honor? They marked an exhibit,
14 but didn't move it. I was just making sure that
15 they didn't miss it, Your Honor, I was just --

16 THE COURT: Uh-huh.

17 MR. DUNN: A professional courtesy.

18 * * * * *

19 **CROSS-EXAMINATION**

20 * * * * *

21 BY MR. DUNN:

22 Q. Is it fair to say that that music that
23 was playing inside the bay was really loud?

24 A. Very loud.

25 Q. It sounded like, and it -- would it be

1 fair to characterize it that whatever that music was
2 inside the bay would -- would have muffled any
3 voices that were -- would have been outside the bay,
4 i.e., you and the other Officers talking?

5 A. As far as voices, I don't know.

6 Q. You would not be surprised, though, if
7 -- if that music inside kept whoever was inside the
8 building from hearing what y'all are talking about
9 outside, right?

10 A. I -- I do not know. I'm --

11 Q. Now, the -- the Solicitor asked you
12 whether the window looked like it had been removed.
13 Do you know when it was removed?

14 A. I couldn't give you a time. I assumed
15 it was when we got called.

16 Q. But you -- you didn't see it get
17 removed, correct?

18 A. No.

19 Q. Okay. And I think at some -- were you
20 -- were you with Officer Austin when he was
21 questioning Mr. Mobley about his name and trying to
22 get that information out of him?

23 A. At what point?

24 Q. When y'all were outside and he was --
25 Mr. -- and the Officer was trying to run the

1 information in the computer, were you -- were you
2 there?

3 A. I was in passing.

4 Q. Okay. Did you hear Mr. Mobley say his
5 name was Mike Mobley?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes, sir.

9 Q. Did you hear Officer Austin ask about a
10 middle name?

11 A. I don't recall.

12 Q. All right.

13 MR. DUNN: No further questions, Your
14 Honor.

15 THE COURT: I just had one. Officer
16 Adkins, when y'all arrived at the scene, did you
17 have your blue lights on, or were you kind of lights
18 off, trying to sneak up on the -- the scene?

19 BY WITNESS: I -- I do not recall having my
20 lights initiated at that time.

21 THE COURT: Okay, but your headlights would
22 have been on, so someone in the building would have
23 seen headlights probably, but not blue lights?

24 THE WITNESS: Uh-huh.

25 THE COURT: Okay.

1 MR. DUNN: I have one --

2 THE COURT: Anything else from --

3 MR. DUNN: -- more question.

4 BY MR. DUNN:

5 Q. What number officer were you in
6 response? Were you the first officer, second
7 officer, third officer?

8 A. I would be considered third officer. I
9 was the second primary officer. I was a FTO.

10 Q. And I don't -- I don't mean for -- I'm
11 just meaning on -- on-scene.

12 A. As far as -- I was second on-scene.

13 Q. Was Officer Austin the first one on-
14 scene?

15 A. Yes.

16 Q. All right, and you were number two?

17 A. Uh-huh.

18 Q. And there was a whole bunch after that,
19 right?

20 A. Yes.

21 Q. Okay.

22 THE COURT: Anything from the State?

23 MS. IMLER: Nothing further, Your Honor,
24 just that this witness would be allowed to step
25 down.

1 THE COURT: All right, any objection, Mr.
2 Dunn?

3 MR. DUNN: No, sir.

4 THE COURT: All right, thank you, ma'am,
5 you can step down.

6 MR. EPTING: Your Honor, the State would
7 ask permission to recall Wendy Shaner for a very,
8 very brief few questions.

9 THE COURT: Any objection, Mr. Dunn?

10 MR. DUNN: Is she still here?

11 MR. EPTING: She is. She stuck around
12 after all.

13 THE COURT: You may recall her.

14 MR. DUNN: May I inquire as to what the
15 manner of the recall is since she's already
16 testified?

17 THE COURT: What -- what's the topic, Mr.
18 Epting?

19 MR. EPTING: I'm going to clarify that he
20 was not in fact an employee, nor did he have
21 permission to be in the business.

22 THE COURT: Any objection, Mr. Dunn?

23 MR. DUNN: I think I've already consented
24 to him not being -- having permission to be there,
25 so I -- I don't know what else I could do to help.

1 THE COURT: It's -- it's -- it's stipulated
2 to.

3 MR. DUNN: I don't know what else I could
4 do to help speed this along.

5 THE COURT: Yeah.

6 MR. EPTING: With that stipulation, I
7 believe that we may not need her after all.

8 MR. DUNN: I -- I mean I -- I told the
9 Court from the beginning, this is a one-issue
10 matter, as far as I'm concerned.

11 MR. EPTING: Thank you for that
12 stipulation.

13 MS. IMLER: Your Honor, at this time the
14 State rests.

15 THE COURT: All right. Mr. Dunn, any
16 motions?

17 MR. DUNN: I do have a -- a motion for a
18 directed verdict, Your Honor.

19 THE COURT: All right.

20 MR. DUNN: And I suspect that my motion for
21 a directed verdict is going to sound a lot like my
22 jury argument, or my closing argument, at some
23 point, but, Your Honor, I've -- I've always
24 maintained we -- we went to a pre-conference last
25 week, and we were here this morning, and I always

1 maintained that, you know, just three issues to the
2 burglary, you've got to be -- you have to be
3 somewhere without permission, which we have
4 consented to. This happened at nighttime, and we
5 consent to it. I mean you can see it on the video
6 that this happened at nighttime. It's always been
7 that third prong of a burglary that has not been met
8 by the State, and that goes to it. And the State is
9 trying to do that with getting in his prior bad act,
10 which is that March 20th of 2020 arrest and
11 conviction from -- from this same -- same building,
12 and -- and, you know, and -- and their argument is,
13 basically, that he didn't have a chance to do
14 anything. I would point the Court's attention to
15 that they still haven't met that burden, and we
16 haven't made it to the past a -- a legal issue, let
17 alone a factual, you know, fact-finder issue. All
18 they have for evidence to -- to satisfy that third
19 prong is a prior conviction. They don't have any
20 testimony from what happened that night. They don't
21 have any evidence, or any testimony, or -- excuse
22 me, any evidence from other things that could be
23 presented to the Court to show intent. And -- and,
24 specifically, what I point the Court's attention to
25 is when Detective Olson testified earlier, at -- as

1 a proffer for the -- the prior bad act, he stated
2 there was video. He said he watched video. He said
3 that he saw Mr. -- Mr. Mobley crawling around. He
4 saw him go into the office. He, you know, he saw
5 him on video and do things. And we asked Ms. Shaner
6 -- Workman-Shaner this time, I did, whether or not
7 there's video, and she said, "Yes," but we haven't
8 seen any video. And so at the end of the day
9 there's simply isn't any -- there's evidence that
10 could have been presented by the State, that would
11 help, you know, to -- to make this get to a trier of
12 fact and make a determination. And as a result, the
13 only evidence that they have, at this point, is a
14 piece of paper for a prior bad act, and that just
15 doesn't rise to the level of meeting that third
16 prong of intent. And so when you -- when you --
17 when you can't even produce evidence or -- or a
18 sufficient amount of evidence to get past all three
19 prongs, DB is -- is the appropriate response from
20 the Court. And I would just argue that we don't
21 have that -- we don't have that third argument --
22 that third prong, Your Honor. This is still a
23 glorified trespassing. He -- what he was doing was
24 not right, it happened at nighttime, we concede
25 that, but that's not the, you know, trespassing is

1 not the same as burglary, Your Honor, and the
2 evidence just isn't there for it.

