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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHEENA ALSTON,

APPELLANT

APPELLATE CASE NO. 2022-001305

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

COURT’S EXHIBIT NO. 1 (PHOTO OF WRAP AND BRACELET)

STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
COUNTY OF CHARLESTON) CASE NO. 2019-GS-10-02504

August 1 & 2, 2022

BEFORE: The Honorable Robert J. Bonds, Judge; and a jury

The State of South Carolina,
Plaintiff,

-vs-

Sheena Alston,
Defendant.

APPEARANCES:

Phillip Noble Abshire, II, Esq.
Timothy Finch, Esq.
Solicitors for the State.

James Kristian Falk, Esq.
Attorney for the Defendant.

Official Court Reporter,
Cynthia D. Weaver

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1 AUGUST 1, 2022

2 (WHEREUPON, the proceedings began at 9:10 a.m.)

3 THE BAILIFF: All rise. Come to order.

4 VOIR DIRE

5 THE COURT: All right. Ladies and gentlemen, we
6 are about to begin the trial of the case of the State of
7 South Carolina against Sheena Alston. And before we select
8 the jury there are several questions which I will ask of
9 you.

10 Now, ladies and gentlemen, this indictment that
11 I'm holding charges the defendant with the -- charges her
12 with burglary in the first degree. In that in Charleston
13 County, South Carolina on or about September 14th, 2018, the
14 defendant, Sheena Alston, did enter the dwelling of Soila
15 Avila without consent and with the intent to commit a crime,
16 therein. That in addition to said entry or remaining
17 occurred in the nighttime in violation of South Carolina
18 Code of Laws.

19 Now, folks, this indictment is not evidence. It's
20 merely the charging document that gets this matter into
21 court. These are nothing but allegations, ladies and
22 gentlemen, and, again, not evidence in this case.

23 Now, the defendant in this case has pled not
24 guilty and has requested a jury trial. And, ladies and
25 gentlemen, when I'm referring to the defendant in this case,

1 police officer were a witness, I would then to have a
2 prejudice against that police officer.

3 THE COURT: All right. Then in that case, sir,
4 I'm going to excuse you from the service in this case.
5 Thank you.

6 JUROR: Okay. Thank you.

7 THE COURT: Okay. Anybody additional voir dire
8 from the State?

9 MR. ABSHIRE: That's fine, Your Honor.

10 THE COURT: Anything from the defense?

11 MR. FALK: No.

12 THE COURT: All right. Ladies and gentlemen, they
13 inform me that's all the questions. What's going to happen
14 now is I find this panel qualified and the Clerk is going to
15 pull a jury.

16 Now, it's one of my favorite times, because I get
17 to tell y'all a story. I'm old enough now that my wife
18 always gets on me about telling the same stories over and
19 over again, but I can say it here because I'm saying it over
20 and over again, but I'm saying it to new folks.

21 It takes them a minute to pull up the roster. And
22 so what happens is, it's just a random selection, but what
23 you may not know is that years ago, we actually had a
24 barrel, where you turn a barrel, you put the names in a
25 capsule, the Clerk would cut the names, put them in a

1 have a seat.

2 Juror Number 229, Robert Roof.

3 What say you for the State?

4 MR. ABSHIRE: Please present this juror.

5 THE CLERK: Any challenges from defense?

6 MR. FALK: No.

7 THE CLERK: Sir, you've been selected as an

8 alternate, please just have a seat.

9 Juror Number 81, Kelly Dupriest.

10 What say you for the State?

11 MR. ABSHIRE: Please present this juror.

12 THE CLERK: What say you for the defense?

13 MR. FALK: Please seat this juror.

14 THE CLERK: Ma'am, you've been selected as the

15 second alternate, please have a seat.

16 Your Honor, you have a jury.

17 THE COURT: All right. Thank you very much.

18 All right. Any motions concerning the jury

19 qualifications, jury selection, any motions at all from the

20 State before I release this jury panel?

21 MR. ABSHIRE: Nothing, Your Honor.

22 THE COURT: From the defense?

23 MR. FALK: No, Your Honor.

24 THE COURT: All right. If you didn't get

25 selected, you're home free. Not yet. Not yet.

1 THE COURT: All right. To my remaining jurors, I
2 told you I thought it was going to be a good week to serve.
3 By remaining with me, you've knocked it out for another
4 three years, okay? But, again, it doesn't apply to city
5 court, magistrate court, or federal court.

6 I'm not -- I'm not -- I'm not exaggerating when I
7 say that your being here is what brings about, A, the
8 resolution to some cases. And, B, the necessary function of
9 our legal system, that is to move forward and for folks to
10 have a right to a jury trial.

11 I'm not going to keep you any longer. You're free
12 to go. Thank you so much for honoring your summons. You're
13 discharged for the week.

14 (WHEREUPON, the jury panel was excused and exited
15 the courtroom at 11:55 a.m.)

16 (WHEREUPON, a break was held from 11:55 a.m. until
17 1:30 p.m.)

18 THE BAILIFF: Court come to order. All rise.

19 THE COURT: All right. Solicitor, I just want to
20 go ahead and go on the record. I know we had a brief
21 discussion in my chambers this morning and I think basically
22 the crux of that conversation was where were we with the
23 case, talked momentarily about voir dire, and going ahead
24 and selecting the jury.

25 And then also I understand there were some issues

1 that -- some pretrial matters were going to need to be
2 brought up. And that also I think that Mr. Falk had some
3 problems perhaps with his client of being here today. I
4 don't know that any decisions were made, but I think that
5 summarizes what took place in my chambers.

6 Do you believe that's a fair and accurate summary
7 of what we spoke about, Solicitor?

8 MR. ABSHIRE: I do, Your Honor, that was my
9 understanding as well.

10 THE COURT: Is there anything that needs to be
11 added as it relates to what was discussed in my chambers
12 this morning?

13 MR. ABSHIRE: I don't believe so, Your Honor.

14 THE COURT: All right. Mr. Falk, as it relates to
15 my description of what happened in chambers, I'm just doing
16 that to get everything on the record, so if anybody says I
17 said something different or there was a discussion, it's
18 just the way I do it.

19 So, sir, did I accurately discuss what was -- what
20 we -- did I accurately describe what we discussed, sir?

21 MR. FALK: Yes.

22 THE COURT: Anything that needs to be added, sir?

23 MR. FALK: No.

24 THE COURT: Okay. Great. All right.

25 As it relates to pretrial matters, does the State

1 have any motions.

2 MR. ABSHIRE: Your Honor, it's just the motion
3 that we briefly discussed is the having the availability of
4 an impeachment witness to testify virtually. Our -- as far
5 as I understand, our Admin Judge in the circuit has pushed
6 hard for the accommodation of virtual testimony.

7 We had a situation where there was a
8 misunderstanding as far as when the witness would need to be
9 in court. He is on assignment with North Charleston in
10 Puerto Rico. He has confirmed that he has the means to
11 testify virtually. He has the evidence that we would be
12 discussing, which is just the interview of the codefendant,
13 which -- who plans to testify.

14 So it would be the State's position that we would
15 only call him after the codefendant testified in the event
16 that we would need to impeach him. So we're making a motion
17 to allow him to testify virtually.

18 THE COURT: All right. Mr. Falk?

19 MR. FALK: Your Honor, that Rule 612, which that
20 relates back to that order for use of remote technologies
21 from January '21 -- what I'm getting to is that one of the
22 carve-outs in there is when it would possibly impact a
23 client's Constitutional rights. And I think they have a
24 Confrontational Clause right to see -- to see the person in
25 the courtroom. I think the jury needs to see the person in

1 the courtroom. I can't -- can't consent to allowing that to
2 go virtual.

3 THE COURT: Would you agree that apparently there
4 only -- it would only be this individual be called in
5 rebuttal; is that your understanding?

6 MR. FALK: That's my --

7 THE COURT: You're not calling him in your main
8 case; is that correct?

9 MR. ABSHIRE: That's correct, Your Honor. And we
10 would make sure that the accommodation was that there would
11 be a viewing of who all is and is not in the room. We only
12 anticipate it to be this one witness.

13 THE COURT: All right. Mr. Falk, I understand
14 that you can't consent to that and I certainly wouldn't
15 consent to that. However, I'm going to allow it. I think
16 it's only for rebuttable. There has been -- there has been
17 a push, for lack of better words, encouraging us to, where
18 possible, if necessary, to try to use remote communication.
19 And to that extent, I will tell that that comes from the
20 Chief Justice himself. Our Chief Justice has certainly
21 encouraged us, where possible, to allow that.

22 I think this is the gentleman who is -- they're
23 recruiting officers in Puerto Rico because there's a need
24 for that. Is that your understanding, Solicitor?

25 MR. ABSHIRE: That's my understanding, Your Honor.

1 And he's been doing that for a while.

2 THE COURT: All right. I'm familiar with that, at
3 least I've read about that program. And so I think that
4 with the technology that's involved, A, that this is a
5 rebuttal witness only, and it's very possible we might not
6 even be able -- might not even need to be called, but with
7 the technology I believe that -- I believe that tenets of
8 the Confrontation Clause will be substantially complied
9 with. I think that the jury will be able to observe the
10 demeanor of this witness. That the clarity generally
11 involved and, of course, if this individual needs to be
12 called, we make sure we have a good link. But I want to
13 make sure, and I believe my experience has been that, as far
14 as the demeanor, as far as the quality of the audio and
15 video I just don't think it's going to interfere with the
16 jury's ability to properly evaluate the truthfulness and the
17 credibility and the demeanor of that witness.

18 Now, if and when we were forced to take that issue
19 up, if there's a problem with connection, Mr. Falk, you
20 certainly can renew your motion at any time, but bring that
21 to my attention if there's a problem. I probably won't need
22 you to bring that to my attention, I will recognize it, but
23 if there's an issue, please let me know, sir, but for right
24 now I'm going to deny -- I'm going to grant the motion under
25 those circumstances, okay?

1 MR. FALK: I understand.

2 THE COURT: Yes, sir. All right.

3 Other matters?

4 MR. FALK: Can I bring you up to date about my
5 client's status?

6 THE COURT: Well, yeah, I mean, yes, sir.

7 MR. FALK: This is what I know. So when we left
8 your chambers this morning I told her that she really needed
9 to get down here, that she would be tried in her absence if
10 she didn't come down here and, you know, going back and
11 forth. And then I called her right after the jury
12 qualification, you know when we took that break?

13 THE COURT: Yes, sir.

14 MR. FALK: And I told her that, you know, anyways
15 when I called her, she was actually at Roper's Emergency
16 Room. So what happened, as her story goes, what happened is
17 she tried to get going and I guess her neighbor was going to
18 drive her down here, went something to the effect she takes
19 another step on her ankle and it gives out. So she's at the
20 emergency room. And when I texted her last, she said
21 they're taking X-rays right now.

22 Now, I have -- she's trying to send me paperwork
23 from her phone. And so I told her that the photograph of
24 the pill bottle is not sufficient, and she's going to send
25 me another about that. She did -- you can see that she was

1 in the emergency room on the 31st.

2 THE COURT: She what? I'm sorry, what did you
3 say?

4 MR. FALK: She was in an emergency room on the
5 31st, last night. And there is -- she did send me over --
6 she said she was going over for X-rays right now, and she
7 sent me a photograph of those. You know how you get those
8 UPC stickers when you go into the hospital and they label
9 everything, you know? She might not be the most intelligent
10 person as far as knowing what is adequate proof, but I do --
11 I am taking her at her word that she is at Roper's Emergency
12 Room.

13 THE COURT: What's the State's position?

14 MR. ABSHIRE: Your Honor, we're prepared to move
15 forward at this juncture. She was in the emergency room
16 last night, it seems a little impossible that she was not
17 treated fully at that point, especially of having X-rays,
18 and then needing to go back today. But, again, we don't
19 have anything that can substantially prove that her
20 accusations are true.

21 MR. FALK: Her point was she tried to put weight
22 on the ankle and it gave way. If -- I can try to if we
23 could stand at ease for ten minutes, I can try to get the
24 most recent --

25 THE COURT: Well, what I'm going to need -- I'm

1 going to need some reports and maybe some objective
2 findings. I mean, it's one thing any -- I had somebody last
3 week tell me about all their problems, and said you need a
4 doctor's excuse, they went to doctor's care and they came
5 back and it says this person says they got X, Y, and Z,
6 excuse them.

7 I mean, you go to the hospital and say your ankle
8 is swollen, and I don't -- I'm not suggesting that your
9 client is not being truthful, sir, I just have no idea. I
10 don't know your client. And, you know, here we are in a
11 case that is three or four years old. I'm going to have to
12 have something. Maybe, you know, I don't know. If she's
13 got this bad ankle, it's going to be bruised. Maybe I see a
14 photo of some bruising. Maybe I see something from the ER,
15 but I'm not inclined to continue this case based on, I
16 sprained my ankle last night in an auto accident, which is
17 what it sounded like to me, Mr. Falk.

18 I wasn't simplifying anything, but it sounded to
19 me like that's what it was. It wasn't a break, correct?

20 MR. FALK: It's my understanding it's not a break,
21 and the bike, you know, she's on a motor bike of some kind.
22 She's having to stop short of hitting a car, and she
23 placed -- the bike falls on her, she's trying to stop.
24 That's how she explained it to me.

25 THE COURT: Were you going to say something, sir?

1 MR. ABSHIRE: I was just going to provide a little
2 background as far as the logistics of our witnesses, as
3 well, Your Honor. We have a severe limitation on
4 interpreters. And that was an issue in the first time we
5 were going to try this case. I was made aware that the
6 court interpreter for today, this was always the
7 understanding, this day was the best day for her. She had
8 severe limitations as far as tomorrow. I asked her if there
9 was any way we could possible work around that schedule,
10 but, again, we need the court interpreter, and the resources
11 as far as interpreters in this county right now are very
12 sparse.

13 THE COURT: So what you're saying is that y'all
14 wouldn't be able to move forward if I just delayed it a day,
15 so that she could get some verification, some objective
16 verification of this injury?

17 MR. ABSHIRE: Your Honor --

18 THE COURT: I mean, I'm not -- is that correct?

19 MR. ABSHIRE: Partially, Your Honor. I asked her,
20 like, absolutely what time could possibly work for you
21 tomorrow? And she said possibly after 3:00. So that would
22 mean delaying calling that witness to that point. But,
23 again, Your Honor, we would rely, again, on the position
24 that we don't have any proof that what the defendant is
25 claiming is actually going on.

1 THE COURT: Well, she isn't going to get any proof
2 in the next ten minutes, I mean.

3 MR. FALK: If I could just -- if we could just
4 stand down? I'll try --

5 THE COURT: Yeah, I mean. Listen, I mean, heck
6 the jury is not even back until 2:00 o'clock. We don't have
7 any other matters to be heard. So certainly, Mr. Falk, you
8 can take all the time you need, sir.

9 MR. FALK: Okay. I got a couple more.

10 THE COURT: Okay.

11 MR. FALK: Thank you, Your Honor.

12 THE COURT: Yes, sir. Was the accident
13 investigated by law enforcement? Did EMS take her to the
14 hospital?

15 MR. FALK: That's not my understanding.

16 THE COURT: That would be nice. If we knew that
17 the -- when you lay down a bike, usually somebody is going
18 to call law enforcement and there'll be an accident report,
19 at a minimum there would be a deputy who investigated and
20 get -- and would have given her his card or her card, and
21 then whether or not there was an EMS transfer. And those
22 would be things I bet the State could verify.

23 All right. We'll be at ease to at least 2:00 and
24 that will give everybody an opportunity to see what else we
25 could do, okay. Thank you.

1 (WHEREUPON, a break was held from 1:45 p.m. until
2 2:05 p.m.)

3 THE BAILIFF: Court come to order. All rise.

4 THE COURT: All right. You can be seated. Thank
5 you. All right. Mr. Falk?

6 MR. FALK: Your Honor, I've got some more
7 pictures. And she's currently at this, I guess, Emergency
8 Care Roper Facility on Rivers Avenue. And I told her not to
9 leave, again, maybe we could send somebody to go pick her
10 up. But I have --

11 THE COURT: All right. Well, what you got? Have
12 you sent it to counsel?

13 MR. FALK: I was just showing it.

14 MR. ABSHIRE: Your Honor, he hasn't sent it to me,
15 but I have viewed all of them.

16 MR. FALK: She's trying to do this over the phone,
17 I mean, this doesn't -- that's not what you were looking
18 for, but that is some proof of where she is right now. I
19 can show you the picture of her ankle.

20 THE COURT: All right. Hold on one second.

21 All right. I've been provided an Estimated
22 Patient Financial Obligation Summary from an emergency
23 department visit at Roper St. Francis Healthcare. All
24 right. I mean, really all that shows is that she's at --
25 she's having -- she's in an emergency room visit.

1 MR. FALK: Yes.

2 THE COURT: All right. What else, sir?

3 MR. FALK: I think this is telling. As for this
4 emergency room she gave \$1,200 for it.

5 THE COURT: All right. I'm seeing something that
6 says, Estimated Charge \$1,975, self pay allowable,
7 \$1,283.75, patient estimated amount \$1,283.75, additional
8 prompt pay discount zero. Of course, that doesn't reflect
9 any dates or what type of services were rendered, I don't
10 believe, but it does show -- it shows what it shows and
11 that's what I just read and put on the record there.

12 Yes, sir.

13 MR. FALK: I've got a bigger picture so that you
14 can see but it's just not as clear.

15 THE COURT: Okay.

16 MR. FALK: Let me show you.

17 THE COURT: Yes, sir. All right. This appears to
18 be a Roper Hospital wristband dated 8/1/22, at 11 -- I'm
19 assuming 11:57, which means at 12 o'clock. It's got her
20 name, Sheena Alston. And it appears to show perhaps what is
21 an ankle that's wrapped with some type of ACE or compression
22 bandage. Is that fair, Mr. Falk?

23 MR. FALK: Yes, Your Honor.

24 THE COURT: All right. What's the State's
25 position?

1 MR. ABSHIRE: Your Honor, we're of the position
2 that we would like to go pick her up, whether that be a
3 deputy, whether that be her bondsman, or whatever means of
4 transportation, but we would like to proceed at this point.

5 And I spoke with Mr. Falk, it doesn't appear that
6 she's bleeding or any other injuries outside of a wrapped
7 ankle. So I understand she may be in a little bit of pain,
8 but we would want to proceed.

9 THE COURT: Well, let's do this: Mr. Falk, let's
10 have both of you stand back. Why don't you make a formal
11 motion, I guess, to continue this case and base it upon the
12 information that I've just reviewed.

13 And, sir, at the appropriate time, if you could
14 print those out what you've shown me, and we'll have those
15 made Court's Exhibits. Is that satisfactory, sir?

16 MR. FALK: That's a great plan.

17 THE COURT: All right. From the defense -- excuse
18 me, from the State, is that satisfactory?

19 MR. ABSHIRE: That's fine, Your Honor.

20 THE COURT: All right. Mr. Falk, I'm happy to
21 hear from you, sir.

22 MR. FALK: Your Honor, I'm just this is my motion
23 for a continuance in this case. And just to make the record
24 I can sort of bring the chronology up to date.

25 THE COURT: Yes, sir.

1 MR. FALK: I got a telephone call from her late
2 last night that she was in an accident where she's riding a
3 motorized bike and she was trying to stop, otherwise she was
4 going to hit a car. She puts the front brakes on, the bike
5 falls over, falls on her leg. She says that she went to the
6 emergency room last night and was in some significant pain.

7 She advised me that they were giving her Tylenol
8 3. She sent me a picture of a medicine bottle, which is
9 blurry, but I'm taking her at her word it was a prescription
10 for the Tylenol 3 for the pain. And I also have, not a
11 great picture, but a somewhat of a piece of paper showing
12 that she was in the emergency room last night, okay.