3 THE COURT: All right, Mr. Epting?

4 MR. EPTING: Your Honor, the standard,
5 especially for a DB is like most favorable to the
6 State. What we presented to the Court as far as
7 intent, he breaks into a business where goods are
8 stored at night. We know that he knows goods are
9 stored at night, because he's pled guilty to
10 stealing those before. I bring the Court's
11 attention to how he was found inside that building.
12 He was not walking around as though he thought he
13 was okay. It appeared to me that -- that he was
14 hiding from Officers. He was uncooperative when
15 they talked to him as far as giving them his hands,
16 or telling who he was at first. Your Honor, I
17 believe that case law states that once he breaks
18 into a place where goods are stored, especially at
19 night, the common sense -- the common-sense
20 implication from that is that they're there to take
21 the goods, especially, that's true where a stranger
22 breaks into a place where goods are stored, but
23 especially a -- a savvy person, who knows that those
24 goods are stored there. I mean certainly we can --
25 certainly for probable cause purposes, we continue

1 -- we contend for beyond a reasonable doubt for
2 fact-finding purposes that he intended to steal when
3 he went in there. Why else break through the window
4 in order to get into that place at night?

5 THE COURT: What's the reference for that,
6 the -- the case law?

7 MR. EPTING: I apologize, I don't have that
8 ready on -- on-hand, Your Honor, but I can very
9 quickly find it.

10 THE COURT: Okay. Well, I -- given that
11 and to view the light in the evidence most favorable
12 to the State, I'm going to deny the motion for a
13 directed verdict. Mr. Dunn?

14 MR. DUNN: If you will give -- I mean I'm
15 going to ask the Court what the Court wants to do,
16 it's almost noon. I -- if I have a witness, it's
17 going be Mr. Mobley, and it won't be very long; but
18 I need to talk to him just for a couple minutes to
19 see if he wants to testify or not. I mean that's
20 certainly a right he has anyways. My goal has
21 always been to make this a short trial, because I,
22 you know, so it's not using up --

23 THE COURT: My inclination would be to go
24 ahead and talk to him now, and see -- see where we
25 are, and then so --

1 MR. DUNN: And then -- because I'm --
2 again, I'm just trying to use the best Court --

3 THE COURT: No, I understand.

4 MR. DUNN: -- Court's time, Your Honor.
5 And with your Court's permission, I'll --

6 THE COURT: Absolutely.

7 MR. DUNN: I'll go back there.

8 THE COURT: Absolutely, absolutely.

9 MR. DUNN: And that way we can have a more
10 candid conversation.

11 THE COURT: Absolutely.

12 MR. DUNN: But I do not anticipate it being
13 a long conversation.

14 MR. EPTING: And, Your Honor, while Mr.
15 Dunn is talking with his client, we provided the
16 Court, and as well as Mr. Dunn, with two cases, we
17 wish for the Court to consider. One is the one I
18 referenced in my directed verdict argument. Another
19 one that's in there regarding intent.

20 THE COURT: All right.

21 MR. EPTING: I should have given you --
22 printed a copy of that. I -- I can print a copy of
23 it.

24 THE COURT: Not necessary, the McMillan
25 case I'm reading right now.

1 MR. EPTING: And for some reason, it said
2 Judge Guyton's -- Judge Guyton's secretary, when we
3 sent it to you on Outlook.

4 THE COURT: I don't know why it does that.

5 MR. EPTING: I think in Outlook I think
6 automatically it populates it that way.

7 THE COURT: Yeah.

8 MR. EPTING: I just want to make sure it
9 went to -- it went to the right place. And, Judge,
10 I can print you a copy, if you want.

11 THE COURT: Which copy -- which case is it?
12 I have McMillan.

13 MR. EPTING: McMillan was the one she sent.
14 Yeah, my -- McMillan was 2001.

15 (Discussion between attorneys.)

16 THE COURT: Mr. Epting, your email's not --
17 the Judicial Department says, "Email attachment
18 removed, improper attachment." So I don't know, but
19 for some reason it doesn't -- can you just give me
20 the site for the case?

21 MR. EPTING: Your Honor, the site is 257 --

22 THE COURT: All right.

23 MR. EPTING: -- S.C. 89.

24 THE COURT: 89? State v. Haney?

25 MR. EPTING: State v. Haney.

1 THE COURT: All right. All right, okay.

2 MR. DUNN: Your Honor --

3 THE COURT: Mr. Dunn, have you discussed
4 your client's possible testimony with him?

5 MR. DUNN: I have, Your Honor.

6 THE COURT: And what does your client elect
7 to do?

8 MR. DUNN: He wishes to testify, Your
9 Honor.

10 THE COURT: All right. Let me go through
11 the colloquy then. All right. Mr. Mobley, I'm
12 going to ask you to stand up, and let the Clerk
13 swear you in, please.

14 * * * * *

15 **Michael Issac Mobley,**
16 **having been duly sworn,**
17 **testifies as follows:**

18 * * * * *

19 THE COURT: Okay, Mr. Mobley, at this time
20 I'm going to explain to you certain of your rights.
21 If you don't understand anything I say, please let
22 me know. If you want me to explain something in
23 more detail, please let me know. Do you understand?

24 MR. MOBLEY: Yes, sir.

25 THE COURT: Okay. We have now reached the

1 stage of the trial where you may present your
2 defense. You have the right to claim the protection
3 given to you by the Fifth Amendment to the
4 Constitution of our country, which says, in part,
5 "No person shall be compelled in any criminal case
6 to be a witness against himself." This means that
7 you cannot be required to testify in this case. You
8 have the right to testify on your own behalf,
9 however, nobody can make you testify. This is a
10 personal right, and no one can waive or give up this
11 right except for you. If you do decide to testify,
12 you will be subject to the same rules that govern
13 other witnesses, and you may be examined or cross-
14 examined on any relevant issue in the case. In
15 addition, if you have any convictions involving
16 dishonesty or false statement, or for crimes
17 punishable by imprisonment for more than one year,
18 and the Court determines the probative value of
19 admitting the evidence outweighs its prejudicial
20 effect. The Solicitor will be able to introduce
21 your record to attack your credibility. If you do
22 decide to testify, this decision must be freely,
23 voluntarily, knowingly and intelligently made, with
24 knowledge of the protections given to you by the
25 Fifth Amendment, and the consequences of your

1 decision to testify. And this doesn't apply to you,
2 but I'm going to read it anyway, because there's no
3 jury. If you decide not to testify, I will instruct
4 the jurors they cannot give the fact that you did
5 not testify any consideration whatsoever, and there
6 is not to be any prejudice at all to you because you
7 did not testify. And so I'll -- I'll convert that,
8 and say if you choose not to testify, when I make
9 the decision as to your guilt or innocence, I will
10 not hold that against you in any way, if you choose
11 not to testify. It's left entirely up to you
12 whether or not to testify. You may talk with your
13 lawyer, your family, your friends, or anyone else,
14 but the final decision is entire up to you. Do you
15 understand what I have explained to you?

16 MR. MOBLEY: Yes, sir.

17 THE COURT: Do you have any questions about
18 what I have explained?

19 MR. MOBLEY: No, sir.

20 THE COURT: Have you discussed with your
21 attorney, Mr. Dunn, whether or not you should
22 testify?

23 MR. MOBLEY: Yes, sir.

24 THE COURT: Do you want to talk to him
25 anymore?

1 MR. MOBLEY: No, sir.

2 THE COURT: Do you want to testify in your
3 case?

4 MR. MOBLEY: (Nods head.)

5 THE COURT: All right, that was a yes?

6 MR. MOBLEY: Yes.

7 THE COURT: Okay. Mr. Dunn, you can call
8 your first witness.

9 MR. DUNN: I call Michael Mobley. He's
10 already sworn, I don't -- I think he's good.

11 THE COURT: He's already sworn, yeah.

12 MR. DUNN: Yes -- yes, sir.

13 THE COURT: Yes, sir.

14 MR. DUNN: May it please the Court?

15 * * * * *

16 **DIRECT EXAMINATION**

17 * * * * *

18 BY MR. DUNN:

19 Q. Go ahead and state your name for us,
20 Mr. Mobley.

21 A. It's Michael Mobley.

22 Q. And how old are you, Mr. Mobley?

23 A. Thirty-three.

24 Q. And when you're not in -- you're
25 wearing -- you're wearing a yellow jumper right now,

1 right?

2 A. Yes, sir.

3 Q. When you're not in a -- when you're not
4 in the York County Detention Center, where do you
5 normally live? Do you have a set place or not?

6 A. Here and there.

7 Q. All right. And what do you mean by
8 here -- here and there?

9 A. If I'm not staying with my grandmother
10 when my uncle's around, and want to be the boss of
11 everything, I normally just stay with certain
12 people, if I can.

13 Q. You don't stay in the same place all
14 the time?

15 A. No, sir.

16 Q. Okay. When you do stay with people, is
17 it -- is there a certain place that you usually
18 stay, a city?

19 A. I mean somewhat.

20 Q. What city do you usually stay in?

21 A. Rock Hill.

22 Q. All right. And your grandmama, where
23 does she live?

24 A. [REDACTED] East Moore Street.

25 Q. East Moore Street?

1 A. Yes, sir.

2 Q. I'm having trouble hearing.

3 A. Sorry.

4 Q. You might just need to pull it a little
5 bit closer to yourself, Mr. Mobley. And that Moore
6 Street, is that in Rock Hill?

7 A. Yes, sir.

8 Q. On the night of December the 9th, the
9 Police found you inside of Workman Oil, correct?

10 A. Yes.

11 Q. Where were you coming from before that?
12 Where were you before that?

13 A. Basically coming from ex's house.

14 Q. From your ex's house?

15 A. Yes.

16 Q. All right, and who's your ex?

17 A. Her name is Nicole.

18 Q. All right, and where does Nicole live?

19 A. Jefferson.

20 Q. And where is Jefferson?

21 A. [REDACTED] Jefferson Street.

22 Q. Is -- Jefferson, is that a street in
23 Rock Hill?

24 A. Yes, sir, off of Saluda.

25 Q. Off of Saluda? All right. So not too

1 far from where you -- Workman Oil?

2 A. Yes, sir.

3 Q. And why had you left Nicole's house?

4 A. We got into an argument about money
5 situations. She wanted to get high. I didn't have
6 the money to provide, so she kicked me out.

7 Q. When she kicked you out, where were you
8 going?

9 A. I was actually going to Celanese --

10 Q. All right.

11 A. -- to my uncle.

12 Q. Just to your uncle's house?

13 A. Yes, sir.

14 Q. On Celanese?

15 A. Yes, sir.

16 Q. Did you make it there?

17 A. No, sir.

18 Q. Why not?

19 A. It started getting cold.

20 Q. All right. So what did you do?

21 A. I kicked in the door for -- actually,
22 pushed in the bay window of Workman Oil, and I just
23 stayed there.

24 Q. You went inside?

25 A. Yes, sir.

1 Q. And why did you do that?

2 A. It was cold.

3 Q. All right. Do you remember what time
4 you got there?

5 A. No, sir.

6 Q. When you got there, do you remember
7 where you went inside the building?

8 A. I went in, I went to the back room, and
9 left out, and then I was just looking for the car.

10 Q. Why did you go to that back room?

11 A. To try to stay warm, because it was a
12 little cold back there.

13 Q. So you went into the building trying to
14 get warm; is that what you're -- is that what you're
15 saying?

16 A. Yes, sir.

17 Q. You -- and do you remember how long you
18 were there before the Police showed up?

19 A. No, sir.

20 Q. Was it a long time, a little bit of
21 time?

22 A. I was there for a while.

23 Q. Can you give us an idea how long a
24 while is?

25 A. I mean like 20, 30 minutes.

1 Q. While you were in there, did you take
2 any of the snacks out of the office?

3 A. No, sir.

4 Q. Did you take any drinks out of the
5 office?

6 A. No, sir.

7 Q. Did you take anything? Any tool, or
8 anything else that didn't belong to you, while you
9 were in there?

10 A. No, sir.

11 Q. And were you under -- the cops found
12 you under the car. Had you gone there -- how long
13 had you been underneath that car?

14 A. About 15 -- 15 minutes.

15 Q. What were you trying to do underneath
16 that car?

17 A. Keep warm.

18 Q. Were you trying to sleep?

19 A. Yes, sir.

20 Q. Was that yes?

21 A. Yes, sir.

22 Q. Did you fall asleep?

23 A. In and out.

24 Q. At some point, did you -- at what point
25 did you know that there were Police there?

1 A. When I actually heard them come in and,
2 "Show me your hands." I thought I was hearing stuff
3 at first.

4 Q. You thought you were what?

5 A. I don't know, the hand stuff, 'cause,
6 you know, the music was on, I thought I was hearing
7 stuff. I looked, but I didn't see anybody the first
8 time, until they actually got up on me and shined
9 the light on me.