13 So coming around to this morning, I advised the
14 Court of my client's possible problem. And after we met in
15 chambers it became clear that we really ought to do whatever
16 we could to get her to the -- to get her to the courthouse
17 today.

18 So I advised her that she needs to get down to the
19 courthouse today. That there was going to be a warrant, it
20 was going to be tried in her absence. So that was sort of
21 during the jury qualifications. And once the jury
22 qualification was done and we were released for lunch I got
23 back in touch with her and found out that she -- at that
24 time I was talking to her she was at a Roper Emergent Care
25 Facility, she said on Rivers, and there is some address

1 information in here saying that she tried -- she had
2 somebody that was going try and get her here today. She
3 could not put weight the ankle, she tried to take a step on
4 the ankle, she fell, and they took her to the emergency
5 room. And that's why I was at the emergency -- that's why
6 she was at the emergency room and it's my understanding
7 she's there right now.

8 She has sent me some paperwork showing that --
9 sort of documenting that there was an emergency hospital
10 room visit today. She showed me a photograph of her ankle
11 wrapped in an ACE bandage and also a possible bracelet,
12 which then would sort of verify that she was there today.

13 Then she sent some other documents that -- I mean,
14 I knew what she was trying to send me, but I'm not sure it's
15 good proof. I mean, as I was telling the Court earlier, she
16 sent me -- when they were taking her X-rays, she took a
17 picture of those UPCs that you get at when you're in the
18 hospital, the stickers that they put on everything. And it
19 looks like she sent me the discharge summary and financial
20 obligation for this visit.

21 So I believe that my client is unable to start
22 this trial this afternoon and we would ask for a continuance
23 at this time.

24 THE COURT: All right. Thank you, Solicitor.

25 MR. ABSHIRE: Your Honor, the State would oppose

1 that motion. It's the State's position that while
2 Ms. Alston may have incurred an injury over the past day
3 that has not been alleged to have been a neurological one or
4 anything that does anything but hinder her walking.

5 As Mr. Falk stated, she has been discharged today.
6 The State is prepared and ready to go forward at the
7 junction. We would be of the mindset that whether her
8 bondsman goes and picks her up, a deputy, or any other means
9 of transportation, that we would request that this motion
10 for continuance be denied and we begin this trial at this
11 time.

12 Your Honor, this case is four-years old, they got
13 it continued to this term from back in May. And, again,
14 Your Honor, we have not seen any evidence that is going to
15 effect her neurological ability outside of taking Tylenol to
16 assist in her defense or being unable to sit through this
17 trial.

18 THE COURT: All right. Mr. Falk, anything else?

19 MR. FALK: Well, it's not Tylenol, it's Tylenol 3.

20 THE COURT: I understand. Yes, sir.

21 MR. FALK: A controlled substance. And if the
22 decision were made to go ahead and pick her up, then I would
23 ask to, if the Court would -- if it was to order that, then
24 to wait on its decision of a continuance until the Court has
25 an opportunity to view her condition for himself.

1 THE COURT: All right. What I'm going to do is
2 this: I'm going to deny your motion for a continuance. I'm
3 going to state on the record why. I understand now that
4 this may have been an accident on a motorized bicycle and
5 not a motorcycle. Is that -- is that correct, sir?

6 MR. FALK: A Moped.

7 THE COURT: Okay. A Moped. What has been
8 provided to me -- this is a four-year-old case, what's been
9 provided to me today have been three items that I think
10 we're going to have marked as Court's Exhibits 1, 2, 3. One
11 was a -- one appeared to be some type of verification
12 indicating that she may be -- that she treated at some type
13 of hospital and/or emergent care facility, it doesn't really
14 say what she was treated for.

15 The second item was a financial responsibility
16 notice. It talked about the cost of the visit and I don't
17 think there were any dates on the information that I saw, it
18 just outlined what her financial responsibility was. There
19 was no diagnosis. There was no history on the first two
20 documents.

21 The third document -- I'm sorry, Mr. Falk, I'm
22 drawing a blank. What was the third document you showed me,
23 sir?

24 MR. FALK: The document is the one that's --

25 THE COURT: The wristband?

1 MR. FALK: No the wristband was with the ankle.
2 The other -- the other one shows sort of --

3 THE COURT: Yes, sir.

4 MR. FALK: -- memorialized this. And, Your Honor
5 if I may approach?

6 THE COURT: Yes, sir. I'm sorry.

7 MR. FALK: And I could show you another
8 photograph.

9 THE COURT: All right. Well, let's -- let's get
10 the third -- and I'm happy to look at the other photograph,
11 but there were three photographs.

12 MR. FALK: That's what I'm going to show you here.

13 THE COURT: Yes, sir. Thank you.

14 MR. FALK: This is the other photograph.

15 THE COURT: All right. So this is what you showed
16 me, this is Court's 1 and it says, Estimated Patient
17 Financial Obligation Summary, and basically it just shows
18 that service date was 8/1, which was today has her name on
19 it, and to that extent, really doesn't have anything else.

20 All right. How do we get to the next?

21 MR. FALK: And then I can provide you a
22 photograph.

23 THE COURT: Let me look at it, that's fine.

24 The other was apparently a wristband with what
25 appeared to be her ankle wrapped by an ACE bandage. And now

1 I think Mr. Falk is looking for something else.

2 MR. FALK: Your Honor, if I could approach?

3 THE COURT: Yes.

4 MR. FALK: This is what I believe those other two
5 pictures -- I guess, I could have taken it long ways so that
6 you could --

7 THE COURT: Yes, sir. He's handed me another
8 document that tends to indicate -- actually, it appears to
9 be a photograph of the actual Estimated Patient Financial
10 Obligation Summary, where it shows that the estimated
11 charges are attached to the document that I made reference
12 to.

13 So it's certainly going to give some type of
14 inference to the fact that she was seen at Roper St. Francis
15 Health Care Partners, for some reason, we don't know what it
16 is, and what the cost was.

17 MR. FALK: Yes.

18 (WHEREUPON, Court's Exhibit Numbers 1, 2, 3, 4
19 were marked.)

20 THE COURT: I believe that accurately outlines
21 what's been shown.

22 Also, I just don't think that's enough at this
23 point to grant continuing a four-year-old case. The
24 matter's also -- I'll just put on the record, it's further
25 complicated by the fact that an interpreter is here, the

1 State's ready to go with their interpreter today and there's
2 going to be problems with having the interpreter here
3 throughout the rest of the week.

4 So I'm going to deny your motion. I just don't
5 see that good cause has been presented to justify continuing
6 a four-year-old case based on the evidence that's been
7 provided to me.

8 Now, I'm not going to order anyone to go pick up
9 your client, sir. I think that if she wants to come and
10 participate, I think that she's fine to come and
11 participate. In other words, I don't want -- if she -- if
12 she is finished with whatever treatment she supposedly needs
13 and she can get down here, great. But I don't -- unless you
14 want me to send somebody to pick her up, then I'm not going
15 to do that. But if you want me, sir, to send somebody to
16 pick her up, I will, but we're going to start the trial this
17 afternoon. I've got a jury waiting and I'm not going to put
18 that off. But whatever you want me -- and I'm not trying to
19 put you in a box, I'm just saying if you want me to have
20 somebody go get her, I can have somebody go get her. If you
21 would rather me just not, such that she could come down here
22 later today or tomorrow morning or whatever she wants to do,
23 whatever your choice is, sir, I'll yield that decision to
24 you. I'll do whatever I can to assist you, sir, but I just
25 can't continue the case.

1 MR. FALK: Thank you. If can we stand down for a
2 minute?

3 THE COURT: Briefly. Yes, sir.

4 (WHEREUPON, a brief pause in the proceedings.)

5 THE COURT: Yes, sir, Mr. Falk.

6 MR. FALK: My wife was in touch with her. I
7 called, there was no answer. So she's going to stay outside
8 and watch the phone for me to go forward.

9 THE COURT: All right.

10 MR. FALK: If I could just -- I guess we're going
11 right for it -- I don't need to preserve my objection to
12 going forward with the case under these circumstances.

13 THE COURT: I don't think so but, I mean, I think
14 you've fully stated your matter and your rationale and I've
15 given mine.

16 Two other things that I did not mention that were
17 brought up as it relates to the continuance: I'm not aware
18 and it hadn't been presented to me that there's been any --
19 there wasn't any EMS or law enforcement that went to the --
20 or was there -- was anybody able to find out whether EMS or
21 law enforcement showed up at the accident?

22 Mr. Falk is indicating, no, they did not.

23 MR. FALK: No.

24 MR. ABSHIRE: It was our understanding that there
25 wasn't even an accident report, it was just a personal

1 accident.

2 THE COURT: All right. And so, again, that would
3 be something that I take into consideration as I factor that
4 in.

5 All right. So in that case, what I'm going to do
6 is bring the jury in here, I plan on instructing the jury
7 that they are to draw absolutely no inference and not
8 consider for any reason why your client is not here. And I
9 plan to instruct them on that at the very beginning. If she
10 comes in later, great. If she doesn't, at that close of
11 trial in my charges I will make specific reference to that,
12 but I want to draw to their attention that they are not to
13 consider why she's not here or allow that to enter into
14 their thoughts.

15 MR. FALK: Obviously, yes, Your Honor. Can I
16 explain to the jury during my opening what's going on?

17 THE COURT: What's the State's position on me
18 instructing the jury not to consider?

19 MR. ABSHIRE: We would oppose that, Your Honor.

20 THE COURT: You'd oppose that?

21 MR. ABSHIRE: Instructed not to draw inferences?

22 THE COURT: Yeah.

23 MR. ABSHIRE: Oh, absolutely --

24 THE COURT: Right.

25 MR. ABSHIRE: -- Your Honor, I misunderstood.

1 THE COURT: But as it relates to him making an
2 argument as why she's not here, I'm going to -- no, sir, I'm
3 not going to let you do that.

4 MR. ABSHIRE: And, Your Honor, along that same
5 point, can we ask that he introduce his wife sitting at the
6 table with him, so there's no confusion that she's the
7 defendant?

8 THE COURT: I mean, he'll do that, sure, and that
9 would be fine.

10 Anything from the State before we bring the jury
11 in?

12 MR. ABSHIRE: Your Honor, we do have her GPS
13 records and we could present those to the Court if you would
14 like to see those whenever we get them, but besides that,
15 Your Honor, we have nothing further.

16 THE COURT: GPS records?

17 MR. ABSHIRE: Her GPS ankle monitor for her bond.

18 THE COURT: Well, I'm not -- I'm not concerned
19 with that right now, I don't think.

20 Anything from the defense before we bring the jury
21 in?

22 MR. FALK: No, Your Honor.

23 THE COURT: All right. Let's get the jury please.

24 MR. ABSHIRE: Stand for the jury?

25 THE COURT: Sir? Yeah, that would be fine, yes,

1 sir. Stand when the jury comes in; is that all right,
2 Mr. Falk?

3 MR. FALK: Yeah.

4 THE COURT: And just so long as you do the same
5 thing, I don't care.

6 Madam Clerk, as soon as they get in here, I'm
7 going to want you to swear them in, okay?

8 THE CLERK: Okay.

9 THE COURT: Thank you so much.

10 MR. FALK: Your Honor, if I may? At some point I
11 would proffer the three sentences of my argument that I
12 would say about her, because I think -- I think the jury --
13 I don't think this is her fault.

14 THE COURT: Well, when -- counsel approach.

15 (WHEREUPON, a bench conference was had.)

16 (WHEREUPON, the jury entered the courtroom at
17 2:27 p.m.)

18 THE BAILIFF: All jurors are present, Your Honor.

19 THE COURT: All right. Thank you.

20 Ladies and gentlemen, I'll tell you what, why
21 don't you just remain standing, because what I'm going to do
22 is -- you guys can sit down -- I'm going to have the Clerk
23 swear you in, okay? Thank you.

24 (WHEREUPON, the jury was sworn.)

25 THE COURT: All right. Ladies and gentlemen,

1 thank you, you can be seated. Thank you, Madam Clerk.

2 All right. Ladies and gentlemen, we are about to
3 begin the case, or try the case, of the State versus Sheena
4 Alston.

5 Now, ladies and gentlemen, before we begin this
6 trial, I want to tell you that this trial will be different
7 than what you might expect. Many people don't have a chance
8 to attend an actual court session as you're doing now. And
9 may think from watching TV, movies, and reading books that
10 trials are always full of high drama, intense action,
11 riveting circumstances. And while all of those may be true,
12 at some time, or at some points, this trail is not for
13 entertainment. It's a fundamental part of our democracy and
14 I always repeat this twice: It's an often slow,
15 deliberative and repetitive process. Slow, deliberative,
16 and repetitive. And the reason is, folks, we've got to get
17 it right. And it's the exact opposite of TV, movies, or
18 books.

19 The courtroom is a place of honor. It's dedicated
20 for the protection and preservation of citizen's rights,
21 through what many have called the greatest justice system
22 ever created. The attorneys appearing before you are
23 advocates for their parties they represent, but first and
24 foremost, they're officers of the court, they're sworn to
25 uphold the integrity and fairness of our judicial system.

1 You should expect them, ladies and gentlemen, to be
2 professional, competent, and ethical in their representation
3 of their client's interest.

4 And by the same charge, ladies and gentlemen,
5 you've taken an oath and you are also expected to be
6 professional, reasonable, and ethical. So I thank you for
7 accepting that responsibility and for your contribution to
8 the justice system this week.

9 Now, ladies and gentleman, what I say now is
10 intended to serve as an introduction to the trial of the
11 case. These remarks are not a charge on the law in the
12 case. I will instruct you on the applicable law to the case
13 at the end of the trial before you retire to consider your
14 verdict. This is merely an explanation of the procedure
15 that we will follow in the trial of the case so that you may
16 better understand what maybe happening, okay.

17 Now, ladies and gentlemen, during the trial of
18 this case I'm going to ask that you not take notes, okay.
19 Some judges let jurors take notes, others do not. My
20 preference is that you do not. Sometimes note taking can be
21 distracting. Sometimes some people are deemed better note
22 takers than others and they may be the very ones who are
23 writing down something incorrectly. But perhaps what I
24 believe to be the most important thing is that note taking
25 will often distract you from your ability to observe the

1 witnesses who take the stand, because what you're doing,
2 folks, is you're evaluating their believability, their
3 credibility. And so not looking or being distracted
4 sometimes that can take away or interfere with your ability
5 to observe. And, as a result, I'm going to ask you to not
6 take notes.

7 Now, you will say, Judge, I see you taking notes
8 during trial, why can't I.? Remember, and I'll tell you
9 this over and over again, folks, you're the sole finder of
10 the facts in this case, I am not. And so that's why, where
11 the facts come from, they come from right there, from that
12 witness stand and/or exhibits that are entered into
13 evidence. And that's why I'm going to ask you not to take
14 notes.

15 Now, folks, this morning you heard me read the
16 indictment and I want you to know the defendant is charged
17 by an indictment filed with this court with the crime of
18 burglary in the first degree. The elements of which will be
19 explained to you later.

20 Now, the indictment is simply the charge by which
21 the case is brought into court and it is not in any sense
22 evidence of any -- of the allegations that it contains. The
23 defendant has pled not guilty to this indictment. The
24 State, therefore, has the burden to proving each of the
25 elements of the indictment beyond a reasonable doubt. And

1 it will be your duty, ladies and gentlemen, to decide
2 whether the State has met that burden.

3 Now, ladies and gentlemen, I will tell you right
4 now that Ms. Sheena Alston is not in the courtroom today.
5 She may be in the courtroom later today, she may be in the
6 courtroom tomorrow, but what I'm telling you right now is
7 this: You took an oath and I'm instructing you, per your
8 oath and your duty, ladies and gentlemen, you are not to
9 consider why she is or isn't in this courtroom. You are to
10 draw no inference from the fact that she isn't in this
11 courtroom. You are not to consider that, the fact that she
12 is not in this courtroom.

13 Ladies and gentlemen, you are the judges of the
14 facts. That's what you're here to judge. You're to draw no
15 inferences at all by the nature of her not being here today.

16 Now, folks, you determine the facts from the
17 testimony you hear and the other evidence introduced to this
18 court. It is up to you to determine the inferences from
19 which you may feel are properly drawn from the evidence.
20 It's especially important that you perform your duty from
21 determine the facts diligently and conscientiously, because
22 ordinarily there is no way to correct an erroneous
23 determination of the facts by a jury.

24 On the other hand, with equal emphasis, the same
25 law that makes you the judge of the facts, makes me the

1 judge of the law. The law, ladies and gentlemen, as given
2 by the Court is the only law you may consider. You must
3 accept it and follow it even though you may disagree with
4 it. I cannot tell you what the facts are and you cannot
5 disagree with me about what the law is or should be. Your
6 job is to take the law as I give it to you, ladies and
7 gentlemen, and apply it to the facts as you find them from
8 the testimony of the witnesses and any other evidence that
9 is introduced. And, after doing that, you will render your
10 verdict under the solemn oath that you just took as jurors.

11 Now, you're going to hear me say this a bunch this
12 week, ladies and gentlemen, until I advise you to begin your
13 deliberations, you must not discuss this case with anyone
14 including your fellow jurors. This includes -- or any
15 family members or friends, anybody, and that includes
16 discussions face to face, and those by telephone, email,
17 texts, blogs, or any other method of communication. You may
18 not use a computer, cellular telephone, or other electronic
19 device with communication capabilities at any time while in
20 the courtroom or during deliberations.

21 During your breaks, or meals, or over night, if
22 necessary, you may use these devices. However, you may not
23 at any time use these devices to get or send information
24 about this case. And that includes information about a
25 party, don't want anybody playing super sleuth, trying to

1 look things up, about a witness, about an attorney, about a
2 court officer, about the judge, news accounts about the
3 case, research on any topic that you think might be helpful
4 in deciding the case, or any testimony presented by any
5 witness.

6 During the trial do not read, listen to, or watch
7 any news reports about the case, and this includes anything
8 that may be in the newspapers or on the Internet, radio, or
9 television. You must not consider anything you may have
10 heard or read about the case outside of this courtroom,
11 whether before or during the trial. After the case is
12 submitted to you, you must discuss it only in the jury room
13 with your fellow jurors.

14 The attorneys and parties in this case have been
15 advised that they are not to talk to you at all. So if you
16 see anyone involved in the case and they don't even say
17 hello or nod, it's not that they're being unfriendly, they
18 are following the specific instructions that I have given
19 these individuals.

20 Now, ladies and gentlemen, it's important that you
21 keep an open mind and not decide any issue in the case until
22 all of the evidence has been presented, the parties have
23 made their closing arguments, and I instruct you on the law.
24 It's your solemn responsibility to determine whether the
25 State has proven the defendant guilty beyond a reasonable

1 doubt. And your verdict must be based solely on the
2 evidence as it is presented to you in this trial and on the
3 law as I will instruct you during -- during and at the close
4 of trial.

5 Now, in just a moment the Solicitor will make
6 what's called an opening statement, in which the Solicitor
7 will explain to you the issues in this case, or at least
8 what the Solicitor thinks the issues in the case are.

9 The attorney for the defendant will also make an
10 opening statement, although he's not required to do so.
11 What the attorneys tell you during their opening statements
12 is not evidence in this case. It is only their
13 contentions -- or their contention as to what the issues
14 are.

15 The evidence, again, ladies and gentlemen, will be
16 presented to you by the testimony of sworn witnesses from
17 this witness stand and/or exhibits that may be introduced
18 into evidence. From time to time during the trial you may
19 hear one of the lawyers say something like, Your Honor, I
20 believe we have a question of law or a matter of law to
21 discuss with you, or Your Honor, may we approach the bench,
22 or sometimes I might find it necessary to excuse you from
23 the courtroom for a short while, while the attorneys and I
24 can then discuss a matter of law.

25 And, ladies and gentlemen, I'll just tell you, the

1 reason for that is because you're the sole judges of the
2 facts and sometimes when I'm discussing matters of law with
3 the attorneys it may be necessary for me to make some
4 comment as to the facts in connection with the ruling or as
5 to whether a particular law might apply. I'm not supposed
6 to tell you what I think the facts are, so I'll excuse you
7 from the courtroom while these discussion take place so that
8 in no way you will be influenced by anything that I might
9 say or do in connection with the facts.

10 In determining what the facts are in this case you
11 must decide whether or not the testimony of the witnesses is
12 believable. It will be my responsibility to rule as a
13 matter of law as to whether certain testimony is admissible
14 at all or not. But once the testimony, folks, once that
15 testimony is admitted, whether or not you believe it, that's
16 solely for you to determine.

17 In deciding whether to believe a witness you have
18 the right to consider the interest of any witness, the bias
19 of any witness, the prejudice of any witness, the
20 opportunity for the witness to have seen the matters and
21 things about which the witness may testify and the way the
22 witness acts on the witness stand.

23 You have a right to consider anything that's in
24 the record that will help you evaluate the testimony of the
25 witnesses. That means it's your duty, ladies and gentlemen,

1 to pay close attention to the witnesses, to observe the
2 witnesses, to listen to the witnesses, and pay close
3 attention to the attorneys and the Court. Try not to let
4 your thoughts wonder, but pay strict attention to the
5 testimony in this case. So at the end of all testimony,
6 ladies and gentlemen, after the arguments of counsel, and
7 the charge on the law by the Court, you will then be in a
8 position to determine what the facts are and to apply the
9 law to those facts and thus render a verdict.

10 Now, ladies and gentlemen, one of the things I
11 didn't ask you to do is, I'll try to remind you, I didn't
12 y'all to elect a Foreman or Foreperson. I would ask that
13 probably tomorrow morning, when you're back here, if y'all
14 could decide amongst yourselves if you could elect a
15 Foreperson for me?

16 The Foreperson's job is merely to go and sort of
17 be the spokesperson for the jury. So let's say that a
18 question arises, the Foreperson would write the question
19 down, hand it to the Bailiff, who would then give it to me
20 and I would address that question. The Foreperson also is
21 the individual, that once you go and deliberate, okay, once
22 a verdict is reached, the Foreperson would go and mark the
23 verdict form. I'll give you more instructions about that
24 later. And also the Foreperson, during deliberations, would
25 just try to make sure that everybody has an opportunity to

1 voice their opinion, okay.

2 The only caveat is this, the two alternates cannot
3 be the Foreperson. Now, sometimes it's whoever shows up
4 last in the morning, that's the Foreperson, okay. So I've
5 seen it done that way, I don't necessarily recommend that,
6 but it's really -- it's not a whole lot, but I would ask you
7 if y'all could decide that and just let me know who that is
8 tomorrow morning. The Foreperson could just write their
9 name down on a piece of paper, the Bailiff's got a pad for
10 them, they would write their name down and then I would go
11 back and I'd let everybody know and make that a Court's
12 Exhibit. So I thank you there.

13 Now, in order to preserve everyone's rights, I
14 want to give the parties an opportunity to object
15 anything -- any objection to the Court's opening remarks or
16 any omissions from the State?

17 MR. ABSHIRE: None, Your Honor.

18 THE COURT: From defense?

19 MR. FALK: No, Your Honor.

20 THE COURT: All right. Thank you, gentlemen.

21 All right. With that having been said, we are
22 ready to begin the trial of this case. Solicitor.

23 MR. ABSHIRE: May it please the Court.

24 THE COURT: Yes, sir.

25 OPENING STATEMENT ON BEHALF OF THE STATE

1 MR. ABSHIRE: Good afternoon, everyone.

2 This entire trial boils down to someone taking
3 advantage of the people around them. Taking advantage of
4 someone and not caring how much they hurt them.

5 Now, you heard from Judge Bonds, myself and my
6 co-counsel, we represent the State in this, and in
7 representing the State we carry the burden of proof beyond a
8 reasonable doubt. We have to prove to each and every one of
9 you the elements of the charge as you heard, burglary first.

10 So, let's talk about how we get to the point of
11 proving those elements. You heard Judge Bonds say that all
12 the facts come from right there. Throughout this trial
13 we're going to have to prove to you that a person is guilty
14 of burglary in the first degree if the person enters a
15 dwelling without consent and with intent to commit a crime
16 in that dwelling and that the entering or remaining, occurs
17 in the nighttime.

18 Now, lawyers do a good job of making everything a
19 little more confusing than they need to be. So the
20 definitions that I think are important here are, dwelling,
21 it's just a fancy word for where someone lives, but talking
22 about intent as part of the element of this charge.

23 You'll hear that it is law in South Carolina that
24 you cannot get inside the mind of someone and know exactly
25 what they are thinking. But that you can infer their intent

1 by the actions and the situation surrounding what they are
2 doing and at what point it comes into question.

3 Now, just like Judge Bonds told you, you are the
4 judges of the facts. And each of you have one of the most
5 important tools to apply in this trial which is your common
6 sense. Common sense is developed over a million different
7 scenarios throughout your entire life and it guides what
8 does and does not make sense to you.

9 We're going to ask you, as a juror, to apply that
10 common sense. Sitting on this trial is no different than
11 any other scenario where you apply your common sense and
12 consider what does and does not makes sense.

13 Now, September in Charleston brings with it the
14 end of summer. But, as many of you know, the end of
15 September -- beginning of September also brings with it
16 hurricane season. So, back in 2018, many of you may
17 remember, but Hurricane Florence came to Charleston. You're
18 going to hear that during that time, when Hurricane Florence
19 was making it's way to Charleston, a woman named Soila
20 Avila, took her family and they chose to evacuate. Well, in
21 evacuating, as you all know, some people choose to go and
22 other people choose not to. You'll hear that her neighbor
23 chose not to evacuate.

24 You're also going to learn that while she was out
25 of town that, on the night September 14, 2018, around 4:00

1 o'clock in the morning, the defendant arrived at her home.

2 You're also going to learn that the defendant was
3 not a guest. She was not given permission to be in there.
4 And Soila did not consent to what happened that night.

5 That night, the defendant chose to drive to North
6 Charleston, but you're going to learn that she didn't drive,
7 she was not alone. You're going to meet Eric Zipfel. And
8 you're going to learn that Eric Zipfel is the defendant's or
9 was the defendant's fiancée at the time. And that he was
10 driving around that night, driving her to different
11 locations so she could buy scratch off tickets. He would
12 drive here to different locations and drop her off and then
13 pick her back up.

14 And you'll hear that one of those stops that
15 night, the final stop, was at [REDACTED] Ward Ave., North
16 Charleston, Soila's home. What you're also going to hear
17 is, during that process as he was driving her around that
18 night, they were fighting. And during that fight, it hit
19 the point where Eric was completely done, he wanted out of
20 the relationship, and he wanted to just go back to New
21 Jersey to be with his family.

22 You're going to learn that, while Eric had the car
23 driving them around, he didn't have any money. Well, when
24 he is trying to get to the point where he can get away from
25 the defendant, she says, All right, take me here and I'll

1 give you some money and then you can go your way.

2 Well, you're going to learn that he did that. He
3 drove her to that location at [REDACTED] and they arrived around
4 4:00 o'clock in the morning. You're going to learn that
5 whenever they got there the defendant told Eric go knock on
6 the door. He's doing his, as you'll learn, to see if
7 anybody's home.

8 She then tells him go scout --

9 MR. FALK: Your Honor, may I approach?

10 THE COURT: Yeah. Counsel, approach.

11 (WHEREUPON, a bench conference was had.)

12 THE COURT: By the way folks, that's some fancy
13 sound machine, we don't have that in Walterboro, and it's
14 supposedly white noise, they call it, and so you're not
15 supposed to be able to hear all the secrets that we're
16 talking about. All right. At first, I forgot about it,
17 it's been awhile since I've been here, I thought it was
18 raining. But, in any event, that's what that is, I just
19 remembered I just wanted to let you know that.

20 Go ahead, Solicitor. I'm going to overrule the
21 objection.

22 MR. ABSHIRE: Ladies and gentlemen, you're going
23 to learn that Eric participated in the scouting and the
24 entry of this home. You're also going to learn that the
25 only person that entered that home that night was the

1 defendant. You're going to learn that he helped her take
2 the AC unit, a window unit off the back window, then she
3 entered the home through that window.

4 You'll also learn that she was using her cell
5 phone that night as a flashlight with it being 4:00 o'clock
6 in the morning and being dark out.

7 But after Eric takes the AC unit off the window
8 and he returns to his vehicle, they do not see that a
9 neighbor, the one who failed to evacuate, saw the figures
10 entering the home.

11 Well, as Eric returns to his vehicle, you're going
12 to hear that the defendant is inside using her cell phone
13 and that she is rummaging, looking for things of value,
14 things that she could sell, things of money, anything. But
15 during that process a police officer was responding to that
16 scene because of the 911 call that the neighbor made.

17 You're going to hear from that officer today and
18 he is going to come through and he is going to tell you that
19 as he arrives he was the first one to arrive on scene. It
20 was dark, it was stormy, and that he could see some kind of
21 lights in the house, but as he approached the front door
22 slammed. You're going to learn that the defendant was in
23 the house, slammed the door, and jumped back in locking it.

24 Well, during that time, the officer, it obviously
25 becomes an officer safety situation where he doesn't know

1 what's on the other side of that door. You're going to
2 learn that he made commands telling them to come out, but
3 during that time he was calling for backup.

4 Eventually, as officers arrived, they made entry.
5 But they found that the light was gone and that there was
6 nobody inside the house. But what you're going to learn is
7 that during that time period the defendant had time, and she
8 did, jump through the back window in which she came through.

9 You'll learn that the only difference about when
10 she came through the window as when she went out is that she
11 left something. You're going to learn that officers found a
12 pink and white cell phone, the one that she was using
13 inside, underneath, outside the window.

14 You're going to hear that as they realized nobody
15 was in the house, they realized that there was a man sitting
16 in a running vehicle right outside, Eric Zipfel. Whenever
17 they first go up to ask him what he's doing, you'll learn
18 that he said he was an Uber, that he was waiting to be paid,
19 and that the woman ran off when the cops got there.

20 You're going to learn that he then gave a story
21 that he was driving around a woman named Tina, that he did
22 know her, and that -- but he didn't know her phone number.
23 Eventually, you'll learn that as they started -- as officers
24 started questioning him, they took him back to the station
25 and he eventually caved, he told them everything that

1 happened.

2 He told them that it was just him and the
3 defendant driving around that night. You'll learn that
4 there was no Tina, there was no Uber driving. It was Sheena
5 Alston, the defendant, his fiancée at the time.

6 Well, as they investigated this they also charged
7 Eric Zipfel with his involvement in this. And
8 North Charleston, through their investigation, realized that
9 once they had a name, they actually knew who the defendant
10 was.

11 Officer Karen Macdonald, as you'll hear from her,
12 she was actually the officer that found the phone on the
13 scene that night. She will tell you that she went to a
14 Spinx gas station because she knew that the defendant would
15 frequent it buying scratch off tickets. She told the clerk,
16 Hey, we're looking for this person, if you could do me a
17 favor and give me a shout if you see this woman.

18 Well, a few days later on September 20th, you'll
19 learn that a security guard with Trident Tech, Eric Jones,
20 was inside that same Spinx. As he was coming inside, he was
21 tipped off by the clerk that the woman he had spoken with, a
22 North Charleston Police Officer, before a few days earlier,
23 had just left the store.

24 Well, in learning this, he starts following, who
25 you'll learn was the defendant. She got on a white Moped

1 and she started taking it down Midland Park. As he's doing
2 this, Eric Jones made a call to Karen Macdonald, because he
3 knew her personally and understood that the person they were
4 looking for was being looked for by North Charleston. The
5 call comes out and another North Charleston officer is not
6 far away and falls in line behind Eric Jones. You'll learn
7 that they follow the defendant on her Moped to her apartment
8 on Midland Park Avenue.

9 At that point, she enters the apartment, and as
10 they approach the Moped is out front, except this time
11 there's a man standing outside. And they asked, Have you
12 seen this woman? Did she go in this apartment? May we
13 enter the apartment? And at that time Karen Macdonald
14 arrived. You'll learn that he claimed he was the one
15 driving the Moped and that they were not entering without a
16 warrant. Officer Macdonald says, Totally fine, goes and
17 gets the warrant from the station.

18 And you'll learn that they did eventually go in
19 that apartment and at that point they did a search. They
20 went room by room and they didn't find anyone. Until as,
21 they were leaving, they noticed that the cabinet under the
22 sink was picked open. And at that point, they bent over,
23 opened it up and the defendant was hiding underneath the
24 sink covered in water.

25 You'll learn that they made the arrest and that,

1 North Charleston, through their investigation, will take
2 phones. They took Eric Zipfel's phone the night that he got
3 arrested. And they also took that phone that I mentioned
4 earlier, the pink and white phone.

5 Now, limitations with the technology allowed of
6 how much you can and cannot get off the phone, they were
7 able to access Eric's phone, but they weren't able to fully
8 access the defendant's phone.

9 You're going to hear from Detective Sam Riedel,
10 who does the phone dumps for North Charleston and he'll tell
11 you that, while he can't fully access it, they can access
12 information off the SIM card.

13 On that SIM card you will see that the same phone
14 number that was saved in Eric Zipfel's phone as Sheena, was
15 the number that he was corresponding with, that he was
16 calling and texting that night. You'll see that he was
17 texting her up until minutes before law enforcement got
18 there. And you'll also be able to see for yourself this
19 pink and white phone that is the defendants, the one she
20 used during the burglary, and the same pink and white phone
21 that she dropped outside of that window.

22 Now, ladies and gentlemen, I told you in the
23 beginning, this is an entire case about someone taking
24 advantage of people. Judge Bonds told you that you are the
25 judge of the facts, and we're going to ask that you apply

1 your common sense that we talked about to everything that
2 you see, all the facts that come from that witness stand
3 this week. And at the end of this trial we're going to ask
4 you to return the only verdict that is reasonable and that
5 applies common sense and that is a guilty verdict for
6 burglary in the first degree. Thank you.

7 THE COURT: Mr. Falk.

8 MR. FALK: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. FALK: Solicitor.

11 OPENING STATEMENT ON BEHALF OF THE DEFENSE

12 MR. FALK: I want to thank you all for being here
13 today. You know, we spent probably an hour, two hours
14 maybe, up in that big jury selection room asking a lot of
15 questions of y'all. And through those questions we sort of
16 got to a point where we think that you all could be fair in
17 this case.

18 As you noticed, some of those people were excused,
19 they came up and told the Judge something, and some people
20 were excused from this case. But none of y'all were
21 obviously excused from the case. And the Solicitor and I,
22 we both are counting on y'all to abide by your oath and be
23 fair in this case and to not have any kind of preconceived
24 notions. And what's really important is not to start
25 deliberating and thinking about this case until it is

1 entirely over. I mean, the Solicitor just gave you a big
2 long story, but that's his story. The Solicitor wasn't
3 there that night, I mean, this is just -- that's the story.
4 But the only thing that matters is what the witnesses are
5 able to tell y'all.

6 You know, the State's got to prove this case
7 beyond a reasonable doubt. That is completely fair,
8 because Ms. Alston, as you can guess, I'm her lawyer, and
9 I'm a one-man lawyer in a little office on Broad Street.
10 The Solicitor has the entire Solicitor's Office and they
11 have the North Charleston Police Department and they've got
12 somebody to do some nice, you know, video graphics and
13 you're not going to see that from me.

14 So, I mean, that fact that, you know, there's a
15 lot of people on that team and it's just me and Ms. Alston
16 on our team. So it's not unreasonable that the State should
17 be able to prove their case beyond any reasonable doubt.

18 Another thing I want y'all to get an appreciation
19 for -- I want y'all to think about his: Y'all don't know my
20 client from Adam, right? Because if you did, you would have
21 told the Judge that, so you don't know my client at all.

22 However, because y'all are sitting in that booth
23 today, y'all have a lot of power. You're going to make one
24 of the biggest decisions in the life of somebody you have
25 never even met. Now, think about that. I mean, obviously,

1 y'all make big decisions about your family members. You
2 make decision on where your kids are going to go to school.
3 You make decisions to get married, all this kind of stuff.
4 Those are all important decisions and y'all make important
5 decisions everyday. But this is the most important decision
6 you're going to make regarding a stranger's life. And
7 because of that, y'all really have to abide by your oath and
8 wait until you hear the whole case. Because I think this
9 case is going to turn on -- the State's really relying on
10 Mr. Zipfel. And I think that you're going to maybe find
11 that Mr. Zipfel is so scared of going to prison and will say
12 anything, even if his story doesn't really make a lot of
13 sense.

14 And I think at the end of the day you're going to
15 see that there's some holes in Mr. Zipfel's story that just
16 don't make sense and he's doing whatever he can to keep
17 himself out of prison.

18 So I want y'all to listen to the evidence. I want
19 y'all to think about what motives some people might have for
20 the testimony. And I want you to wait until the Judge has
21 charged you on the law at the very end before you start
22 deliberating this case. Because if the Judge were to make a
23 mistake in this case, there's a mechanism there, we can
24 appeal the decision, if he makes a mistake on the law.

25 If I make a mistake, you know, if I provide my

1 client ineffective assistance of counsel, she's got a record
2 there, but y'all are the fact finders. There's no remedy if
3 you make a mistake on the facts. Whatever y'all determine
4 the facts are in this case, the facts are going to be here,
5 there's not going to be any change in that. So that's why
6 you have to be very thoughtful in your decision here. And I
7 think at the end of the day you will see that the State is
8 on unable to prove their case beyond a reasonable doubt.
9 I'm sure you will have lots doubt in the strength of the
10 State's case. Thank you.

11 THE COURT: Thank you, Mr. Falk.

12 All right. Solicitor, are you ready to call your
13 first witness?

14 MR. ABSHIRE: We are, Your Honor.

15 THE COURT: Yes, sir.

16 MR. ABSHIRE: The State calls Officer Brandon
17 Owens.

18 THE COURT: All right. Counsel, approach for one
19 second.

20 (WHEREUPON, a bench conference was had.)

21 THE COURT: Okay. All right. Give us one second,
22 ladies and gentlemen, bear with me for one second.

23 BRANDON OWENS, having been duly sworn,
24 testified as follows:

25 THE WITNESS: My name is Brandon Owens. Last name

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1 is spelled O-W-E-N-S.

2 THE COURT: Your witness, sir.

3 DIRECT EXAMINATION

4 BY MR. ABSHIRE:

5 Q. Good afternoon, Officer Owens.

6 A. Good afternoon.

7 Q. Could you explain to us what your current
8 occupation is?

9 A. I'm with the traffic unit with the North
10 Charleston Police Department, currently. I've been doing
11 that for quite a while now, officer with the traffic unit.

12 Q. And walk us through your background in law
13 enforcement, if you could?

14 A. Okay. So I started in the Uniform Patrol
15 Division. When I got to the police department, I started
16 working the midnight shift. I primarily stayed at that and
17 worked two different sections of the city, the south and
18 central ends. And then I joined the Traffic Unit in 2018,
19 actually around the same time, I've been in the traffic Unit
20 ever since where I served as the Hit and Run Investigator, a
21 DUI Enforcement Officer, as well as normal traffic-related
22 duties that we get assigned.

23 Q. And were you on duty the night of September 14th,
24 2018?

25 A. I was. Yes, sir.

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1 Q. And what were doing that night?