10 Q. Have you had interactions with the
11 Police before in Rock Hill?

12 A. Quite a few times.

13 Q. Did you ever -- you -- earlier you said
14 that you were, you know, you stay here and there.
15 Have you ever been out sleeping out on the streets
16 before?

17 A. Yes, sir.

18 Q. Is it fair to say at times you're
19 homeless?

20 A. Yes, sir.

21 Q. Ever been threatened with being
22 arrested for loitering, or anything?

23 MR. EPTING: Objection to relevance, Your
24 Honor.

25 MR. DUNN: I think the investigator's

1 intent, Your Honor, is why he's inside Workman.

2 THE COURT: I'll overrule the objection.

3 Go ahead.

4 BY WITNESS:

5 A. Yes, sir.

6 Q. So when you were -- I guess the
7 question I -- the real question we all want to know
8 is when you're walking from your grandmama's house
9 to Celanese, why would you -- why -- why Workman's?
10 Why would you stop there?

11 A. 'Cause given the time of night it was,
12 my grandmother's not getting up, my grandmother is
13 87, so she's long gone to bed. Like I said, me and
14 my uncle, her son, we don't really see eye-to-eye.

15 Q. Is it fair to say that you didn't have
16 anywhere else to go that night?

17 A. Not at that moment.

18 Q. And was that your -- you'd heard -- you
19 heard earlier where the -- the State had read out
20 your record. You -- you have -- you've had run-ins
21 with the law in the past, right?

22 A. Yes, sir.

23 Q. In fact, I think you've been accused --
24 and you pled guilty to -- to breaking into Workman
25 Oil, and taking stuff from there before, right?

1 A. Yes, sir.

2 Q. And I think you had some other petty
3 larcenies, is that what we call them, or you had
4 some other petty larcenies on your record, as well?

5 A. Yes, sir.

6 Q. Is there anything about that night that
7 I haven't asked you, that you think, you know, that
8 you need to tell the Judge as to -- as -- you know,
9 this is your story, and your time to -- to tell the
10 Judge your story. Have I missed anything, or not
11 asked you a question you think the Judge should
12 hear?

13 A. No, sir, other than just trying to find
14 somewhere to go that night. And it was -- it was
15 starting to get cold. I wasn't going to make it to
16 -- to Celanese, not by walking.

17 Q. And I think you were just wearing a
18 hoody that night, right?

19 A. Yeah, a hoody and some joggers.

20 Q. And you didn't have any heavier jacket
21 or outerwear?

22 A. No, sir.

23 Q. Did you have a bag with you that night?

24 A. No, sir.

25 Q. There have been some mention back in

1 March of 2020, did you have a bag that night you got
2 arrested by the Police?

3 A. Yes, sir.

4 Q. And is that what you carried away some
5 of that stuff in?

6 A. No, some of my clothes and stuff.

7 Q. But they -- they said that you had
8 taken some stuff from Workman, and that was part of
9 why you got in trouble. Had you taken some of that
10 stuff away in that bag?

11 A. Yes, sir.

12 MR. DUNN: I don't have any further
13 questions, Your Honor.

14 THE COURT: All right. Ms. Imler? Mr.
15 Epting?

16 MS. IMLER: A moment to confer with court
17 counsel -- with co-counsel, I beg the Court's
18 indulgence.

19 THE COURT: Yes, ma'am.

20 MS. IMLER: May it please the Court?

21 THE COURT: Yes, ma'am.

22 * * * * *

23 **CROSS-EXAMINATION**

24 * * * * *

25 BY MS. IMLER:

1 Q. Mr. Mobley, Workman Oil's a business,
2 isn't it?

3 A. Yes.

4 Q. It's got a body shop with a little
5 convenience store?

6 A. You could say that.

7 Q. And that convenience store sells things
8 like snacks and lighters?

9 A. Yes.

10 Q. And so you were there after business
11 hours, since it was the middle of the night, right?

12 A. Yes.

13 Q. No one asked you to come there?

14 A. No.

15 Q. You entered the building because you
16 popped out that window, right?

17 A. Yes.

18 Q. And you had to crawl through that
19 window to get in?

20 A. Yes.

21 Q. But you weren't in there for too long
22 before the cops came.

23 A. I was in there about a good 30 minutes.

24 Q. Uh-huh. And when they arrived, you
25 were laying under that car?

1 A. Yes.

2 Q. But when they asked you to get out from
3 under that car, and show your hands, you didn't
4 comply, did you?

5 A. Not at first.

6 Q. In fact, they had to physically get
7 under there, and pull you out so you could show them
8 your hands, right?

9 A. Yes.

10 Q. And when Officers asked you for your
11 name, you didn't identify yourself, did you?

12 A. No.

13 Q. You waited until after you were
14 arrested to finally give them your name.

15 A. Just being woken up kind of angry, yes.

16 Q. But this wasn't your first time at
17 Workman Oil, was it?

18 A. No.

19 Q. You've actually broken into Workman Oil
20 before, right?

21 A. Yes.

22 Q. Back in March of 2020?

23 A. Yes.

24 Q. And you admitted to breaking in through
25 their garage bay window?

1 A. Yes.

2 Q. One that you had to crawl inside to get
3 in?

4 A. Yes.

5 Q. You admitted taking items like snacks
6 and sodas?

7 A. Yes.

8 Q. And you just told Mr. Dunn that you
9 took some of those items out in the bag that you
10 brought with you, but not all of them, right?

11 A. Yes.

12 Q. Okay. And you were caught trying to
13 leave the scene in that one, right?

14 A. Yes.

15 Q. Okay. And you pled guilty to that
16 burglary, didn't you?

17 A. Yes. I mean I was caught red-handed
18 with items.

19 Q. Now, I want to talk a little bit about
20 what happened in this case. You heard on the video
21 that you said you worked there?

22 A. I used to.

23 Q. Okay, but --

24 A. Back in early 2000s.

25 Q. But you didn't work there in 2021, did

1 you?

2 A. No. I occasionally stop by. I mean I
3 know -- I know Ms. Shaner. She probably doesn't
4 remember me from back then. Recently, I was just up
5 there a couple weeks ago. I just bought kerosene.

6 Q. But that's a no to my question, you
7 didn't work there?

8 A. No.

9 Q. Okay.

10 MS. IMLER: No further questions for this
11 witness.

12 BY THE COURT:

13 Q. Mr. Mobley, you say you were sleeping
14 the -- when the Officers arrived? That's -- that's
15 what you were doing?

16 A. Yes.

17 Q. Why did you pick -- was -- is the floor
18 of that place concrete?

19 A. Actually, like I said, when you first
20 come in, there's a room to your right, and it has a
21 big hole in the ceiling, so it was kind of cold in
22 there, even though the lights was on, (inaudible)
23 but the car kept more heat.