2 A. So, given the fact that anytime we have a natural
3 disaster, the Special OPS Division, they kind of flip it on
4 how it they change it every year. Normally, what we do is
5 we kind of overflow patrolling it, so we keep extra patrols
6 throughout neighborhoods and stuff, because when a storm is
7 activated a lot of people leave. So we just kind of keep
8 patrols in one area. So I was assigned to the patrol
9 division and assist them to calls for service.

10 Q. Did you respond in reference to a burglary at some
11 point?

12 A. I did. I was actually at the Spinx on Midland
13 Park when the call for a burglary in progress went out on
14 Midland Park.

15 Q. And was that location at [REDACTED] Ward Avenue?

16 A. Yes, sir.

17 Q. Is that in Charleston County?

18 A. It is in Charleston County, yes, sir, North
19 Charleston.

20 Q. And I believe you told us, but you were at the
21 Spinx. What were you doing at the Spinx?

22 A. Just taking a break from everything. The shift
23 hours kind of changed, so I just stopped to get a coffee,
24 and wait there, so that's why I was in there when the call
25 dropped.

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1 Q. Do you recall about how far away you were?

2 A. I was probably maybe a mile and a half, maybe
3 less, from Midland Park. I was in between Rivers and
4 Midland Park right near the intersection, this was call, I
5 want to say, was probably, I know definitely less than two
6 miles from where I was at, so maybe, maybe a couple of
7 minutes away.

8 Q. Were you the first one to respond?

9 A. Yes, sir, I was. As well as our other agencies.
10 I believe I was the first one from Charleston there.

11 Q. And I want to talk to you about whenever you first
12 responded. Could you kind of walk us through what time of
13 night that was?

14 A. It was pretty late at night. I know definitely
15 pitch black dark hours. Not a lot of people out, in fact, a
16 lot of people had evacuated. Where this was, it was a
17 pretty poorly lit area. That's about what I recall, I don't
18 think it was raining at that point in time, at least I don't
19 remember if it was or not. It was kind of like one of those
20 portions of breaks in the storm.

21 Q. And what did you do whenever you first got on the
22 scene?

23 A. So what I do is normally when we respond to a
24 burglary in progress, kind of like to ease the element of
25 surprise, what we call it, we park away from the scene and

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1 approach on foot so that way the suspects aren't alerted to
2 our police cars, because at the time I was driving a marked
3 police car. So I parked a little bit away from the
4 residence, if I recall correctly, and then we approached the
5 house.

6 Q. And did you have any idea of what was going on
7 inside that house?

8 A. So when we received the call of the burglary in
9 progress, as I approached, that's when I observed possibly
10 two sets of flashlights in the house. And then I was like,
11 Okay, there's somebody still inside. Because at the time,
12 from when the call dropped and I responded, I mean, it was
13 just a couple of minutes, if that. And, at that point,
14 either I don't know if they saw my uniform or saw my car
15 down the road, that's when I heard the door slam shut and
16 that's when I started announcing myself.

17 Q. About how far away were you from the front door?

18 A. Not too terribly far away. I know there was,
19 like, some parking spaces, if I remember correctly, in
20 between, so not terribly far away from the house. Usually,
21 when we're calling somebody out of house, we want to grab
22 some type of cover or concealment, I think there was a tree
23 or something standing by just to try to conceal myself a
24 little bit, just because you don't know what people's
25 intents are, especially if they just broke into somebody's

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1 house.

2 Q. So talk to me just real briefly on what kind of
3 house we are talking about. Is it an apartment or is it...

4 A. If I my memory recalls correctly, it was like a
5 duplex setup. So we have a lot of residences where you kind
6 of split off between two houses, not necessarily a
7 townhouse, but it's like a couple of units, like, sectioned
8 off like an apartment style, but not a townhouse, if that
9 makes sense.

10 Q. And you told us about the approach, but were you
11 able to see definitively inside of the house?

12 A. It was very hard to see from where I was at into
13 the doorway. I just knew that somebody was there, because
14 hearing the door slam shut. I don't remember if I saw any
15 figures, I knew I couldn't see much into the house, other
16 than I knew that somebody was still in the house.

17 Q. And could you -- you told us that you saw a
18 flashlight, was it moving?

19 A. It appeared that -- like I said, it' been a while
20 ago, I saw two moving flashlights that were reflecting off
21 the window. So there were moving, but I recall two sets of
22 flashlights focused at one of the windows, I can't remember
23 which window it was, but it was one of the front facing
24 windows of the house.

25 Q. Is it possible that those two lights were a

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1 reflection?

2 MR. FALK: Objection, Your Honor.

3 THE COURT: I'll sustain.

4 MR. FALK: Calls for speculation.

5 THE COURT: I'll sustain. I think that's
6 speculative, yes, sir.

7 BY MR. ABSHIRE:

8 Q. So as you're approaching, the door closed, were
9 you able to see who closed the door?

10 A. Not to my knowledge, no, sir. I could not see, I
11 could not identify anybody in the house from where I was at,
12 at the time.

13 Q. So, as the door closed, what is your immediate
14 reaction as a law enforcement officer?

15 A. So now that there's a known fact that there's
16 people inside the house and they're still inside, so
17 normally what we do is, our standard operating procedure is,
18 we'll establish a perimeter outside the residence, get more
19 units in the area, establish a perimeter and contain the
20 house and then start calling the subject out, whether that
21 be through a PA system or loud announcements like I did that
22 night. We also utilized a K9 unit and stuff like that that
23 also respond to the scene and assists us with potentially
24 getting the suspect out. It kind of negates the danger of
25 going into a house of unknown protocol and helps us.

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1 Q. But were you still alone at that point?

2 A. There was a few officers arriving. There was
3 different agencies just because of the storm activation.
4 There had been people there from the Sheriff's Office, I
5 know our patrol had some people assigned down there. There
6 was a good bit of people there pretty quickly. So it wasn't
7 long that I was by myself.

8 Q. Did you draw your weapon?

9 A. I did. I un-holstered my weapon and kept it, you
10 know, in look-out position, just to get ready to -- you
11 know, when I start calling out, we normally have a gun,
12 because, like I said, if somebody is breaking into a house
13 there's no idea what their intentions are. So I had my
14 department issued firearm ready to go just in case.

15 Q. And during that time did anybody come out?

16 A. No, sir. The door slammed shut and then we just
17 started calling -- you know, calling commands to the house
18 for all occupants to come out. And it didn't seem like we
19 were getting any response from that.

20 Q. And did you see anybody run around either side of
21 the house?

22 A. Not to my memory or recall, no, sir, I didn't
23 recall anybody coming out of the house.

24 Q. But did y'all eventually after some time go into
25 the house?

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1 A. Yes, sir. I can't remember which officers went
2 in, but we eventually, once we exhausted all efforts, we
3 determined at that point to make entry into the house. I
4 don't remember if we used a K9 to assist us in the house and
5 clearing the residence, but I'm not sure 100 percent if I
6 was one of the first units to go into the house. We cleared
7 the house at some point after we didn't get a response from
8 anybody inside.

9 Q. Did you find anybody inside the house?

10 A. At that time, no, sir. It appeared that all the
11 occupants left and didn't find anybody inside the house at
12 that time.

13 Q. And was there a determination as to what had
14 happened?

15 A. So after we were looking around the house, we
16 noticed that there's an AC unit. A lot of residents they
17 keep them in their window, but, you know, a lot of people
18 don't secure it to where the window can still go up. So
19 believe that they actually entered and exited the same way
20 they came in through that AC unit that was in the bedroom
21 window.

22 Q. And setting up a perimeter, does that include
23 canvassing the area for possible evidence?

24 A. Yes, sir. We'll canvass the area for evidence,
25 witnesses, just try to locate anything of potential value,

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1 whether it be a witness or, you know, any items they may
2 have left at the scene, that's another common thing. If
3 somebody gets spooked and then they take off running they
4 might leave something behind that we might be able to
5 locate.

6 Q. So you didn't find anybody at the house, were you
7 able to actually able to find someone else at that scene
8 outside of the house?

9 A. From what I recall, there was the complainant who
10 initially called in the call, I believe I made contact with
11 him, but due to language barriers, there somebody else that
12 was out there with me. We spoke with him and it's pretty
13 much along the lines is he saw somebody exiting, I believe,
14 from the back of the residence at the time when we were
15 calling out the house, they were actually getting out and
16 leaving. So I believe that was the complainant actually
17 called into the department.

18 Q. Was there a determination that there was running
19 car in the front?

20 A. Yeah, so after we got done with going through the
21 house, we observed a gentleman what was sitting in a car and
22 I didn't put too much mind to it at first because, you know,
23 there's parking spaces in front. If I recall correctly,
24 there's -- you have like multiple residences that would live
25 there. So seeing a car in one of the parking spaces

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1 wouldn't be something that was off. But then, when we came
2 back, we're like, Hold on, wait a minute, the guy is still
3 waiting here in the car. So that's when we investigated
4 further and detaining him for him possibly being involved
5 with the incident.

6 Q. What was your understanding of what he was doing
7 there?

8 A. He was waiting to pick somebody up, initially.
9 And that's pretty much what I got. He was just there at the
10 scene waiting to pick somebody up. And then we found out
11 that he's possibly the person that broke into the house.

12 Q. Were you able to determine who lived in the house?

13 A. All's I remember is, it's a Hispanic couple that
14 was actually out of town when it happened, they evacuated
15 the area. I never spoke with the victims from the
16 residence. I think somebody reached out to them on the
17 phone and then they were going to reach back out to us once
18 they got back in town.

19 Q. So were you able to determine if the victim was
20 home during this?

21 A. No, the victim was not home at the time of the
22 incident.

23 Q. Officer Owens, were -- was it standard issue at
24 that time to wear a body cam?

25 A. Yes, sir. It was relatively new technology, but

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1 we started implementing it in that process and we didn't
2 normally wear body cameras at that point.

3 Q. Were you wearing one that night?

4 A. Yes, sir, I was.

5 Q. And was it activated?

6 A. Yes, sir.

7 Q. If you were to see a copy of that video would you
8 recognize it?

9 A. Yes, sir.

10 MR. ABSHIRE: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. ABSHIRE:

13 Q. Officer Owens, I'm handing you what is marked as
14 State's Exhibit 1. Could you describe what that is?

15 A. That is a copy of my bod cam video footage which
16 is installed after viewing the disk itself.

17 Q. And just to be clear, is that you initialed to
18 show that you have watched it?

19 A. Yes, sir.

20 Q. And in watching that video was it a fair and
21 accurate representation of what happened that night?

22 A. Yes, sir.

23 Q. And in watching that video had you -- did you see
24 any kind of alterations?

25 A. No, sir.

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1 MR. ABSHIRE: Your Honor, at this time we would
2 move to enter State's Exhibit 1.

3 THE COURT: Any objection?

4 MR. FALK: No objection.

5 THE COURT: All right. State's Exhibit 1 admitted
6 without objection. Thank you.

7 MR. ABSHIRE: And, Your Honor, we would ask to
8 publish at this time.

9 THE COURT: Any objection to that?

10 MR. FALK: No, sir.

11 THE COURT: All right. Yes, sir, feel free to.

12 (WHEREUPON, State's Exhibit Number 1 admitted into
13 evidence. Published to the jury. Not transcribed
14 herein.)

15 MR. ABSHIRE: I apologize, Your Honor.

16 THE COURT: Yes, sir.

17 MR. ABSHIRE: The video was playing.

18 THE COURT: Folks, when everybody is watching him
19 like this, it's a tremendous amount of pressure. You've
20 probably been like this if you've ever had to make a
21 presentation at work or at school, it's tremendous pressure.

22 So I know that y'all will bear with him, as I
23 certainly will, because we've all been.

24 MR. ABSHIRE: You're Honor, we've been made aware
25 that somebody from the clerk's office is on their way.

BRANDON OWENS - DIRECT BY MR. ABSHIRE

1 THE COURT: All right. Folks, let's just take a
2 quick break, let y'all get up, stretch. If you'll just go
3 back to your jury room, I'll get you back in here as soon as
4 I can. Don't talk about the case. Thank you.

5 (WHEREUPON, the jury exited the courtroom at 3:25
6 p.m.)

7 THE COURT: Sir, you can stand down, you just
8 can't talk with anybody about your testimony. Okay, sir?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right.

11 (WHEREUPON, a brief pause in the proceedings.)

12 MR. ABSHIRE: I think we're good now, Your Honor.

13 THE COURT: He's worth it in gold, right there.

14 MR. ABSHIRE: He is.

15 THE COURT: All right. So are we ready to
16 proceed, State?

17 MR. ABSHIRE: We are, Your Honor.

18 THE COURT: Mr. Falk?

19 MR. FALK: Yes, Your Honor.

20 THE COURT: All right. And I just want you to
21 remember the State needs to let their witnesses know they're
22 being sequestered and what goes with that, because I just
23 want to make sure they're aware of that, okay?

24 MR. ABSHIRE: Absolutely, Your Honor.

25 THE COURT: All right. Then let's get the jury in

BRANDON OWENS - DIRECT BY MR. ABSHIRE

1 here. Madam Court Reporter, are you ready?

2 COURT REPORTER: I am ready, yes, sir.

3 THE COURT: All right. Thank you, sir.

4 (WHEREUPON, the jury entered the courtroom at 3:31
5 p.m.)

6 THE COURT: When y'all come in, y'all can be
7 seated. They're standing up for y'all, okay.

8 THE BAILIFF: All jurors present, Your Honor.

9 THE COURT: All right. Thank you. Okay.

10 MR. ABSHIRE: I appreciate your patience.

11 THE COURT: All right. Ladies and gentlemen, we
12 got somebody in here, we think we got it ready to go.

13 All right. Solicitor, are you ready to proceed,
14 sir?

15 MR. ABSHIRE: We are, Your Honor.

16 THE COURT: All right. That's great.

17 (WHEREUPON, video/audio recording published to the
18 jury. Not transcribed herein.)

19 BY MR. ABSHIRE:

20 Q. Officer Owens, did you hear the statement that you
21 said about the back window?

22 A. Yes, sir.

23 Q. And just in case the audio wasn't good, could you
24 repeat that statement?

25 A. That they could have possibly gone out the back

BRANDON OWENS - CROSS BY MR. FALK

1 window, something along those lines.

2 MR. ABSHIRE: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 MR. ABSHIRE: Thank you, Officer Owens. If you
5 could answer anything the defense asks of you.

6 THE COURT: Mr. Falk, cross-examination, sir?

7 MR. FALK: Thank you.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. FALK:

11 Q. You prepared a police report in this case?

12 A. Yes, sir. I took the initial report of the
13 incident.

14 MR. FALK: May I approach the witness?

15 THE COURT: Yes, sir.

16 BY MR. FALK:

17 Q. I just want to make sure I had the right one. Is
18 this part of your report?

19 A. Yes, sir, it is.

20 Q. Okay. Thank you.

21 In your report you talked about conversations you
22 may have had with the complainant.

23 A. Yes, sir.

24 Q. Who is the complainant in this case?

25 A. I'm trying to remember off the top of my head,

BRANDON OWENS - CROSS BY MR. FALK

1 it's been so long ago. I believe it's the complainant that
2 initially reported the burglary in progress. I believe he
3 was at a nearby trailer park, but I don't remember exactly
4 the whole conversation that we had.

5 Q. Well, he talks -- did you get the impression he
6 was near the house?

7 A. He was in viewing distance of the house is that I
8 gathered.

9 Q. Okay. And he did not -- he didn't really give any
10 kind of description of the people did he?

11 A. Outside our report, no, sir, not much more.

12 Q. But I know that you said, in your testimony
13 started, you talked about two flashlights and then a couple
14 of times in your testimony you always talked about, They.

15 So based on your conversations with the
16 complainant, did you believe there were two suspects in the
17 house?

18 A. At that point in time yes, sir. I believed there
19 was two people in the house.

20 Q. Okay. Now, you had also talked about somebody --
21 somebody being an Uber driver sitting in a car?

22 A. Yes, sir.

23 Q. Okay. Now, where was that car relative to where
24 the front of the house was?

25 A. Like I said, I can't remember exactly where, but I

BRANDON OWENS - CROSS BY MR. FALK

1 believe there was parking spots out front of the duplexes,
2 so somewhere in that -- it was close proximity to the
3 residence, but I can't remember which parking space and
4 close it was to the residence, but there was a line of
5 parking spaces outside of the residence.

6 Q. Well, while you were there was that car sort of
7 always in your eyesight?

8 A. The car, when I approached, I did see the car,
9 initially, I didn't think it was related, just because of
10 the mere factor, you know, so the duplex there could be
11 other residents there.

12 So, initially, I didn't think it was involved, and
13 then come out of back it looks like there's something is
14 going on so that's when I started speaking with the driver.

15 Q. When you came up to the car did you notice whether
16 or not somebody was in the car at that time?

17 A. At that point in time, if memory serves me
18 correctly, there was somebody sitting in the vehicle at that
19 time.

20 Q. So it's your memory that somebody was sitting in
21 the vehicle by the time you got there?

22 A. I do not recall if they were was somebody sitting
23 in the car when I approached. I just know there was a
24 vehicle there, but I can't recall if somebody was in the car
25 at the time when I approached the house.

BRANDON OWENS - CROSS BY MR. FALK

1 Q. I see. Do you know when that person could have
2 gotten into the car?

3 A. Without causing any kind of -- I mean, with as
4 many police officers that were out there, somebody would
5 have had to have seen somebody go back to that vehicle at
6 that point in time.

7 Q. Did -- you had a conversation with the
8 complainant, did the complainant, and based on your
9 conversation with the complainant, did you believe that
10 they -- you said that you believed they removed the
11 air-conditioning unit?

12 A. Yes, sir. Just the mere fact that it was kind of
13 unsecured window AC unit, it was our belief that they
14 possibly exited out of the residence through that same place
15 where they possibly came in. That's where we believe the
16 point of entry and exit was.

17 Q. Well, did the complainant say that he saw them
18 remove the air-conditioning unit?

19 A. I do not recall.

20 Q. If I could show you...

21 A. That might help, yes, sir. Thank you, sir.

22 In my report it states that he observed -- the
23 complainant observed the AC unit being removed from the
24 window prior to calling the police. So I don't know if
25 that's before or after the incident took place.

BRANDON OWENS - CROSS BY MR. FALK

1 Q. I see. Well, did he report that he saw anybody
2 going into the unit -- into the house?

3 A. I do not recall. All's I remember is that
4 outside, that's what was on the incident report, somebody
5 removing the AC unit, whether -- I mean, it would be in line
6 that he was observing them going into the house, removing
7 the AC unit at the time, to best of my knowledge.

8 Q. Can I show you this report again?

9 A. Yes, sir.

10 Q. So if you could read over that, maybe I missed it,
11 but it reads to me like he said he saw them going into the
12 house.

13 A. So all that's here is that he removed them --
14 removed the AC unit prior to calling police, but -- and then
15 it states in my report, Observed suspects exiting the house
16 once I arrived on scene. From what I gathered with my
17 conversation I had with him in my report, it doesn't state
18 whether the complainant saw them enter the residence after
19 the AC unit was removed.

20 Q. Okay. Because you don't really know whether or
21 not they removed the AC unit to leave the residence, right?

22 A. That's correct.

23 Q. So really we don't know if they came in through
24 the AC unit -- they came in through that window or if they
25 just left through that window; is that right?

BRANDON OWENS - CROSS BY MR. FALK

1 A. Yes, sir. And that's what we believe was possibly
2 the entry and exit based on when we went through the house
3 that was the only area that was unsecured.

4 Q. Now, if you're the first officer on the scene, who
5 is responsible for seeing if there, you know, directing that
6 somebody would look for fingerprints?

7 A. The first person on the scene, that would be
8 something, you're talking about -- could you repeat that
9 question, so I understand better?

10 Q. Well, there's a reference in here about
11 fingerprints.

12 A. Yes, sir.

13 Q. And so did you direct somebody to go try to and
14 see if they could get fingerprints?

15 A. Yes, sir. Given the fact that, you know, in my
16 law enforcement career as we respond to burglaries, we do
17 know a good spot to dust and lift fingerprints would be
18 around the AC unit, because if they're manipulating it as
19 they're trying to get it out the window, sometimes they'll
20 leave fingerprints there. So we checked that area for
21 latent fingerprints at that time.

22 Q. There were none recovered; is that correct?

23 A. Sir.

24 Q. There were none recovered; is that correct?

25 A. Not to my knowledge I don't believe there was any

BRANDON OWENS - REDIRECT BY MR. ABSHIRE

1 recovered.

2 MR. FALK: No further questions.

3 THE COURT: All right. Any redirect, sir?

4 MR. ABSHIRE: Yes, Your Honor.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION

7 BY MR. ABSHIRE:

8 Q. Officer Owens, I believe Mr. Falk provided you
9 with a copy of the report, State's Exhibit 2?

10 A. Yes, sir.

11 MR. ABSHIRE: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. ABSHIRE:

14 Q. Does your report reference that it was a possible
15 female seen that night?

16 A. Yes, sir. According to my report, he was unable
17 to give a detailed description of the second, but it was
18 believed that one of the two suspects was possibly female
19 with long hair.

20 Q. And coming back to the AC unit, did you see that
21 the AC unit had been removed?

22 A. I cannot recall that if it was out already or not,
23 I do not recall.

24 Q. But do you know if they were able to collect other
25 evidence that night?

BRANDON OWENS - REDIRECT BY MR. ABSHIRE

1 A. Not that I know of, because detectives and I
2 believe we had a crime scene unit respond out and they kind
3 of took over the case, so I'm not sure exactly what happened
4 after that --

5 Q. Is that -- excuse me. I'm sorry, go ahead.

6 A. Just so whatever evidence they gathered after the
7 fact, probably in their investigation, I don't recall
8 anything else that sticks out to me.

9 Q. So that's not your responsibility?

10 A. So we try to -- we try to do a preliminary thing,
11 to come through to see if we see anything of initial value,
12 but we have some people respond out, especially burglary,
13 sometimes crime scene would respond out, and they would do a
14 followup with other officers on the scene and might see
15 something I didn't initially see at the scene. So that's
16 always a possibility that they recovered more evidence than
17 what was initially found.

18 MR. ABSHIRE: Nothing further, Your Honor.

19 THE COURT: All right.

20 MR. FALK: No recross.

21 THE COURT: All right. Officer, thank you so
22 much, sir. I appreciate it.

23 THE WITNESS: All right. Thank y'all.

24 THE COURT: Is he here pursuant to a subpoena?
25 Solicitor, is he released from any subpoena he's under?

BRANDON OWENS - REDIRECT BY MR. ABSHIRE

1 MR. ABSHIRE: Absolutely, Your Honor.

2 THE COURT: All right. He's free to go. Thank
3 you, sir.

4 THE WITNESS: Thank y'all.

5 THE COURT: All right. Solicitor, are you ready
6 to call your next witness, sir?

7 MR. ABSHIRE: We are, Your Honor.

8 THE COURT: Okay. Great.

9 MR. ABSHIRE: Your Honor, the State would call
10 Soila Avila. And, Your Honor, this will need the
11 interpreter.

12 THE COURT: All right. Great. Madam Clerk are
13 you going to be able to swear the interpreter in for us?

14 THE CLERK: Yes, Your Honor.

15 THE COURT: Thank you so much. All right.
16 Are you ready, sir?

17 MR. ABSHIRE: Oh, I apologize, Your Honor. We are
18 ready to proceed.

19 THE COURT: Have your witness come up, sir.

20 MR. ABSHIRE: Your Honor, the State calls Soila
21 Avila.

22 THE INTERPRETER, MS. TORRES, was duly
23 sworn by the Clerk.

24 THE COURT: All right. Thank you. We need to go
25 ahead and swear the witness in.

SOILA AVILA - DIRECT BY MR. ABSHIRE

1 SOILA AVILA, having been duly sworn,
2 testified as follows:

3 THE WITNESS: Soila Lenore Avila. A-V-I-L-A.

4 THE COURT: All right. Thank you. She can have a
5 seat.

6 Your witness, sir.

7 DIRECT EXAMINATION

8 BY MR. ABSHIRE:

9 Q. Good afternoon, Soila.

10 A. Good afternoon.

11 Q. Do you live in North Charleston?

12 A. Yes.

13 Q. And are you familiar with the reason why we're in
14 court today?

15 A. Yes.

16 Q. And is that because someone broke into your home
17 in 2018?

18 A. Yes.

19 Q. Do you still live there?

20 A. Yes.

21 Q. And just to be correct, is it [REDACTED] Ward Avenue?

22 A. Yes.

23 MR. ABSHIRE: And, Your Honor, we've stipulated to
24 State's Exhibits 2, 3, 4, 4 and 5.

25 THE COURT: Thank you.

SOILA AVILA - DIRECT BY MR. ABSHIRE

1 MR. ABSHIRE: May I approach?

2 THE COURT: Yes, sir. We've got stipulated -- are
3 you going to move those into evidence?

4 MR. ABSHIRE: That's the State's intention.

5 THE COURT: After she identifies them?

6 MR. ABSHIRE: Yes, Your Honor.

7 THE COURT: All right. Any objection?

8 MR. FALK: No objection.

9 THE COURT: All right. Thank you. Go right
10 ahead, sir.

11 BY MR. ABSHIRE:

12 Q. Soila, can you tell me what State's Exhibit 2, 3,
13 4, and 5 are? And if it's easier you can go one at a time.

14 A. This was in the front of the house by the big
15 road. This is the side by where my neighbor lives, this
16 side.

17 THE COURT: All right. Have her identify what
18 number that is.

19 BY MR. ABSHIRE:

20 Q. And just to be clear, is State's Exhibit 2 the
21 picture of your house from the road?

22 A. Yes.

23 Q. And State's Exhibit 3 is that of your neighbor's
24 house?

25 A. Yes.

SOILA AVILA - DIRECT BY MR. ABSHIRE

1 Q. And what is State's Exhibit 4?

2 A. Exhibit 4, that's from the back of the house where
3 the person that entered used to enter, that's the back of
4 the house.

5 MR. FALK: Objection, Your Honor.

6 THE COURT: All right. I'm going to sustain the
7 objection.

8 BY MR. ABSHIRE:

9 Q. Is this the picture of the back window of your
10 home?

11 A. Yes, from where they came in.

12 MR. ABSHIRE: Objection.

13 THE COURT: I'll sustain that objection.

14 BY MR. ABSHIRE:

15 Q. And moving to State's Exhibit 5, what is that a
16 picture of?

17 A. That's in the room where they entered.

18 Q. Okay.

19 MR. ABSHIRE: And, Your Honor, at this time we
20 would seek to publish -- or enter these into evidence as
21 State's Exhibit 2, 3, 4, and 5.

22 THE COURT: Any objection?

23 MR. FALK: No objection.

24 THE COURT: Admitted without objection, yes, sir.

25 MR. ABSHIRE: And may.

SOILA AVILA - DIRECT BY MR. ABSHIRE

1 MR. FALK: Might we approach briefly?

2 THE COURT: Yeah.

3 (WHEREUPON, a bench conference was had.)

4 MR. ABSHIRE: Your Honor, at this time we would
5 seek to publish State's Exhibits 2, 3, 4 and 5.

6 THE COURT: Mr. Falk, any objection?

7 MR. FALK: No objection.

8 THE COURT: All right. Admitted without
9 objection.

10 (WHEREUPON, State's Exhibit Numbers 2, 3, 4, and 5
11 were admitted into evidence. Published to the
12 jury.)

13 MR. ABSHIRE: May I approach?

14 THE COURT: Yes, sir.

15 BY MR. ABSHIRE:

16 Q. Soila, I'm going to put these on the projector so
17 you can see them on the screen.

18 Soila, you told us State's Exhibit 2 is from the
19 road. Which side of the house do you live on?

20 A. I live this one.

21 Q. And she can write on the screen.

22 A. At the circle.

23 Q. And, Soila, is this road right here, is that Ward
24 Avenue?

25 A. Yes.

SOILA AVILA - DIRECT BY MR. ABSHIRE

1 Q. Soila, I'm showing you State's Exhibit 3. What is
2 this blue house right here?

3 A. This house is for the neighbor that lives next to
4 me.

5 Q. Do you know if they called 911?

6 MR. FALK: Objection.

7 THE COURT: Hold on. What's your objection?

8 MR. FALK: She would be speculating whether or not
9 the person called 911 or it would be hearsay.

10 MR. ABSHIRE: Your Honor.

11 THE COURT: Go ahead.

12 MR. ABSHIRE: I'm seeking to elicit testimony as
13 to her personal knowledge if she knows whether the phone
14 call was made or not, not what the statement was.

15 THE COURT: I'm going to sustain his objection.

16 BY MR. ABSHIRE:

17 Q. Moving to State's Exhibit 4. Is this the back
18 window of the right side of the duplex?

19 A. Yes.

20 Q. And down here, what is this mesh fence?

21 A. They're flowers.

22 Q. Was that fence there in 2018?

23 A. No, I didn't have this, but the fence, the mesh,
24 that was there.

25 Q. Okay. And so were the plants there as well?

SOILA AVILA - DIRECT BY MR. ABSHIRE

1 A. No, the plants in the line they weren't there,
2 they're new.

3 Q. Okay. Were there any plants there at all?

4 A. Yes, I had like chilis growing and underneath the
5 AC.

6 Q. Did anything happen to those plants while you were
7 out of town?

8 MR. FALK: Objection.

9 THE COURT: Hold on. What's your objection?

10 MR. FALK: Calling for speculating.

11 THE COURT: I think she can -- I'm going to
12 overrule that. Go ahead. Hold on.

13 Ask the question again, sir.

14 BY MR. ABSHIRE:

15 Q. Soila, were you out of town during September for a
16 hurricane?

17 A. Yes.

18 Q. And when you came back was something different
19 with the plants?

20 A. Yes. They were broken and you can see on the dirt
21 everything was stepped on. The AC was down. And you could
22 see a lot of footprints around there.

23 Q. And moving to State's Exhibit 5. And is this the
24 same window just on the inside?

25 A. Yes. It's the rear window. It's the window that

SOILA AVILA - DIRECT BY MR. ABSHIRE

1 we just saw on the inside.

2 Q. And the same AC unit?

3 A. Yes.

4 Q. And whose room is this?

5 A. That is the bedroom where we sleep with the
6 children.

7 Q. And is this a bed post right here?

8 A. Yes, it's a bunk bed.

9 Q. Soila, when you came back in town after
10 evacuating, what did the inside of your house look like?

11 A. When I came back to town in the bedroom I found
12 all the clothes was scattered. The clothes from the drawers
13 from the picture you just had, everything was just scattered
14 everywhere.

15 Q. And is that normal?

16 A. No.

17 Q. Soila, we talked about it a little bit, but were
18 you home the night of September 14th, 2018?

19 A. No.

20 Q. And were you the one that threw these clothes' all
21 over the place?

22 A. No.

23 Q. Soila, do you know who Sheena Alston is?

24 A. No.

25 Q. Is that person -- was that person given permission

SOILA AVILA - CROSS BY MR. FALK

1 to go in your home during this time?

2 A. No.

3 MR. ABSHIRE: Nothing further, Your Honor. May I
4 approach?

5 THE COURT: Okay. Sure.

6 Mr. Falk, do you have any cross-examination, sir?

7 MR. FALK: I do.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. FALK:

11 Q. Can you hear me if I stand here?

12 A. Yes.

13 Q. This looks like there's some maybe cement or
14 pavement that those flower pots are sitting on?

15 A. From here that's a small sidewalk we have because
16 they're connected from here to here and everything else is
17 just grass, ground.

18 Q. So what are those flower pots sitting on?

19 A. The pots are on top of, it's like a plywood, on
20 top of bricks.

21 Q. Thank you. You don't know how -- you have no
22 firsthand knowledge if anybody went in your house; is that
23 correct?

24 A. No.

25 Q. What you know about that -- what you've testified

SOILA AVILA - REDIRECT BY MR. ABSHIRE

1 to is what a police officer told you; is that correct?

2 A. Yes.

3 Q. You don't know if anybody removed the
4 air-conditioning unit; is that correct?

5 A. No.

6 Q. Do you know how many -- no further questions.
7 Thank you.

8 THE COURT: All right. Any redirect, Solicitor?

9 MR. ABSHIRE: Court's indulgence, Your Honor.

10 THE COURT: Yes, sir.

11 MR. ABSHIRE: Briefly, Your Honor.

12 THE COURT: Yes, sir.

13 REDIRECT EXAMINATION

14 BY MR. ABSHIRE:

15 Q. Soila, when you left to evacuate, did you pull all
16 those clothes all over the ground?

17 A. No. All of that was in the drawers. All of it.

18 Q. And did anybody else pull these clothes all over
19 the place in your family that you were with before you
20 evacuated?

21 A. No.

22 MR. ABSHIRE: No further questions, Your Honor.

23 THE COURT: All right. Mr. Falk, anything else?

24 MR. FALK: No recross.

25 THE COURT: All right. Great. Thank you very

SOILA AVILA - REDIRECT BY MR. ABSHIRE

1 much, ma'am. Can she be excused?

2 MR. ABSHIRE: Yes, Your Honor.

3 THE COURT: All right. She can be excused. Thank
4 you.

5 And to my interpreter, if there's anything you
6 need me to sign, you can just pass it up to me, okay, ma'am?

7 All right. Is the State ready to call their next
8 witness?

9 MR. FINCH: We are, Your Honor.

10 THE COURT: All right. That would be great, yes,
11 sir.

12 MR. FINCH: The State calls Eric Jones.

13 THE COURT: All right.

14 ERIC JONES, having been duly sworn
15 testified as follows:

16 THE COURT: No, you can, sit down.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you. Yes, sir. If you'll just
19 state your name and spell your last name, sir.

20 THE WITNESS: My name is Eric Jones. Last name,
21 J-O-N-E-S.

22 THE COURT: All right. Thank you, Mr. Jones.
23 Your witness, sir.

24 MR. FINCH: Thank you, Your Honor.

25 DIRECT EXAMINATION

ERIC JONES - DIRECT BY MR. FINCH

1 BY MR. FINCH:

2 Q. Mr. Jones, Officer Jones, I assume?

3 A. Yes.

4 Q. And you are employed with who?

5 A. North Charleston Police Department.

6 Q. How long have you been with North Charleston?

7 A. Approximately three and a half years.

8 Q. And with North Charleston, do you guys -- you fill
9 out reports for offenses and all kinds of interactions with
10 the police?

11 A. Yes.

12 Q. And what the reference -- do you use the
13 reference -- is OCA the reference for that?

14 A. Yes, it is.

15 Q. It's just the number that you give reports?

16 A. Yes, so we can individualize the reports.

17 Q. Back in 2018, you said you were employed with
18 North Charleston for about three-and-a-half years. Were you
19 employed with North Charleston in September of 2018?

20 A. No. I was employed with Trident Technical
21 College.

22 Q. What did you for Trident Tech?

23 A. I was a police officer there.

24 Q. And as part of that you would patrol on the
25 campus?

ERIC JONES - DIRECT BY MR. FINCH

1 A. Yes, sir.

2 Q. On the evening of September 20th, 2018, do you
3 recall that evening?

4 A. Yes.

5 Q. Okay. What were you doing that evening?

6 A. On that evening I was refueling our campus patrol
7 vehicles because by policy you're supposed to refuel those
8 after every shift, usually at the Spinx on Rivers Avenue.

9 Q. And at the Spinx you were refueling the car, did
10 you go inside the store?

11 A. Yes, I did. We waited inside to pay using a
12 receipt system we had.

13 Q. And was anybody else inside the store when you
14 went in?

15 A. Just the store clerk.

16 Q. Did you talk to the store clerk?

17 A. Yes.

18 Q. Based on your conversation with the store clerk,
19 what did you do next?

20 A. The store clerk immediately told me there was a
21 woman there that I guess North Charleston Police Department
22 was looking for. I did have a contact with North Charleston
23 Police Department, so I called that person.

24 Q. After you contacted that person, who is that you
25 contacted in North Charleston?

ERIC JONES - DIRECT BY MR. FINCH

1 A. Officer Macdonald of North Charleston Police
2 Department?

3 Q. You just called her on the phone?

4 A. Uh-huh.

5 Q. And after you contacted Officer Macdonald, what
6 did you do next?

7 A. They said that there black female on a white Moped
8 and that Moped -- and I did see that Moped when I first got
9 there, and I saw a woman get on it. Once I was told that by
10 the clerk, I went out to Midland Park Road to try to follow
11 it a little bit. I lost sight of it, but I did see that
12 Moped in front of an apartment complex.

13 Q. So you followed the Moped to an apartment complex?

14 A. Yes.

15 Q. And did you talk to the individual on the Moped at
16 that time?

17 A. Did not.

18 Q. What did you do after you got to the apartment
19 complex and saw the Moped?

20 A. I went back to the Spinx, waited for I believe
21 another officer to get there from the North Charleston
22 Police Department and that's when I led them back to where
23 it was.

24 Q. And why did you go back to the Spinx? Was that --
25 you were instructed to by anyone?

ERIC JONES - DIRECT BY MR. FINCH

1 A. It was just our meeting point.

2 Q. That was the meeting for you and North Charleston?

3 A. Uh-huh.

4 Q. After as you met with North Charleston, what
5 happened next?

6 A. After I met with North Charleston we went back to
7 that apartment complex where I saw that Moped, and it had
8 moved from the side of that building to in front of
9 Apartment [REDACTED].

10 Q. [REDACTED] you said?

11 A. Right.

12 Q. And who was with you at that time?

13 A. I believe Officer Infinger.

14 Q. Infinger. Was also with North Charleston?

15 A. Yes.

16 Q. And what did you do after you and Officer Infinger
17 arrived at that apartment, [REDACTED]?

18 A. From the best of my knowledge we made contact with
19 the person outside by the Moped, which was a white male.
20 And I guess inquired about the subject that was on the Moped
21 first.

22 Q. Okay. And did you get any information about the
23 individual on the Moped?

24 A. Did not.

25 MR. FALK: Objection. Calls for hearsay.

ERIC JONES - CROSS BY MR. FALK

1 THE COURT: I'm going to overrule that. I think
2 he didn't give any information and we can move forward from
3 there. Thank you.

4 BY MR. FINCH:

5 Q. And your answer to that, did you get any
6 information about that individual?

7 A. No.

8 Q. And as part of your involvement, did you write any
9 sort of report on this?

10 A. I did not.

11 Q. Why is that?

12 A. Because it wasn't on Trident Tech, in our
13 jurisdiction or campus I was just assisting.

14 Q. So the people who write the reports and contribute
15 to the OCA report are just NCPD officers?

16 A. That's correct.

17 Q. Nothing further. Please answer any questions from
18 Mr. Falk.

19 CROSS-EXAMINATION

20 BY MR. FALK:

21 Q. Officer Jones, you had some testimony about the
22 lady that worked at the Spinx.

23 A. I think it was -- I was unsure if it was a male or
24 woman that was the clerk there.

25 Q. And what about the clerk at the Spinx?

ERIC JONES - CROSS BY MR. FALK

1 A. In reference to the Moped?

2 Q. Yes.

3 A. It was just about a woman that was I guess sought
4 after by the North Charleston Police Department.

5 Q. Okay.

6 A. They did not say what it was about, but they said,
7 I guess North Charleston was looking for them.

8 Q. Did you know the person's name?

9 A. I do not.

10 MR. FALK: Okay. Thank you. No further
11 questions.

12 THE COURT: All right. Anything else?

13 MR. FINCH: Not from the State, Your Honor.

14 THE COURT: All right. Sir, thanks a lot.

15 Any objections to this witness being released from
16 the State?

17 MR. ABSHIRE: None, Your Honor.

18 THE COURT: Mr. Falk?

19 MR. FALK: No, Your Honor.

20 THE COURT: All right. Sir, have a good day.

21 Thank you very much.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Counsel approach.

24 (WHEREUPON, a bench conference was had.)