24 Q. So, you know, there -- there's an
25 office with chairs and things, right? But the --

1 the place you picked to sleep is on the concrete
2 floor of the service bay under a car?

3 A. Yes, sir.

4 Q. Why?

5 A. It's not my first time sleeping in the
6 cold.

7 Q. All right. Mr. Dunn?

8 MR. DUNN: I just have a couple follow-ups.

9 * * * * *

10 **REDIRECT EXAMINATION**

11 * * * * *

12 BY MR. DUNN:

13 Q. You've had prior run-ins with the
14 Police -- Rock Hill Police, right?

15 A. Yes, sir.

16 Q. Is it fair to say you're not a big fan
17 of them?

18 A. No.

19 Q. Okay. And the Solicitor had asked you,
20 that you -- you had pled guilty last time when you
21 got caught stealing stuff out of Workman's, right?

22 A. Yes.

23 Q. And you pled guilty because you were
24 guilty?

25 A. Yes.

1 Q. And this time we're going to trial
2 because you didn't take anything, right?

3 A. Yes.

4 Q. Okay. And just going to the Judge's
5 question, I mean just so we're all honest, you were
6 hiding -- you were sleeping under the car because
7 you were hiding? You knew you weren't supposed to
8 be there, right?

9 A. No, I wasn't supposed to be there.

10 Q. Okay. I mean if you slept out on the
11 couch, you would be a lot more exposed there, right?

12 A. Yes.

13 Q. Right, but, again, just so we're all --
14 you were there that night, because you were cold,
15 and you were just looking for a place to sleep?

16 A. Yes.

17 Q. All right.

18 MR. DUNN: I have no other questions, Your
19 Honor.

20 THE COURT: Ms. Imler?

21 MS. IMLER: Nothing further from the State,
22 Your Honor.

23 THE COURT: All right. Thank you, sir, you
24 can step down.

25 MR. DUNN: Your Honor, the Defense rests.

1 I think I need to renew some motions that were
2 made --

3 THE COURT: Okay.

4 MR. DUNN: -- earlier. I didn't do that
5 after the State's case-in-chief, but I -- I think it
6 would be appropriate to -- to raise them now again.

7 THE COURT: Please.

8 MR. DUNN: Especially that the Lyles'
9 motion that was made earlier, Your Honor, I would
10 argue, again, that his prior bad act of -- of that
11 March 20th, 2020, arrest and conviction for the
12 burglary at the Workman, that it not be considered,
13 as evidence for the trier-of-fact for purposes of --
14 of intent. I think when he -- Mr. -- I think when
15 Mr. Mobley takes the stand, it changes some of the
16 equation. And now he has given a statement, it's up
17 to the trier-of-fact, Your Honor, to decide whether
18 or not you believe his statement as to why his
19 intent was there. Maybe the Court decides that he's
20 -- he's, you know, giving a self-serving statement,
21 you don't believe it, he just got caught, and he's
22 trying to lie about it, that's fine; but I think by
23 putting in that -- that old and -- that old
24 conviction, that it -- it just -- it changes how --
25 how that -- that evidence should be viewed by the

1 Court. Because, again, it's -- it's a very
2 prejudicial piece of evidence, and, you know, pre --
3 it's prejudice, because the trier-of-fact has heard,
4 he's done this before. It's so much easier to -- to
5 -- to just believe it because he's done it before,
6 and -- and it's not as easy to then try to weigh
7 that against what his statement is. And I think
8 because he has presented a defense, it at -- at
9 least changes some of how that should be viewed,
10 Your Honor, and, as such, for the purposes of -- I
11 mean we can see that he got convicted, it's part of
12 the impeachment. We can see that he's got other
13 convictions, but for purposes of trying to -- as
14 evidence, to try to go to -- to the level of intent,
15 I would argue that it's still not proper evidence
16 for the Court to consider.

17 THE COURT: All right. Mr. Epting?

18 MR. EPTING: I think his cross-examination
19 over his -- his direct testimony, in his own
20 defense, very much highlights why that evidence
21 should have come in. Number one, it -- it was
22 inquired in detail by the defense on recross or on
23 -- on redirect. And, second, he stated -- well, at
24 first he stated that he pled guilty last time is
25 because they caught him with the things. I think

1 that's relevant in consideration for the trier-of-
2 fact to hear on why he was positioned where he was,
3 and what his intent was when he went in there, and
4 how he might have helped position himself, knowing
5 that Police had pulled up, and made the entry into
6 that garage (inaudible). I would submit to the
7 Court that was it not credible based upon on the
8 facts we know. He chose to sleep on the concrete,
9 according to his own testimony, right underneath the
10 hood of a car, rather than, as was testified, by the
11 owner of that business, in a much more comfortable,
12 and much more sensible office in the back. I would
13 submit to the Court that that's much clearer
14 evidence, that he's attempting to hide Officers --
15 hide from Officers. He lied to the Police when --
16 when they asked him what he was doing there. He
17 said he worked there. That was not true. And,
18 again, he's -- I -- I would argue it's notable that
19 he did not tell the Officers, "I'm here just to find
20 someplace warm," he said, "I work here, I have
21 permission to be here," basically. So we don't
22 believe that changed anything. If anything, it
23 added more evidence to the State's case, by virtue
24 of him giving an (inaudible) version of events that
25 happened that night. And yes, Your Honor, deny the

1 motion.

2 THE COURT: I'm not going to disturb my
3 prior ruling. Anything else from the Defense?

4 MR. DUNN: I think that's all I had to
5 raise for -- I think -- I think all the other --
6 when I raise any other motions of -- of objections
7 that I made that the Court ruled against, I don't
8 know if it changes a whole lot, but I do need them
9 for purposes of the record.

10 THE COURT: They're -- they're -- they're
11 renewed, and you're protected for the record, and
12 the Court denies them for the reasons previously
13 stated. And my preference would be, if y'all are
14 okay to go ahead and hear closing now, and then we
15 can take a break, and I'll consider my verdict over
16 the break; but if y'all need time to prep your
17 closing, we can break now.

18 MR. EPTING: I beg the Court's indulgence,
19 Your Honor.

20 THE COURT: Yeah.

21 MR. DUNN: My preference is to push
22 forward, Your Honor.

23 THE COURT: Yeah.

24 MR. EPTING: Can we have a five-minute
25 recess?

1 THE COURT: Sure.

2 MR. EPTING: We'll make it very brief.

3 THE COURT: Five-minute recess.

4 MR. EPTING: Thank you, Your Honor.

5 (Whereupon, the Court recesses for five
6 minutes.)