25 THE COURT: All right. Ladies and gentlemen, I

1 Is that all right, Madam Court Reporter?

2 COURT REPORTER: Yes, Your Honor.

3 THE COURT: And then if we need to put anything on
4 the record or take up any issues, we'll take them up at that
5 time.

6 I don't know if we're going to finish tomorrow or
7 not, but what I want y'all to know is, Mr. Falk knows,
8 because I've had a couple of cases with him, I had a
9 fabulous first law clerk and she's gone and now works for
10 the Solicitor's Office, in fact, down in Beaufort. So my
11 new law clerk doesn't start for another week, so I don't
12 have a law clerk this week, okay.

13 So what that means is I'm going to need y'all to
14 help me with jury charges, okay. And so, to that extent, I
15 think I've got my computer down there, I may be able to
16 bring some up, but jury charges. And then, gentlemen, any
17 verdict form, okay. I'm sure that y'all can work together
18 and try to piecemeal something together. If you can't agree
19 on it, then certainly I can make a ruling and decision as to
20 it. That's not to say I'm not going to try to put together
21 something myself. But I wanted to make y'all aware of that,
22 that I don't have a law clerk assisting me this week and I'm
23 old enough to need a law clerk.

24 All right. Mr. Falk, the case has been called,
25 and as a result of that I think your client's bond

1 requirements as it relates to bond, the bondsman, he's
2 terminated his obligations I think are ended now that this
3 case has been called.

4 I'm inclined not to issue a bench warrant at this
5 time. What's the State's position on that? Do they have
6 one?

7 MR. ABSHIRE: Your Honor, I mean, I trust Mr. Falk
8 whenever he tells me that she's going to be coming, but we
9 may need to take that up again tomorrow morning.

10 THE COURT: Yeah, I tend to believe what Mr. Falk
11 tells me, that's been my experience. And so what I'm going
12 to do is I'm not going to issue a bench warrant and we'll
13 address that if it's an issue tomorrow, okay.

14 So, Mr. Falk, is that acceptable, sir?

15 MR. FALK: Yes, Your Honor. And, of course, I
16 have given you the best information I've got.

17 THE COURT: Mr. Falk, I understand that
18 completely. And, Mr. Falk, is there anything that you
19 wanted to proffer or you want to say that now or you just
20 want to wait and see if she shows or what do you want to do,
21 sir?

22 MR. FALK: No. If we could just do -- I just
23 wanted to, as part of my opening statement, to make some
24 kind of reference as to why my client wasn't here. But I
25 realized all I was really going to say -- what I would do

1 just to make the record, just adopt the procedural history
2 that I gave you as far as starting from when she called last
3 night that she was in the accident.

4 THE COURT: Right.

5 MR. FALK: And if I could just adopt that, I would
6 have obviously used less of it for the opening, but I mean,
7 I just wanted to advise the Court that.

8 THE COURT: I understand that. And I think I
9 understand what you would be saying to them. What was the
10 State's position? Is there anything else you want to put on
11 the record as it relates to that?

12 MR. FALK: I know we're not getting, I just want
13 to -- you know, I'm PCR proofing my case.

14 THE COURT: Yes, sir. All right. So is there
15 anything else you want to put on the record as it relates to
16 that, sir? Whatever you need to do.

17 MR. FALK: No, Your Honor.

18 THE COURT: All right. What's the State's
19 position on that? I think the State did not want or it was
20 their intention they didn't want him to be able to do that,
21 correct?

22 MR. ABSHIRE: We were opposed.

23 THE COURT: All right. And so I think for the
24 reasons that I set forth, I understand that, I think you've
25 adequately protected the record, sir. I just think it -- I

1 think it dodges them to -- it starts to draw the jury --
2 number one, it draws the jury's attention in my opinion as
3 to why she's not here. I specifically instructed them
4 repeatedly and with emphasis not to hold that against her or
5 draw any inferences from it. And I think that if possible
6 that the inferences that could be drawn from that may draw
7 it as some type of sympathy and I just wasn't going to get
8 into it. I didn't think it was fair to the State. And so,
9 to that extent, that's why I denied your motion and for
10 whatever other reasons I may have said on the record
11 earlier, but I think you protected your record.

12 MR. FALK: Thank you.

13 THE COURT: So is there anything else that we need
14 to take up now before we break for the -- oh, and also the
15 State wanted to put on the record that I think your client
16 was notified to be here, that there's no issue as it relates
17 to notice or where she needed to be, which was here in court
18 today.

19 Mr. Falk, is that correct, sir?

20 MR. FALK: That's correct, Your Honor.

21 THE COURT: All right. Solicitor, is that
22 satisfactory for the record, sir?

23 MR. ABSHIRE: It is, Your Honor, thank you.

24 THE COURT: All right. So anything else then from
25 the defense, Mr. Falk?

1 MR. FALK: Your Honor, I think we need to address
2 what I'm anticipating from Mr. Zipfel's testimony, which I
3 think is going to get into some 404(b). Now, we can either
4 wait, you know, you can either address it --

5 THE COURT: From who's testimony?

6 MR. ABSHIRE: The codefendant, Your Honor.

7 MR. FALK: Codefendant's testimony.

8 THE COURT: Okay. Go ahead.

9 MR. FALK: He -- well, first of all I think he's
10 going to elude to drug use, that they were doing drugs
11 together and I don't think that's -- you know, I would need
12 a good explanation as to why that is necessary for the
13 State's case, and it's certainly criminal conduct for what
14 she's not being charged. And I think that clearly fits
15 404(b), for any testimony in that level would be more
16 prejudicial than probative.

17 THE COURT: What about it, Solicitor?

18 MR. ABSHIRE: Your Honor, the State's position is
19 that it speaks to his bias and his credibility as far as his
20 interactions with the defendant. And if you were to find
21 that it was character --

22 THE COURT: One second. It speaks as to whose
23 bias?

24 MR. ABSHIRE: His bias and credibility as a
25 witness.

1 THE COURT: Oh, well, if he wants to say he's
2 doing dope --

3 MR. FALK: No problem --

4 THE COURT: No problem. I mean, if he wants to
5 say he was high as a kite, I don't really care --

6 MR. ABSHIRE: Your Honor --

7 THE COURT: -- but now, when he starts saying, Oh,
8 when we were doing it, that's a different matter, that
9 doesn't effect his credibility, that goes straight to hers.

10 MR. ABSHIRE: And to that point, Your Honor, it
11 would -- it's the State's position that it would fall under
12 the exception to the 404 and that it would speak to motive,
13 as to why they were breaking into people's house, why they
14 needed money, why they were riding around at all times of
15 the night, buying scratch off tickets, and that he needed
16 money to return back to New Jersey and what their actions
17 were together.

18 MR. FALK: Well, now, for two motives: One he
19 needed money to get back to New Jersey, now, he somehow
20 needs money to buy drugs and get back to New Jersey. I
21 mean, it defeats his other argument as to motive, it's
22 irrelevant.

23 THE COURT: I'll tell you right now, I'm not
24 letting any drug use on behalf of the defendant coming in.
25 That, I mean, any probative value is going to be far

1 outweighed by the prejudicial effect. And I just think that
2 that's just going to try to nail, you know, impugn her
3 character. I mean, if he wants to say he was doing
4 something -- I mean, you've already said what he was doing.
5 Y'all -- well, you said that in your opening that he was
6 there to -- she asked him to drive him to an address so that
7 she would then be able to get him money to get back home. I
8 mean, you laid that out pretty good. I'm not quoting you,
9 but I remember that. You gave a very detailed narrative of
10 what these witnesses were going to say, you know.

11 I just think that as it relates to drugs we're not
12 going to get into that. I just think that -- I mean, again,
13 if you want your witness to bring that up, that's fine --

14 MR. ABSHIRE: Understood, Your Honor.

15 THE COURT: -- and talk about his drug use and he
16 didn't know -- I don't care. But at the same time we're not
17 going to get into his client, okay?

18 MR. ABSHIRE: Understood, Your Honor.

19 THE COURT: All right. Anything else?

20 MR. FALK: There's one more facet of it. In the
21 statement that the codefendant gave to law enforcement in
22 the other case, he also eluded to --

23 THE COURT: Hold, hold. The other case?

24 MR. FALK: You know, there's the burg second
25 charges. There was a different -- that's a different

1 arresting agency, so he was talking to different officers.

2 THE COURT: All right.

3 MR. FALK: And he had -- he had made some comments
4 about that she always kind of would -- he would always drive
5 her from place to place and she would get money, and maybe
6 she gave the guy a massage, or maybe she did this or maybe
7 did that, eluding to some illicit activity that may have
8 been taking place. He didn't go into in his statement in
9 this case I just don't want him to go into it on his
10 testimony.

11 THE COURT: Solicitor?

12 MR. ABSHIRE: Your Honor, like we spoke about this
13 morning, I'm not interested in exploring the facts of
14 another charge. I'm simply going to talk to him what he was
15 doing that night.

16 THE COURT: All right. And you'll be able to prep
17 him and make sure that he understands that, and I think
18 that's fine.

19 Mr. Falk, is that satisfactory, sir?

20 MR. FALK: Absolutely. Absolutely.

21 THE COURT: I mean, I just think -- I just think
22 this case needs to be tried on these set of facts, sir, and
23 I think that's...

24 All right. Anything else?

25 MR. FALK: No, Your Honor.

1 MR. ABSHIRE: Along that same vein though, Your
2 Honor, I do intend to elicit testimony about his
3 relationship with the defendant as far as if he thought it
4 was a healthy relationship or is he thought it was...

5 THE COURT: I think that's -- I think -- I think
6 that's fair game. I think he can accurate -- I mean, you
7 know, he certainly can testify as to what type of
8 relationship he had with her. Now, I don't want him get up
9 there and say, Oh, we just got high together all the time,
10 okay?

11 MR. ABSHIRE: I'm not going to ask him about drugs
12 use, Your Honor.

13 THE COURT: That wouldn't be appropriate, all
14 right. But if he says, you know, we had an
15 on-again/off-again relationship or we had a volatile
16 relationship or, you know, she was my fiancée but we really
17 didn't along, I think that's fair game. But getting into,
18 you know, I don't know how he's going to characterize the
19 relationship, but getting into details, but I think anybody
20 can characterize their relationship.

21 Mr. Falk?

22 MR. FALK: No problem. I mean, it was, again, in
23 another interview he talked about being assaulted by her,
24 but not in this interview.

25 MR. ABSHIRE: I would intend to ask him if the --

1 if he describes it as an unhealthy relationship, if there
2 was any physicality with it.

3 THE COURT: I'll think about that. I think I
4 might allow that, but beyond that, no. I mean, I don't
5 think I'm going to allow him to get into assault, but
6 physicality, geezy peasy. I'm inclined to let that in.

7 Excuse me on the geezy peasy, she was wondering
8 how you spell that. But, gosh, I'm not going to get into
9 the assault.

10 MR. ABSHIRE: Understood, Your Honor.

11 THE COURT: But I think -- I'll think about that,
12 okay?

13 What else, Mr. Falk?

14 MR. FALK: That's all I got, Your Honor.

15 THE COURT: Solicitor?

16 MR. ABSHIRE: Nothing else, Your Honor.

17 THE COURT: All right. Great. All right. Thank
18 y'all very much. I'll see everybody back here about 9:30
19 tomorrow morning. Thank you.

20 (WHEREUPON, the proceedings adjourned for the day
21 at 4:33 p.m.)

22 AUGUST 2, 2022

23 (WHEREUPON, the proceedings resumed at 9:50 a.m.)

24 THE BAILIFF: All rise.

25 THE COURT: All right. I understand all of our

1 jurors are here. You've got a few minutes before 10:00.
2 Anything else that we need to put on the record from the
3 State before we get the jury in here. I'm going to wait a
4 few minutes before we bring them in here.

5 MR. FINCH: Your Honor, not necessarily for the
6 record, just sort of a housekeeping item.

7 THE COURT: Yes, sir.

8 MR. FINCH: Did you prepare a bench warrant? We
9 have a form on our case management system.

10 THE COURT: Yeah, I'm not preparing anything this
11 week, well, I say that, I'm joking, I don't have a clerk.

12 MR. FINCH: Okay. What I'll do is I'll step out
13 and make a call and just so we can prepare the bench
14 warrant.

15 THE COURT: Yes, sir, that's fine.

16 MR. FINCH: It it's needed.

17 THE COURT: Yes, sir. That's fine. That will be
18 great. Thank you.

19 MR. FINCH: Thank you.

20 THE COURT: Mr. Falk, anything else that you need
21 to put on the record, sir?

22 MR. FALK: No, Your Honor.

23 THE COURT: All right. Great. Thank you,
24 Mr. Falk.

25 (WHEREUPON, there was a brief pause held.)

1 THE COURT: All right. Gentlemen, I have been
2 informed that the jury has elected a Foreman or Foreperson,
3 a Forewoman in this case, Sherese Coleman, Juror Number 56
4 is the Foreperson.

5 And so what I'd like to do -- if you want to see
6 this or read it, you certainly can, but I just going to make
7 this a Court's Exhibit.

8 Any objection from the State?

9 MR. ABSHIRE: No, Your Honor.

10 THE COURT: Defense?

11 MR. FALK: No, Your Honor.

12 THE COURT: All right. So this will be Court's
13 Exhibit?

14 COURT REPORTER: That's Number 5.

15 (WHEREUPON, Court's Exhibit Number 5 was marked.)

16 THE COURT: Number 5. Thank you.

17 COURT REPORTER: You're welcome.

18 THE COURT: All right. And, gentlemen, it's now
19 almost four past 10:00. We're ready to resume the trial of
20 this case. I said yesterday that, in the event that the
21 defendant was not here this morning at the commencement of
22 the case, that I would go ahead and sign a bench warrant for
23 her arrest.

24 And so, Solicitor, I understand that you will
25 provide that for me and it's my understanding that she, in

1 fact, has had and received notice about being here this week
2 and that her case was Number 1 up for trial that she needed
3 to be here.

4 Mr. Falk; is that correct, sir?

5 MR. FALK: Yes, Your Honor. And I would just ask
6 that if she is picked up today and brought here today that
7 she not be brought before the jury in handcuffs.

8 THE COURT: Oh, absolutely, absolutely. In the
9 event they're able to find her, then we'll see what we can
10 do to get her into the courtroom and not in handcuffs.

11 There's no objection from the State on that, is
12 there?

13 MR. ABSHIRE: No, Your Honor.

14 THE COURT: No. In fact, if y'all let me know and
15 I'm happy to make sure that we have a smooth transition as
16 possible, okay? Anything else from the State before we
17 bring the jury in?

18 MR. ABSHIRE: No, Your Honor.

19 THE COURT: Anything from the defense?

20 MR. FALK: No, Your Honor.

21 THE COURT: All right. Thanks. Let's get the
22 jury, please.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Thank you.

25 (WHEREUPON, the jury entered the courtroom at

1 10:05 a.m.)

2 THE BAILIFF: All jurors are present, Your Honor.

3 THE COURT: All right. Thank you. You all can be
4 seated. Thank you very much.

5 Ms. Coleman, were you the last one here this
6 morning?

7 JUROR: I was not.

8 THE COURT: All right. Well, then in that case,
9 definitely congratulations. Thank you for your willingness
10 to serve, I appreciate that. And, again, it's really just
11 more administrable and housekeeping in nature and if there's
12 anything that needs to be brought to my attention, you just
13 write it down exactly as you did with your name and jury
14 number, I'd appreciate that very much.

15 Ladies and gentlemen, I understand that the State
16 is ready to move forward it with their case?

17 Solicitor, you can call your next witness, please.

18 MR. FINCH: Thank you, Your Honor.

19 The State calls Officer Justin Infinger.

20 JUSTIN INFINGER, having been duly sworn
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. FINCH:

24 Q. Good morning, Mr. Infinger, how are you today?

25 A. Doing okay.

JUSTIN INFINGER - DIRECT BY MR. FINCH

1 Q. Good. I want to ask you a couple of questions in
2 relation to a case, North Charleston OCA Number 2018-027847,
3 are you familiar with that case?

4 A. Yes.

5 Q. And are you still employed with North Charleston?

6 A. I am not. I am currently a detective with
7 Summerville PD.

8 Q. All right. And at the time of this incident back
9 in September of 2018, you were employed with North
10 Charleston?

11 A. I was. I was a patrol officer.

12 Q. And as a patrol officer what are your duties and
13 responsibilities?

14 A. I take calls for service and traffic stops and any
15 other things to enforce the law.

16 Q. Okay. And on the evening of September 20th, 2018,
17 in relation to the OCA we referenced, what was your
18 involvement with that case? Where were you?

19 A. So I had already worked a full shift. I was at
20 Clayton Homes working an off-duty shift. I decided to go
21 about a block away to the Spinx to get a Gatorade and a
22 snack so that I could sit there for four hours with that
23 off-duty shift. Whenever the clerk of the Spinx flagged me
24 down and said, Hey, that lady right there on the Moped has a
25 warrant. I was kind of confused at first because I didn't

JUSTIN INFINGER - DIRECT BY MR. FINCH

1 realize that an employee at a gas station could know that
2 somebody has a warrant. So another officer, I believe it
3 was Officer Jones, with Trident Tech at the time, he was
4 there as well.

5 So I got on the radio and I advised dispatch as
6 such about what had just happened. We seen a lady take off
7 on a Moped towards Midland Park towards Stall Road towards
8 the airport. Then we seen her pull into an apartment
9 building. Then we -- we got out and started talking to --
10 there was also a male at the apartment, we started talking
11 to him. And then Officer, I think, McDonald got on the
12 radio and said, Hey, I was the one that told the clerk that
13 this lady has a warrant, I'll be there in a minute.

14 So we waited for the officer, since she had
15 knowledge of the case and knowledge of the suspect, we
16 waited for her to get there. And then once she got there
17 she kind of took over as far as the primary officer.

18 Q. And you referenced a lady on a Moped. Can you
19 kind of describe that lady?

20 A. Yeah. She -- the only thing I remember is she was
21 a black female, kind of middle-aged black female. It was
22 nighttime, I didn't really get a good look at her at the
23 time. It's been a while, so I didn't really...

24 Q. And when you were at that apartment, did you go
25 into the apartment at that time?

JUSTIN INFINGER - DIRECT BY MR. FINCH

1 A. So we -- Officer Jones and I waited until Officer
2 Macdonald got there and the male said -- there was a white
3 male standing up under --

4 MR. FALK: Objection.

5 THE COURT: I'm going to sustain the objection as
6 to what a white male told him, sir.

7 THE WITNESS: Okay.

8 BY MR. FINCH:

9 Q. Who was at the apartment?

10 A. There was a guy -- all I remember was last name,
11 Ricciardelli, Ricciardelli. This male said that he lived at
12 the apartment and that we could not go in.

13 MR. FALK: Objection.

14 THE COURT: All right. There was an -- I think
15 there was an objection, hearsay, sir?

16 MR. FALK: Yes, Your Honor.

17 THE COURT: All right. And so, again, I'll
18 instruct the jury to disregard the last statement. I would
19 sustain the objection. That is, in fact, hearsay.