7 THE COURT: The State will get a reply.
8 Okay, Ms. Imler? Mr. Epting?

9 MS. IMLER: May it please the Court?

10 THE COURT: Yes, ma'am.

11 * * * * *

12 **CLOSING STATEMENT BY PLAINTIFF**

13 * * * * *

14 MS. IMLER: On December 9, 2021, Workman
15 Oil was burglarized. The Defense has conceded to
16 both the entry, and the lack of consent, but the
17 issue here today is intent. Your Honor, we believe
18 that we've shown you, beyond a reasonable doubt, not
19 beyond all doubt, but just at the level of common
20 sense, that this Defendant intended to break into
21 Workman Oil to commit a crime therein. This
22 Defendant broke in, and instead of sleeping in a
23 warm or at least warmer office, he chose to attempt
24 to sleep on a cold, concrete floor underneath the
25 car. You've heard today that this was not this

1 Defendant's first time in Workman Oil. You've heard
2 testimony from Officers and from the owner of
3 Workman Oil herself that this Defendant previously
4 broke into Workman Oil through the same method,
5 through the same garage bay. Now, in the present
6 case the Defendant argues that he did not have the
7 intent to commit crime therein, but as we know from
8 State v. Lyle, that intent could be inferred. Our
9 Supreme Court stated that where the intent may not
10 be inferred from the nature of the act itself, it
11 may be inferred in the manner of its commission. In
12 this present case, this Defendant forcibly removed
13 the panel of glass to gain access to a locked,
14 closed business under the cover of night. You've
15 heard testimony that Workman Oil has stuff in there,
16 like, snacks, drinks, and, of course, auto parts,
17 this Defendant knew that. You've heard testimony
18 from the owner of Workman Oil that this Defendant is
19 not to be on the premises, nor was anyone else. And
20 even if this Defendant argues that he didn't have
21 the criminal intent at the time of the commission,
22 the manner of this commission gives reason to infer
23 that his intent was to commit a crime there. We've
24 heard testimony that it was a cold winter's night,
25 and he just needed a place to go, but, Your Honor,

1 you've heard that he had places that he could go.
2 You've heard about his grandma's house, you've heard
3 about his uncle's house. In fact, there are many
4 other places in Rock Hill that he could have chosen,
5 but this Defendant, he chose to go into a place
6 where he knew he could get in, he knew he could pop
7 out a window, and he knew that there were goods
8 inside. Your Honor, we, the State, believe that we
9 have proven that common sense would tell you that
10 he'd go into an office instead of the bay. Common
11 sense would tell you that he wouldn't have music on
12 if he just intended to sleep. Common sense would
13 tell you that he intended to commit a crime inside
14 Workman Oil that night, instead of just getting
15 warm. So, Your Honor, at this time the State would
16 ask that you find this Defendant guilty. Thank you.

17 THE COURT: Mr. Dunn?

18 * * * * *

19 **CLOSING STATEMENT BY THE DEFENSE**

20 * * * * *

21 MR. DUNN: May it please the Court, Your
22 Honor, hopefully, this will be heard. Your Honor,
23 the -- as -- as a trier-of-fact, if -- if you were a
24 jury, I would stand up here, and I would argue about
25 the beyond the reasonable doubt, and all the other

1 legs of the stools that we defense lawyers like to
2 talk about, and I'm not going to insult your --
3 insult you by trying to go through all those. But I
4 will argue this, Your Honor, that every element of
5 that burglary has to be met at a beyond a reasonable
6 doubt standards, not just one part of it, and the
7 other ones can get moved along, and -- and brought
8 along on the trailer, so to speak; all three have to
9 be met equally beyond a reasonable doubt. And I've
10 maintained from the very beginning, we can see that
11 he was -- Mr. Work -- Mr. Mobley was somewhere where
12 he was not supposed to be. We can see that it was
13 at nighttime, and it -- it, you know, without
14 consent, and it -- it meets the -- the definitions
15 of -- parts of the defi -- elements of burglary,
16 second violent. We've also maintained from the very
17 beginning that there was no intent that night to do
18 anything beyond do -- beyond just be there because
19 it was cold. What I find compelling in this case
20 is, not what has been said and -- and shown, but
21 what has not been shown. The Detective from the
22 March 2020 incident mentioned that he saw videos,
23 and he saw a video of Mr. Mobley crawling around.
24 He saw Mr. Mobley on his hands and knees, or
25 crawling on his belly, or what -- however it is that

1 he phrased it. Saw him going into the -- the
2 office. We heard testimony from Mrs. Shaner that
3 there were still videos available. We could have
4 very eas -- the State could very easily had brought
5 those videos into -- as evidence into this trial,
6 for what happened on December 21st to show -- to
7 help show that intent. If he's walking around, it
8 would -- it would show it. If he's not walking
9 around, it would show it. If he was going in the
10 office and -- and kneeling around, and -- and
11 looking into things, it would show it. It would
12 also show whether or not he was trying to hide from
13 Officers when the Officers arrived. I mean I -- I
14 know that some of the evidence that's been presented
15 has -- has -- is at least trying to infer that the
16 reason why he was under that car, at that point, is
17 because he saw the headlights, or he saw the cops
18 show up, maybe heard voices outside, maybe not, and
19 was trying to evade detection by the Officers. And
20 I would argue that that's simply hasn't been shown,
21 and that it could very well easy have been shown if
22 the State would have brought more evidence into this
23 trial. I -- I believe when the State doesn't bring
24 in evidence that should -- that could be shown, that
25 it should go to the favor of the Defendant, because

1 it -- it helps -- it helps with that level -- level
2 of beyond a reasonable doubt. We heard that I March
3 2020, he was in there a very short -- for a very
4 short period of time. That was I think
5 uncontroverted evidence, that he went in, I'd call
6 it a smash and grab, you kick in the door, you grab
7 what you want, and you leave, and you do it very
8 quickly, because the longer you stay inside a
9 building the more likely it is that you're going to
10 be detected, and he still got caught. He got caught
11 running away with the items and was detained, had a
12 bag -- according to him had a bag, and it had some
13 of those items in it. In this particular case, we
14 don't have that. By his own -- his -- his testimony
15 is he was in there for a little while, 20 minutes,
16 30 minutes. I would argue that if -- if he was
17 intending to have stolen anything, that he would
18 have gone in and gotten out as quickly as possible.
19 I'm sure the State's position is that he just got
20 caught too soon, but I don't think that the evidence
21 is there to -- to -- to overcome that beyond a
22 reasonable doubt standard. Again, there's things
23 that they could have brought into evidence, and
24 things I have not seen, things that -- that sound
25 like could exist if the -- if the Police would had