20 MR. FALK: May I approach?

21 THE COURT: Yeah.

22 (WHEREUPON, a bench conference was had.)

23 THE COURT: All right. I'm going to sustain the
24 objection. And, Counsel, the witness cannot testify as to
25 what other people told him. Thank you. All right.

JUSTIN INFINGER - DIRECT BY MR. FINCH

1 MR. FINCH: Yes, sir.

2 THE COURT: Go right ahead Counsel, your witness,
3 sir.

4 MR. FINCH: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 BY MR. FINCH:

7 Q. In reference to the white male at the apartment,
8 was that the person on the Moped?

9 A. No.

10 Q. And, again, the person on the Moped you would
11 describe as how?

12 A. A black female, about middle-aged, other than
13 that, I don't remember.

14 Q. Okay. And while you were on scene with Officer
15 Jones, you did not enter the apartment at that time?

16 A. At that time, no. We entered the apartment later
17 once Macdonald got back with the warrant.

18 Q. Thank you. No further questions at this time.
19 Please, answer any questions Mr. Falk has for you.

20 THE COURT: Okay. Mr. Falk, cross-examination,
21 sir?

22 MR. FALK: No questions, Your Honor.

23 THE COURT: All right. No questions.

24 Hey, Officer, thank you so much. If you're here
25 pursuant to a subpoena -- any objection to him being

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 released?

2 MR. ABSHIRE: No, Your Honor.

3 THE COURT: You're released and free to go and
4 have a great day, sir. Thank you.

5 All right. Solicitor, you can call your next
6 witness.

7 MR. ABSHIRE: Your Honor, the State calls Karen
8 Macdonald.

9 KAREN MACDONALD, having been duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ABSHIRE:

13 Q. Good morning, Karen, how are you?

14 A. I'm fine. How are you?

15 Q. I'm good. Ms. Macdonald, could you explain what
16 you do for a living at this time?

17 A. I'm a law enforcement officer.

18 Q. And where is that?

19 A. I currently work for the Greenville County
20 Sheriff's Department as a deputy.

21 Q. And were you a law enforcement officer somewhere
22 else beforehand?

23 A. Yes. Before that I worked with the North
24 Charleston Police Department.

25 Q. And how long did you work for North Charleston?

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 A. About 16-and-a-half years.

2 Q. Would you have been working in North Charleston in
3 2018?

4 A. Yes.

5 Q. And what were some of your duties and
6 responsibilities in 2018 in North Charleston?

7 A. At that time I worked in patrol. I worked the
8 night shift. So my duties and responsibilities would be
9 patrolling the areas, knowing the people in the areas,
10 making arrests, making cases, enforcing the law.

11 Q. And working patrol in 2018, were you working
12 patrol on September 14, 2018?

13 A. Yes.

14 Q. And at some point during your shift were you
15 dispatched to a home?

16 A. Yes. Uh-huh.

17 Q. And could you describe -- well, was that address
18 [REDACTED] Ward Avenue?

19 A. Yes, uh-huh.

20 Q. Could you described your involvement whenever you
21 arrived at that residence?

22 A. When I arrived at that residence, I held the
23 perimeter and other officer -- some held the perimeter and
24 some searched the residence.

25 Q. What was your understanding of what was going on

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 at the house?

2 A. A reported burglary.

3 Q. And do you know if any suspects were found?

4 A. Yes, they detained one male suspect.

5 Q. Could you describe that -- do you remember that
6 male?

7 A. It's been like four years, but an older gentleman,
8 a white male.

9 Q. And --

10 A. His last name -- it was like Italian.

11 Q. And do you recall what the interaction was
12 whenever they first made contact with this male?

13 A. The only thing I recall is that he was in the
14 vehicle next to the residence and they detained him and put
15 him in the back of my patrol vehicle. And then I took him
16 back to the detective bureau.

17 Q. And I apologize, I didn't ask before, but do you
18 remember around what time you got to this residence?

19 A. Around 4:30, 4:35 in the morning.

20 Q. So was it dark?

21 A. Yes, uh-huh.

22 Q. And do you know if this -- this person that was
23 found on scene, was he placed in the back of your cruiser,
24 if I heard you correctly?

25 A. Uh-huh.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 Q. And what did you do after that?

2 A. At some point I think the lieutenant was talking
3 to him and I went and helped putting the air-conditioning
4 unit back in the back where it was popped out.

5 Q. Okay. So let's talk about that for a second.

6 Whenever you arrived at the house, could you
7 describe what type of building it was? Was it an apartment
8 or a duplex or?

9 A. I believe it was a duplex, single level, brick.

10 Q. And were you the first person to respond to the
11 scene?

12 A. I don't recall if I was first or not. I think
13 Owens, Officer Owens was first.

14 Q. Okay. And you told us that you were setting up a
15 perimeter, would that require you to actually go around the
16 side of the house as well?

17 A. You cover one section.

18 Q. Uh-huh.

19 A. I don't recall what section I covered, but now
20 that I think about it, yeah, Officer Owens was probably the
21 first officer there, because I wouldn't do a perimeter
22 unless somebody else was there.

23 Q. So you told us about this window. Do you remember
24 where on this house this window was?

25 A. In the rear.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 Q. Okay. And talk to us a little bit about the
2 air-conditioning unit. Where did you see this unit at
3 first?

4 A. It was on the ground outside.

5 Q. So it was not in the window at that time?

6 A. It was not in the window.

7 Q. And you told us that you were involved with it.
8 What exactly were you doing with that air-conditioning unit?

9 A. I was trying to help put it back in the window.

10 Q. Uh-huh. And after you put the air-conditioning
11 unit back in the window, did you end up observing anything
12 around the window?

13 A. Yeah. I looked on the ground and there was a cell
14 phone.

15 Q. And how would you describe that cell phone?

16 A. It was in purple and pink case. I think it had
17 flowers on it. And the phone itself was pink and white.
18 And there was also a Vanilla Visa, I believe, and a
19 10-dollar bill inside there.

20 Q. If you were to see that phone, would you recognize
21 it again?

22 A. I think I probably would.

23 MR. ABSHIRE: May I approach, Your Honor?

24 THE COURT: Yes, sir.
25

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 BY MR. ABSHIRE:

2 Q. Ms. Macdonald, I'm handing you what is marked as
3 State's Exhibit 6. I'm going to hand you a pair of gloves.

4 Before we go any further, could you describe what
5 I've just handed you?

6 A. An evidence bag with most definitely my
7 handwriting on it, and containing, it looks like a phone and
8 a phone case.

9 Q. Would it have your handwriting on it because you
10 collected it?

11 A. Yes.

12 Q. And does it appear to be substantially in the same
13 form as when you found that phone?

14 A. I can't really see the -- I think -- I don't have
15 the case, but other than that.

16 Q. But does it appear to be altered in any way?

17 A. No. No. It's still sealed with my initials on
18 the back.

19 MR. ABSHIRE: Your Honor, at this time we would
20 move to enter into evidence State's Exhibit 6.

21 THE COURT: Mr. Falk, any objections, sir?

22 MR. FALK: No objections, Your Honor.

23 THE COURT: All right. State's 6 admitted without
24 objection. Thank you.

25 (WHEREUPON, State's Exhibit Number 6 was admitted

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 into evidence.)

2 MR. ABSHIRE: And, Your Honor, we would seek to
3 allow her to open the bag and publish to the jury the phone.

4 THE COURT: Any objection, Mr. Falk?

5 MR. FALK: No objection.

6 THE COURT: All right. You can do so, sure. Yes,
7 sir, you can publish that.

8 BY MR. ABSHIRE:

9 Q. Ms. Macdonald, can you open that bag and pull that
10 phone out for us?

11 A. It's a tough bag.

12 Q. Yeah. And Ms. Macdonald, if you could hold that
13 up for us.

14 THE COURT: Solicitor, have her step down in front
15 of the jury so they can see it, sir, please, if the witness
16 would.

17 BY MR. ABSHIRE:

18 Q. Ms. Macdonald, if you could step around.

19 You told us that you found a phone, is this the
20 pink, purple, and white case that you were talking about?

21 A. Yeah. I remember there were some flowers on it.

22 Q. And then this cell phone. Is this -- if you could
23 hold that up -- is this also the cell phone that you found
24 on scene?

25 A. I believe it is, it's in this little case here.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 Q. Is that the case you found with it and put it in
2 the evidence bag?

3 A. Yeah.

4 Q. Ma'am, could you describe to us exactly how far
5 away this was from the window?

6 A. It wasn't a long distance away. There was a car
7 parked behind the house and it was like right by like the
8 front wheel and like right next to the front of that
9 vehicle.

10 Q. But was it a close distance to the back window
11 that you put the AC unit back in?

12 A. Yeah. Yes.

13 Q. And you told us that you put it in the bag.
14 What's the standard steps that you go through as a police
15 officer in securing evidence?

16 A. Okay. So when I collected the evidence at that
17 time, I placed it in an evidence bag and I secured it in my
18 locked vehicle until I could get it back to the department
19 and then I deposited it into the secured property room where
20 we keep the evidence.

21 Q. Okay. And in putting it in that evidence locker
22 was there a decision made to try and test that phone?

23 A. Not that time because it was like four-something
24 in the morning. It was a regular -- the testing staff
25 weren't there.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 Q. But eventually during normal business hours would
2 it be submitted to be tested?

3 A. I would assume so. I wasn't involved in that, so
4 I can't really say.

5 Q. But it was placed in the secured locker?

6 A. Yeah. I believe that -- I can't remember exactly,
7 I might have put it in the drop box. Either way, you can't
8 get it -- once you put it in there, you can't get it out.

9 Q. Would anybody be able to access it?

10 A. The evidence technicians.

11 Q. So, Ms. Macdonald, you talked to us a little about
12 this male that was found in the car. Do you know what
13 happened? Do you know where they took him?

14 A. They took him to the detective bureau in one of
15 the interview rooms.

16 Q. Would that be for questioning?

17 A. Yes.

18 Q. And was that right after y'all had responded to
19 the scene?

20 A. Yeah. After, you know, the lieutenant spoke to
21 him on the scene and I went and parked and I took him back.

22 Q. But was there any other arrests made that night?

23 A. No.

24 Q. Ms. Macdonald, you told us a little bit about your
25 duties as a patrol officer as being familiar with the area.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 What was your involvement with this investigation after you
2 had responded to the burglary?

3 A. Well, they had developed a second suspect and they
4 put a flyer out within the department that she was wanted.

5 Q. And did you know who that was?

6 A. Yeah.

7 Q. And who was that?

8 A. Sheena Alston.

9 Q. Are you familiar with her?

10 A. Yeah, I was very familiar with her, because she
11 was --

12 MR. FALK: Objection, Your Honor.

13 THE COURT: All right. Counsel approach.

14 (WHEREUPON, a bench conference was had.)

15 THE COURT: All right. I'm going to overrule your
16 objection. Counsel, you can proceed.

17 BY MR. ABSHIRE:

18 Q. Ms. Macdonald, in being familiar with her did you
19 know that she would go to the Spinx gas station on Midland
20 Park Road?

21 A. Yes.

22 Q. And being familiar with her going to that gas
23 station, did you, as part of this investigation, go speak
24 with anybody at that gas station?

25 A. Yes.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 Q. And what did you tell them?

2 A. I went to the night clerk and I asked him if he
3 had seen her because I was with familiar with her going
4 there several times an evening throughout the night and he
5 hadn't seen her yet. And I asked him to call me when he did
6 see her because there was an active warrant for her.

7 MR. ABSHIRE: Your Honor, may we approach briefly?

8 THE COURT: Yeah. Yeah.

9 (WHEREUPON, a bench conference was had.)

10 BY MR. ABSHIRE:

11 Q. Ms. Macdonald, you said you went and spoke with
12 the person working at the Spinx and told them about the
13 warrant. Did you ever hear -- were you ever made aware that
14 they spotted her?

15 A. Yeah, they found her later.

16 Q. And would that have been on September 20, 2018?

17 A. Yes. It was after -- when I spoke to him it was
18 like around 1:00 on the 19th. So it was like around 12:00
19 in the morning.

20 Q. And what did you do whenever you learned that they
21 had spotted her?

22 A. I hurried up and tried to get back there before
23 she left.

24 Q. And were you -- tried to get where exactly? To
25 the Spinx?

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 A. To the Spinx at 6899 Rivers Ave.

2 Q. And was she there when you got there?

3 A. No. Because I had to come from the other side of
4 town, so it took me a little minute.

5 Q. And so where did you go next?

6 A. He informed me that there was another officer
7 there who he told about like right after she left and he
8 went up the street looking for her. So I went directly to
9 where I know she lives.

10 MR. FALK: Objection -- withdrawn.

11 THE COURT: Yeah. Okay. Go ahead.

12 BY MR. ABSHIRE:

13 Q. And do you remember where that location would have
14 been?

15 A. That would have been the Twin Oaks Apartments.

16 Q. How far away is that from the Spinx gas station?

17 A. Maybe a mile.

18 Q. If you were to see pictures of those apartments
19 would you recognize them?

20 A. Yeah.

21 MR. ABSHIRE: Your Honor, may I approach?

22 THE COURT: Yeah, may I see those, please. Thank
23 you, sir.

24 MR. ABSHIRE: May I approach, Your Honor?

25 THE COURT: Yes, sir.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 BY MR. ABSHIRE:

2 Q. Ms. Macdonald, I'm handing you State's Exhibits 7,
3 8, 9, and 10.

4 A. Yeah.

5 Q. And what are those?

6 A. These are photos of Twin Oaks Apartments.

7 MR. ABSHIRE: And, Your Honor, at this time --

8 THE WITNESS: And Apartment ■, which is what her
9 listed address was.

10 MR. ABSHIRE: And, Your Honor, at this time we
11 would seek to move in, I believe without objection, State's
12 Exhibit 7 and 8.

13 MR. FALK: No objection.

14 THE COURT: All right. Admitted without objection
15 State's 7 and 8.

16 MR. ABSHIRE: I believe it was 7, 8, 9 and 10,
17 Your Honor.

18 THE COURT: Seven, 8, 9 and 10. Okay. Thank you.
19 (WHEREUPON, State's Exhibit Numbers 7, 8, 9, and
20 10 were admitted into evidence.)

21 MR. ABSHIRE: May I approach?

22 THE COURT: Yes, sir.

23 MR. ABSHIRE: Your Honor, at this time we seek to
24 publish these as well.

25 THE COURT: That's fine.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 BY MR. ABSHIRE:

2 Q. Ms. Macdonald, I'm going to show you these so the
3 jury can see. We were talking about the Twin Oaks
4 Apartment. Is that the sign right out front?

5 A. Yes, it is.

6 Q. And if we zoom out here. What is this road that
7 runs right here?

8 A. Midland Park Road.

9 Q. I'm going to show you State's Exhibit 8. What --
10 are you familiar with what building this is?

11 A. That's the ■ Building. It faces this way, Midland
12 Park Road.

13 Q. Is that the building that you responded to that
14 evening?

15 A. Yes, it is.

16 Q. I'm showing you State's Exhibit 9. Is this just a
17 closer up view?

18 A. Yes, it is.

19 Q. And then State's Exhibit 10. I believe you said
20 earlier, but what -- can you tell us what part of the
21 building this is and what apartment you went to?

22 A. Okay. So we went to apartment ■, which would be
23 on the bottom floor on the left.

24 Q. And, Ms. Macdonald, whenever you first got there,
25 what did you observe?

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 A. I observed Officers Infinger and Jones were there.
2 I also observed that the moped was parked in front of a car
3 in the breezeway.

4 Q. Uh-huh. And did you see an individual outside at
5 that time besides Officer Infinger and Jones?

6 A. I believe Mr. Ricciardelli was out there talking
7 to them.

8 Q. Uh-huh. At some point did you go get a warrant to
9 enter the apartment?

10 A. Yes, I got the arrest warrant for her.

11 Q. And just to be clear the arrest warrant for who?

12 A. For Sheena Alston.

13 Q. And did you come back to the scene?

14 A. Yes, I did.

15 Q. Was it your understanding that Officer Infinger
16 and Jones stayed there while you went and did this?

17 A. Yes, they did.

18 Q. So what did you do once you arrived with the
19 arrest warrant?

20 A. We presented it to Mr. Ricciardelli.

21 Q. And did you search for Ms. Alston?

22 A. Yes.

23 Q. If you could please just walk us through your
24 search of that apartment when you were looking for
25 Ms. Alston.

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 A. Myself and Officer Infinger went inside, we
2 cleared the front rooms the living room, kitchen area has a
3 little partition, but they're not really separate, and the
4 back room where the bathroom was, we didn't locate her. And
5 as I was walking out, I was looking around, because I was
6 trying to figure out how she wouldn't be in there. And then
7 I realized that the cabinet under the kitchen sink was open
8 like that much and I opened it and she was in there all
9 curled up in a little ball.

10 MR. ABSHIRE: Court's indulgence, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. ABSHIRE:

13 Q. Ms. Macdonald, if you were to see a picture of the
14 person that you arrested that night would you recognize her?

15 A. Yes.

16 Q. Ms. Macdonald...

17 MR. ABSHIRE: May I approach, Your Honor?

18 THE COURT: Wait. Hold on a second. Let me see
19 that picture, please. All right.

20 (WHEREUPON, a bench conference was had.)

21 THE COURT: All right. Thank you.

22 MR. ABSHIRE: May I approach, Your Honor?

23 THE COURT: Yes, sir, of course.

24 BY MR. ABSHIRE:

25 Q. Ms. Macdonald, I'm going to hand you State's

KAREN MACDONALD - DIRECT BY MR. ABSHIRE

1 Exhibit 11. Could you tell us what this is?

2 A. It's a photograph of Sheena Alston.

3 MR. ABSHIRE: And, Your Honor, at this time we
4 would seek to move into evidence State's Exhibit 11, I
5 believe, without objection.

6 MR. FALK: No objection.

7 THE COURT: All right. State's 11 admitted
8 without objection.

9 (WHEREUPON, State's Exhibit Number 11 was admitted
10 into evidence.)

11 MR. ABSHIRE: Your Honor, again, we would seek to
12 publish at this time as well.

13 THE COURT: All right.

14 BY MR. ABSHIRE:

15 Q. Officer Macdonald, is this the woman that was
16 under the sink that night?

17 A. Yes, it is.

18 Q. And just to be clear, you said that this is Sheena
19 Alston?

20 A. Yes.

21 MR. ABSHIRE: Your Honor, at this time we would
22 ask to let the record reflect that the witness has
23 identified the defendant, Sheena Alston, in this case.

24 THE COURT: Well, I think what the record reflects
25 is that she's identified what she says is a photograph of

KAREN MACDONALD - CROSS BY MR. FALK

1 Ms. Alston. And so, to that extent, I'll let the evidence
2 speak for itself as it relates to that in this matter.

3 Mr. Falk?

4 MR. FALK: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. ABSHIRE: Thank you. Nothing further, Your
7 Honor.

8 THE COURT: All right. Mr. Falk, do you have any
9 cross-examination of this witness, sir?

10 MR. FALK: Yes, Your Honor.

11 THE COURT: Go right ahead, sir.

12 CROSS-EXAMINATION

13 BY MR. FALK:

14 Q. -- so your duties when you responded to the scene.

15 THE COURT: I'm sorry, Mr. Falk, I'm having
16 trouble hearing you.

17 BY MR. FALK:

18 Q. Officer Macdonald, what were your duties when you
19 responded to the scene?

20 A. What were my duties on scene or when my duties in
21 general.

22 Q. No, I mean when you responded to the scene at the
23 incident?

24 A. I helped hold the perimeter and I let them secure
25 the suspect that they located on scene in my vehicle. And I

KAREN MACDONALD - CROSS BY MR. FALK

1 helped putting the air-conditioning unit back into the rear
2 of the window and I located the cell phone on the ground.