1 followed through with their investigation. We
2 haven't heard about any -- any kind of evi- --
3 anything being taken. The Officers have testified
4 -- they didn't testify anything being taken. Ms.
5 Shaner-Workman didn't testify to anything being
6 taken. I would argue that the reason why nothing
7 was taken is, because that wasn't the intent of Mr.
8 Workman -- or Mr. Mobley that night. He's an
9 individual that has had run-ins with the law, it was
10 a cold night. You know, he's been threatened in the
11 past with -- with vagrancy sort of ordinances. He
12 was just trying to find a place out of the cold that
13 wouldn't -- wouldn't get him into trouble and
14 wouldn't get him on the radar of the Police Officers
15 to -- to -- to deal with that night. He chose the
16 wrong place. I mean there's no doubt about that.
17 You can't go into a building that's not yours, or
18 without permission, we concede that; but there's a
19 difference between trespassing and burglary, and
20 that's the big difference. Burg -- the big
21 difference is -- I mean if you're somewhere where
22 you're not supposed to be, that's trespassing, and
23 he's very much guilty of it, but they haven't
24 charged him with that. What he's guilty of is -- is
25 -- is a burglary -- or, excuse me, what he's not

1 guilty of is a burglary because they haven't met
2 that third element of -- of the prong. The only
3 other thing I would point out, Your Honor, as far as
4 it goes to trying to avoid detection is, is there
5 was, you know, music being played that night. I --
6 I just -- I don't see him trying to hide. I don't
7 -- I don't think he turned the music on. Why would
8 a person turn music on if you're trying to remain
9 undetected? I mean that's the first thing that
10 would bring -- bring people's attention to somewhere
11 where they're not supposed to be. Neither light
12 inside the building, ala Watergate, or, you know,
13 music being played, both those things are going to
14 bring your attention to an otherwise dark light
15 area, so I don't think that that music would have
16 been something he would have turned on. He was just
17 there for the -- for the sleep, Your Honor. Should
18 he have gone somewhere else? Absolutely, no --
19 without a doubt, should have gone somewhere else;
20 but there hasn't been any intent shown that would
21 rise to the level -- there hasn't been any evidence
22 shown that would rise to the level of beyond a
23 reasonable doubt to show that intent, Your Honor.
24 And that's been the issue from the beginning for me
25 as his lawyer, and that's why we're at a bench

1 trial, Your Honor.

2 THE COURT: All right. Reply from the
3 State?

4 MR. EPTING: Very -- very briefly, Your
5 Honor. The uncontroverted facts in this case, Your
6 Honor are that he pushed in, or kicked in, or broke
7 in that window, in order to enter a place when there
8 are any number of other places he could have gone.
9 He test -- the testimony from the Officers was that
10 his grandmother's place was not too terribly far
11 from where Workman's Oil is situated. He could have
12 easily have walked there. His stance is that this
13 was the only place available to him. I -- my -- I
14 would argue to the Court that is not credible.
15 There were any number of other places he could have
16 gone inside and outside of -- of other businesses,
17 or social services, or even a homeless shelter,
18 should he -- his situation would have been dire as
19 he stated; but instead he went to the place that he
20 was convicted of breaking in. I think it's notable,
21 Your Honor, that he stated that -- that -- that the
22 Officers testified that as soon as they got that
23 call, they arrived on-scene. I think it's notable
24 where he was located, particularly given the story
25 that he's given, that he was there to warm up and

1 not freeze, when he is, as the Court pointed out,
2 laying on concrete on a cold winter's night in front
3 of a car. Your Honor, I also think it's notable
4 that when Ms. Imler asked him on cross-examination
5 whether he pled guilty to his prior case, he turned
6 to the side and he said, "I had the stuff in my
7 hand." I think that's (inaudible) in this case,
8 Your Honor. I would submit to the Court that he is
9 inside that building, for whatever reason, playing
10 music, and I -- I can see that is a strange element
11 to this case, but also highly inconsistent with him
12 just trying to warm up and fall asleep blaring
13 music. Your Honor, I would submit to the Court that
14 it is much more reasonable that he has broken inside
15 this place, that the Police have arrived on-scene
16 much quicker than he anticipated, much quicker than
17 they did the last time that he pled guilty and was
18 convicted of, and that he, quite simply, was caught
19 in the act, did not have time to grab things, and
20 has to come up with a story. Your Honor heard what
21 he said to the Officers. When they came in, he
22 said, "I work here. I have permission to be here,"
23 but what he did not say was, "I was just needing
24 someplace to -- to rest my head and warm up, I was
25 freezing to death, basically, and I needed help."

1 He lied, and I would submit that he lied on the
2 stand when he testified in his own defense. We
3 think if -- if this were a jury case, as Mr. Dunn
4 said, common sense would have been every other word
5 that I would argue to this. Common sense leads us
6 to the conclusion, based on the facts, that we
7 already know of the Defendant and the facts of this
8 case, that he's guilty beyond a reasonable doubt.
9 Again, that's not beyond all doubt, that is beyond a
10 reasonable doubt, and I would submit there is no
11 reasonable doubt that he intended to commit a crime
12 when he entered through that window that night.

13 THE COURT: All right, Counsel, thank you.
14 It's about 12:35. Let's take a break 'til 2
15 o'clock, our normal break. I anticipate I will have
16 a verdict by 2 o'clock. If I do not, I'll let y'all
17 know, but I -- I believe I'll be able to have a
18 verdict by 2 o'clock. See everyone back at 2:00.

19 (Whereupon, Court takes a break until 2
20 p.m.)

21 THE COURT: I have reached a verdict.
22 Madam Clerk, do you want to read the verdict?

23 MADAM CLERK: Okay.

24 THE COURT: And, yeah, Madam Clerk, if you
25 can read the verdict. Defendant please rise.

1 * * * * *

2 **JUDGE'S RULING**

3 * * * * *

4 MADAM CLERK: For Indictment Number 2021-
5 GS-46-07542 in the State of South Carolina, State v.
6 Michael Issac Mobley, for burglary, second degree,
7 which is a violent crime, the verdict is guilty.

8 THE COURT: Mr. Epting, do y'all have a
9 sentencing sheet prepared?

10 MR. EPTING: Your Honor, I was just asking
11 that. I believe I left it upstairs. I apologize.
12 I'll go and grab it.

13 THE COURT: Okay.

14 MS. IMLER: Your Honor, may I approach?

15 THE COURT: Please. All right. Thank you,
16 ma'am. Ms. Imler, can you give me the Defendant's
17 full prior record, please?

18 MS. IMLER: Yes, Your Honor. This
19 Defendant was convicted in December 2018 of petty
20 larceny. In February 2021, of burglary. In July of
21 2021, of shoplifting, and, Your Honor, I would like
22 to note that he was also sent to SCDC on both the
23 burglary charge and on the shoplifting charge.

24 THE COURT: All right.

25 MS. IMLER: He was convicted on December

1 19th, 2012 of shoplifting. On March 2014, of
2 unlawful carrying of a weapon. In March 2018, a
3 possession of greater than one gram of meth or
4 cocaine base, second offense. And those are all the
5 (inaudible).

6 THE COURT: Thank you. And, Counsel, my
7 understanding that this offense is both violent and
8 serious; is that correct?

9 MR. EPTING: Yes, Your Honor.

10 THE COURT: Mr. Dunn?

11 MR. DUNN: Are you talking about the
12 burglary second, Your Honor?

13 THE COURT: Yes, sir.

14 MR. DUNN: I believe it is.

15 THE COURT: Okay.

16 MR. DUNN: I believe it is a strike.

17 THE COURT: All right. I'll be happy to
18 hear from you Ms. Imler and Mr. Epting.

19 MS. IMLER: Yes, Your Honor, the State has
20 presented the case that this Defendant repeatedly
21 breaks into the same location. We believe that he's
22 got intent to commit this crime, and, unfortunately,
23 we've seen that sending him to SCDC for short stints
24 doesn't deter him from doing the same thing. In
25 fact, he was sent to SCDS shortly after his last

1 conviction, got out, committed a different property
2 offense, went back to SCDC, and here we are today.
3 In light of all of that, Your Honor, the State
4 respectfully requests a sentence of ten years at the
5 Department of Corrections.

6 THE COURT: All right, anything else from
7 the State?

8 MS. IMLER: Nothing further, Your Honor.

9 THE COURT: Mr. Dunn?

10 MR. DUNN: Your Honor, if it may please the
11 Court. Mr. Mobley exercised his -- his right to a
12 trial, and the State had offered him five, I don't
13 think ten would be a -- a fair way to repay a
14 person's ability to -- or right to exercise their
15 right to a trial. Out of deference to the Court, we
16 made this a bench trial because this has always been
17 a very specific issue that I have, as a lawyer.
18 When we look at State v. McMillan, that was a PCR
19 case. That was a PCR case where it looked like the
20 lawyer probably didn't do the right thing to begin
21 with, and that's why it was being decided on the
22 merits, at -- at that point, and I think the Supreme
23 Court screwed up on that case, and I still think
24 they screwed up, but I still think that, you know,
25 that intent part of the element is the very part of

1 it, and I don't think Mr. Mobley should be punished
2 for that part of it. I mean we -- we found that
3 what I thought was a very surgical and judicial way
4 of trying to deal with that issue without wasting 12
5 people's time, and -- and all that. So punishing
6 him further in a -- even higher than what the offer
7 was, I think is -- is -- is ludicrous. When you
8 look at his record, Your Honor, he's -- Mr. Mobley's
9 a homeless guy, and, you know, his -- his -- he's
10 got crimes of -- and -- and the crimes that he's
11 convicted of are, you know, petty larceny and
12 stealing things, breaking into the same place, the
13 place that he worked 20 years ago. You know, what
14 -- what didn't come into Court is -- I mean he's
15 broken in and out of Workman Oil a number of times
16 over the years, and sometimes they wanted to press
17 charges, and sometimes they didn't. I mean I don't
18 think that there's a level of -- I mean while he was
19 a nuisance to them, I don't think his -- his level
20 of nuisance, you know, rose to the level of putting
21 him in prison, as -- as some kind of danger to the
22 community. You know, he slept on the streets a lot,
23 and when he's not -- when he wasn't with his friend
24 and his family. Your Honor, I would ask the Court
25 to consider something much less than -- I'd actually

1 consider less than five. Again, I don't think he
2 should be punished. I -- I think five was a -- was
3 a high -- high offer on this case. I understand
4 he's been in and out of jail a little bit, and I
5 mean I'm not disputing it. I don't think he's
6 probation material. He could ask me for probation,
7 I don't think he's probation material. I mean I
8 don't think that -- I think he's -- that's just
9 setting him up for a failure, but a short stint in
10 SCDC serves the same point as opposed to a long-term
11 in SCDC, and I would ask the Court to consider
12 something more like the, you know, 18 months, 24
13 months, something in that neighborhood. To me,
14 that's a much more appropriate sentence on -- on
15 something like this, in light of the fact that he
16 has been in SCDC before. I mean I'm not trying to
17 -- to belabor that point. He does have 119 days of
18 credit so far, Your Honor, because he's been in jail
19 ever since December the 9th, when he got arrested.

20 THE COURT: Any objection to 119 days, Ms.
21 Imler?

22 MS. IMLER: No objection, Your Honor.

23 THE COURT: Okay. All right. Mr. Mobley,
24 would you like to say anything, sir?

25 MR. MOBLEY: No, sir.

1 THE COURT: All right. Taking into account
2 the Defendant's prior record, and most particularly,
3 the -- the fact that he's broken and burglarized
4 this particular business once before, the sentence
5 of the Court's going to be six years. The State of
6 South Carolina v. Michael Issac Mobley, Indictment
7 2021-GS-46-07542, the charge is burglary in the
8 second degree, violent. The sentence of the Court
9 is Mr. Mobley's coming into the custody of the
10 Department of Corrections for a period of six years,
11 with a credit for 119 days already served.

12 MR. EPTING: Thank you, Your Honor.

13 MS. IMLER: Thank you, Your Honor.

14 (Whereupon, the bench trial is concluded.)

15 -- END OF TRANSCRIPT --

16 * * * * *

17

18

19

20

21

22

23

24

25

WITNESSES

RHPD

Witnessing Officer: Beach

ARREST WARRANT NUMBER

2021A4620302725

ACTION OF GRAND JURY

TRUE BILL

Heather Schinski 3/17/2022
Foreperson of Grand Jury
Date:

VERDICT

Guilty - Bench Trial

Will Allen 2761
McKinnon

Foreperson of Petit Jury
Date: 4-7-22

DOCKET NO. 2021-GS-46-07542

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MARCH 17, TERM 2022

THE STATE

VS.

MICHAEL ISAAC MOBLEY

INDICTMENT FOR

**BURGLARY, SECOND DEGREE,
(VIOLENT)**

SC Code: § 16-11-0312(B)
CDR Code: 0086

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on March 17, 2022, the Grand Jurors of York County present upon their oath:

BURGLARY, SECOND DEGREE, (VIOLENT)

The defendant, Michael Isaac Mobley, did on or about December 9, 2021, in York County, South Carolina, enter a building at 314 Saluda Street, Rock Hill, SC, belonging to Workman Oil And Wrecker Service without consent and with intent to commit a crime therein. ~~The defendant has been convicted of two or more housebreaking and/or burglaries.~~ ^{uA} The entering or remaining in the building occurred in the nighttime hours. All in violation of 16-11-0312(B), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PERI E. IMLER
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

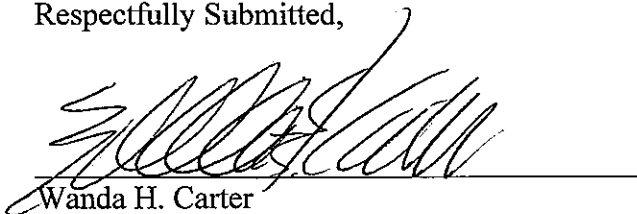
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Apr 24 2023

SC Court of Appeals


Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of April, 2023.