3 Q. And you picked up the cell phone?

4 A. Yes.

5 Q. Because I noticed when you -- when you just
6 handled the cell phone this time you had gloves on. Did you
7 pick it up with gloves that time?

8 A. Yes.

9 Q. Was the cell phone ever -- was it ever dusted for
10 prints to try to see if there were any fingerprints on the
11 cell phone?

12 A. I don't recall. I put it in an evidence bag for
13 the crime scene technicians to whatever they needed to do
14 with it.

15 Q. Okay. And where was the cell phone located?

16 A. On the ground.

17 Q. Where exactly? I mean, how far away from the
18 house was the cell phone located?

19 A. It was a very short distance from the house. It
20 was the back of the house and then there was a vehicle
21 parked behind the house. And in between the back of the
22 house and the vehicle was the phone.

23 Q. Was what?

24 A. The phone.

25 Q. Okay. Was the vehicle parked -- this is about a

KAREN MACDONALD - CROSS BY MR. FALK

1 yard, was the vehicle parked this close to the house?

2 A. I can't specifically say how long the distance was
3 because I didn't measure it with a tape measure and it was
4 four years ago, so it was close.

5 Q. Was there anything between the cell phone and the
6 house?

7 A. No.

8 Q. And there was a car parked in the back of the
9 house is what you're saying?

10 A. Yes.

11 Q. What kind of car was that?

12 A. I don't recall.

13 Q. Was that a parking area behind the house?

14 A. In that neighborhood, people normally park their
15 cars like in the back of their homes, in the front yard,
16 wherever they can find a place to park their vehicles.

17 Q. Okay. You had said that when you arrived on the
18 scene the other suspect was in a vehicle; is that correct?

19 A. I didn't see him sitting in a vehicle, another
20 officer did.

21 Q. Okay. And did you see where the vehicle was
22 parked?

23 A. The one the suspect was in?

24 Q. Yes.

25 A. No, I held the perimeter.

KAREN MACDONALD - CROSS BY MR. FALK

1 Q. What are your jobs -- when you do the perimeter,
2 what is your job there?

3 A. Make sure nobody goes in, nobody comes out.

4 Q. Are you looking to see what's near the perimeter?

5 A. Yes, to make sure nobody goes in and nobody comes
6 out, and don't miss anyone.

7 Q. Would you take notice if there was a car parked
8 outside the house?

9 A. I may have. But once again, it was four years
10 ago, I can't specifically remember what I was thinking and
11 seeing at that time.

12 Q. Was there any -- was there any effort to see if
13 there were any fingerprints on the air-conditioning unit
14 before you touched it?

15 A. I don't recall. I mean, maybe the crime scene
16 techs came out. I don't recall what they did. But I don't
17 touch anything without gloves.

18 Q. But you don't have firsthand knowledge of when the
19 air conditioner was removed from the house; is that correct?

20 A. Only from what I heard from the --

21 Q. So that's not firsthand knowledge, that's hearsay
22 knowledge. You don't have any firsthand knowledge about the
23 air-conditioning unit, why it was no longer in the window;
24 is that correct?

25 A. No. I do not have any firsthand knowledge.

KAREN MACDONALD - REDIRECT BY MR. ABSHIRE

1 Q. You can't remember where the car was that the
2 other suspect was parked in; is that correct?

3 A. I don't recall.

4 Q. And you don't recall specifically how close the
5 vehicle was or the cell phone was behind the house; is that
6 correct?

7 A. Not the specific measurement, no.

8 MR. FALK: I have no further questions.

9 THE COURT: Any redirect, sir?

10 MR. ABSHIRE: Yes, Your Honor.

11 THE COURT: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. ABSHIRE:

14 Q. Ms. Macdonald, I just want to clear a few things
15 up. As you're setting the perimeter, did you see anyone
16 coming and going through the apartment? Out of the
17 apartment?

18 A. I don't believe I did, no.

19 Q. And Mr. Falk asked you about this vehicle out back
20 of the house. Was the male that was found on scene was he
21 in that vehicle?

22 A. I believe it was a different vehicle. It was like
23 a Jetta or something.

24 Q. In a different vehicle parked in a different part
25 of the house, around the house?

KAREN MACDONALD - REDIRECT BY MR. ABSHIRE

1 A. I didn't locate him, so I can't specifically say
2 that, but only from hearing that it was near the house.

3 Q. Thank you, Ms. Macdonald. Nothing further.

4 THE COURT: All right. Anything further,
5 Mr. Falk, sir?

6 MR. FALK: No recross, Your Honor.

7 THE COURT: Great. All right. Thank you so much,
8 ma'am. You're released from any subpoena. We appreciate
9 you coming down here today and testifying today, okay?

10 THE WITNESS: Thank you.

11 THE COURT: Yes, ma'am, you're excused.

12 Solicitor, are you ready to call your next
13 witness?

14 MR. ABSHIRE: May we approach, Your Honor?

15 THE COURT: Yes, sir.

16 (WHEREUPON, a bench conference was had.)

17 THE COURT: Okay. Ladies and gentlemen, what
18 we're going to do is we're going to take a break for a few
19 minutes, so we can get our next witness here. And as soon
20 as we -- I think we'll be ready to go in about 15 minutes,
21 we'll get you back in here, okay? Thank you.

22 (WHEREUPON, the jury exited the courtroom at 10:52
23 a.m.)

24 THE COURT: All right. So, Solicitor, we've got
25 two more witnesses?

KAREN MACDONALD - REDIRECT BY MR. ABSHIRE

1 MR. ABSHIRE: That's what we anticipate, Your
2 Honor, just Detective Riedel and then the codefendant.

3 THE COURT: All right. And then, Mr. Falk, we go
4 straight in -- have some motions, go straight into your
5 case, sir. You can call whatever witnesses, if any, you
6 want to call and then we'll maybe be able to finish up
7 today.

8 MR. FALK: Thank you.

9 THE COURT: Okay. Thank you. We'll be at ease.
10 (WHEREUPON, there was a break held from 10:53 a.m.
11 until 11:10 a.m.)

12 THE BAILIFF: All rise.

13 THE COURT: All right. Is our witness here?

14 MR. ABSHIRE: Not yet, Your Honor. I apologize.

15 THE COURT: He's supposed to be here at 11:15?

16 MR. ABSHIRE: At 11:20 to 11:30, Your Honor.

17 THE COURT: Is there another witness you can call,
18 sir?

19 MR. ABSHIRE: Your Honor, we could call the
20 codefendant in this case. I do anticipate his testimony
21 would be lengthy. But that would be who we call.

22 THE COURT: Well, that's not going to blow up your
23 strategy or anything by taking it out of order?

24 MR. ABSHIRE: No, Your Honor.

25 THE COURT: All right. Well, let's go ahead, sir,

KAREN MACDONALD - REDIRECT BY MR. ABSHIRE

1 and let's call the codefendant and let's see what we can do.

2 Mr. Falk, is that satisfactory, sir?

3 MR. FALK: I'm sorry. Yes, Your Honor.

4 THE COURT: All right. So anything from the State
5 before we get the jury in here?

6 MR. ABSHIRE: Your Honor, we do have that notice
7 for a Court's Exhibit, the Defendant's Notice, that we
8 mentioned earlier.

9 THE COURT: All right. That's fine. We'll mark
10 that as Court's Exhibit.

11 COURT REPORTER: Number 6.

12 THE COURT: Number 6. You've seen that, Mr. Falk?

13 MR. FALK: Yes, Your Honor.

14 THE COURT: All right. We'll mark that as 6.

15 (WHEREUPON, Court's Exhibit Number 6 was marked.)

16 THE COURT: Mr. Falk, anything before we bring the
17 jury in?

18 MR. FALK: No, Your Honor.

19 THE COURT: All right. Let's get the jury please,
20 sir.

21 THE BAILIFF: Yes, sir.

22 (WHEREUPON, the jury entered the courtroom at
23 11:13 a.m.)

24 THE BAILIFF: All jurors present, Your Honor.

25 THE COURT: All right. Thank you very much. You

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 all can be seated.

2 Is the State ready to call it's next witness?

3 MR. ABSHIRE: We are, Your Honor.

4 THE COURT: All right. Yes, sir, Mr. Solicitor.

5 MR. ABSHIRE: The State calls Eric Zipfel.

6 THE COURT: Okay.

7 ERIC ZIPFEL, having been duly sworn,
8 testified as follows:

9 THE COURT: Your witness, sir.

10 DIRECT EXAMINATION

11 BY MR. ABSHIRE:

12 Q. Good morning, Mr. Zipfel, how are you?

13 A. Nervous.

14 Q. Mr. Zipfel, could you tell us where you currently
15 live?

16 A. Nashville, Tennessee, Hendersonville.

17 Q. And where are you from originally?

18 A. New Jersey.

19 Q. Did you -- what are you doing for a living?

20 A. Right now, I'm cutting meat for a steak house in
21 Nashville.

22 Q. And did you ever live in Charleston?

23 A. Yes.

24 Q. What brought you to Charleston?

25 A. Sheena Alston wanted to move here.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 Q. And who is Sheena Alston to you?

2 A. She was my fiance at the time.

3 Q. Were you all engaged during your time in
4 Charleston?

5 A. Yes.

6 Q. And how long were y'all together?

7 A. About five-and-a-half, six years.

8 Q. Mr. Zipfel, I want to just lay the cards on the
9 table.

10 A. Uh-huh.

11 Q. Are you familiar with why we're all here today?

12 A. Yes.

13 Q. Were you also charged --

14 A. Yes.

15 Q. -- in this case?

16 A. Yes.

17 Q. Were you charged with burglary first degree?

18 A. Yes, I was.

19 Q. And throughout this entire time since you got
20 arrested has anyone from my office made you any kind of
21 promises?

22 A. Not at all.

23 Q. Any kind of exchange for your testimony today?

24 A. Nothing.

25 Q. Anything like a wink wink?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 A. Not at all.

2 Q. And is it your intent to testify truthfully today?

3 A. Yes.

4 Q. Mr. Zipfel, you said that you all were together
5 for some years. How would you describe your relationship?

6 A. When it was good, it was good. When it was bad,
7 it was real bad.

8 Q. And when it was bad, would it ever get physical?

9 A. At times.

10 Q. Did y'all ever break up at any point during your
11 time in Charleston?

12 A. A couple of times.

13 Q. And why did y'all break up?

14 A. Altercations between adults. She would attack me
15 and --

16 MR. FALK: Objection, Your Honor.

17 THE COURT: All right. Approach.

18 (WHEREUPON, a bench conference was had.)

19 THE COURT: All right. I'm going to sustain the
20 objection. Solicitor, please proceed.

21 BY MR. ABSHIRE:

22 Q. Mr. Zipfel, you told us that you're familiar with
23 why we're here today.

24 A. Uh-huh.

25 THE COURT: Sir. Yes?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 THE WITNESS: Yes.

2 THE COURT: And the only reason I interrupt, is
3 because what happens is, she's making a recording of
4 everything, sometimes uh-huhs or huh-uhs or nods of the head
5 could be misinterpreted. So however you want to answer a
6 question, just answer out loud. Okay, sir?

7 THE WITNESS: Yes.

8 THE COURT: Okay. Thank you.

9 BY MR. ABSHIRE:

10 Q. So you told us you understood why we're here
11 today.

12 A. Yes.

13 Q. Were you with Sheena Alston the night of September
14 14th, 2018?

15 A. Yes.

16 Q. And could you walk us through what you were doing
17 throughout that night?

18 A. We had been driving around. She was getting
19 lottery tickets. She picked up drugs a couple of times.

20 MR. FALK: Objection, Your Honor.

21 THE COURT: All right. Counsel.

22 (WHEREUPON, a bench conference was had.)

23 THE COURT: All right. Ladies and gentlemen,
24 there's a matter of law I've got to take up outside of your
25 presence. I'll get you back in here just as soon as I can.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 I'm sorry. Thank you. Don't talk about the case, please.

2 (WHEREUPON, the jury exited the courtroom at 11:22
3 a.m.)

4 THE COURT: All right. Mr. Falk, you made an
5 objection. And can you state for the record your objection,
6 sir?

7 MR. FALK: Yes, Your Honor. Yesterday we
8 discussed 404(b) implications of possibly some of
9 Mr. Zipfel's testimony regarding drug use that could be
10 attributed to my client. And I thought that -- I thought
11 there was an understanding that we were not going to tread
12 into that area. I assume that information would have been
13 relayed to the State's witness.

14 THE COURT: All right.

15 MR. FALK: Which -- we'll just leave that at that.

16 And, Your Honor, just to make my record I also do
17 not think that this can be fixed by curative instruction.

18 I'm making a motion for a mistrial.

19 THE COURT: All right. Mr. Falk, thank you.

20 Counsel.

21 MR. ABSHIRE: Your Honor, we would were all on the
22 same page that the drug use of the defendant was off the
23 table. I spoke with Mr. Kozelski, he was in here when that
24 decision was made, it was not the State's intention to
25 elicit that testimony whatsoever, and we will not be asking

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 any questions further about drug use.

2 THE COURT: All right. Does the witness
3 understand that we're not to mention or bring up drug use,
4 sir, or bring up --

5 THE WITNESS: I completely understand, Your Honor.

6 THE COURT: Sir, hold on. Let me finish and then
7 I want to -- and I'll listen to you, sir, I just want to
8 make sure we get this on the record. I don't want you
9 bringing up anything about drug use, sir. I don't you to
10 bring up anything about violence or assaulting. We talked
11 about that yesterday. And so, sir, just be aware that I'm
12 instructing you not to discuss that. That's something
13 that's not relevant for purposes of this trial and this
14 matter.

15 Now, Mr. Falk, as it relates to the instructions
16 that I've given the defendant, I understand you, I'm going
17 to rule on all that in just a second, but any additional
18 instructions that you want me to give this witness, sir?

19 MR. FALK: Just out of an abundance of caution, in
20 some of his other interviews he gave, he talked about other
21 behavior that took place while they were driving around
22 together.

23 THE COURT: We did talk about that yesterday.
24 We're not going to get in to what may have happened on other
25 occasions, Solicitor, other statements that he may have made

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 not pertaining to this case; is that correct, Solicitor?

2 MR. ABSHIRE: Absolutely, Your Honor.

3 THE COURT: All right. And so, sir, you
4 understand that?

5 THE WITNESS: Completely, Your Honor.

6 THE COURT: All right. Thank you very much.

7 Mr. Falk, anything else, sir?

8 MR. FALK: No, Your Honor.

9 THE COURT: All right. So what I am going to do,
10 sir, I'm going to deny your motion for a mistrial. First of
11 all, I take the Solicitor at his word that this was
12 discussed with this gentleman's counsel and relayed from
13 counsel to this gentleman. I don't think that he was
14 fishing for that response.

15 And so, to that extent, I believe that a curative
16 instruction telling them to disregard any testimony that was
17 elicited or that came out concerning drugs, looking for
18 drugs, anything to do with drugs is not for their
19 consideration, it's not relevant in this matter. And I'm
20 instructing them to disregard that. I believe that, sir,
21 will serve and suffice that curative instruction for
22 correcting any harm. And for that reason, sir, I'm going to
23 deny your motion for a mistrial.

24 Is there anything else you want to put on the
25 record, Mr. Falk?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 MR. FALK: No, Your Honor.

2 THE COURT: All right. Anything from the State?

3 MR. ABSHIRE: No, Your Honor.

4 THE COURT: Okay. Y'all can be seated.

5 (WHEREUPON, a brief pause in the proceedings.)

6 THE COURT: All right. Anything before we bring
7 the jury back from the State?

8 MR. ABSHIRE: No, Your Honor.

9 THE COURT: Mr. Falk?

10 MR. FALK: No, Your Honor.

11 THE COURT: All right. Let's get the jury back
12 in here, please, sir.

13 (WHEREUPON, the jury entered the courtroom at
14 11:30 a.m.)

15 THE BAILIFF: All jurors are present, Your Honor.

16 THE COURT: All right. Thank you. You can be
17 seated.

18 All right. Ladies and gentlemen, I'm going to
19 sustain the defense's objection. I will instruct you,
20 ladies and gentlemen, the witness's testimony as it relates
21 to drugs, searching for drugs, looking for drugs, anything
22 concerning drugs, ladies and gentlemen, I'm telling you
23 right now to completely disregard that. That is not for
24 your consideration. It's not relevant in this matter.

25 So I'm instructing you under your oath, ladies and

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 gentlemen, to disregard the witness's testimony concerning
2 drugs. All right. Solicitor, you can proceed. Thank you.

3 BY MR. ABSHIRE:

4 Q. Mr. Zipfel?

5 A. Uh-huh.

6 Q. In September of 2018, do you remember where you
7 were living at the time?

8 A. I was living at Sheena's house.

9 Q. And where was that?

10 A. On Midland Park Road.

11 Q. Would that be the Twin Oaks Apartment?

12 A. Yes.

13 Q. And what was y'all's living situation? Who was
14 living with you at that point?

15 A. Sheena, myself and then her ex-husband, Richard.

16 Q. And were you engaged to Sheena at that time?

17 A. Yes.

18 Q. Did that bother you at all that you were -- that
19 her ex-husband was living there?

20 A. She was helping him out, helping to take care of
21 things, because he was an older man.

22 Q. Did you get along with him?

23 A. Very well. I didn't have any issues with him at
24 all.

25 Q. But he was living there during your time dating

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 and then getting engaged?

2 A. Yes.

3 Q. During this time, did Sheena have transportation?

4 A. Her scooter.

5 Q. And how would you describe that scooter?

6 A. It was one of those old Moped styles. I mean, it
7 was a new version of one. It was one seat, pretty much, and
8 then she drove with me in my car.

9 Q. Was it a white one?

10 A. Yes. She had a couple of different ones during
11 the time she was here, but the one she had then was white.

12 Q. Other than that transportation, what would --
13 would you give her a ride?

14 A. Yes.

15 Q. Let's -- Mr. Zipfel, I'm going to come to the
16 night of September 14th, but first, did you have cell phone
17 at that time?

18 A. Yes, I did.

19 Q. And what happened to that cell phone?

20 A. The police took it that night.

21 Q. If you saw that cell phone would you recognize it?

22 A. Yes.

23 Q. Mr. Zipfel, I'm handing you what is marked as
24 State's Exhibit 12, could you tell me what this is?

25 A. It's my cell phone.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 Q. Does it appear to be changed or altered in any
2 way?

3 A. No.

4 Q. Does it appear to be the same as when you had it
5 back in 2018.

6 A. Yeah, I had just gotten it.

7 MR. ABSHIRE: Your Honor, at this time the State
8 would move to enter State's Exhibit 12.

9 THE COURT: Any objection, sir?

10 MR. FALK: No objection, Your Honor.

11 THE COURT: All right. State's 12 is entered
12 without objection.

13 (WHEREUPON, State's Exhibit Number 12 was admitted
14 into evidence.)

15 BY MR. ABSHIRE:

16 Q. Mr. Zipfel, I know it's been a while, but do you
17 remember what your phone number was at that time?

18 A. This phone?

19 Q. Uh-huh.

20 A. I don't offhand. It's been four years. I barely
21 remember my cell phone that I have now.

22 Q. If you were to see something that might refresh
23 your memory would that help?

24 A. Yeah. If I saw it, probably.

25 MR. ABSHIRE: May I approach, Your Honor?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 THE COURT: Yes, sir.

2 BY MR. ABSHIRE:

3 Q. Now, Mr. Zipfel, I don't want you read directly
4 from this, but could you tell me if you see your phone
5 number on there?

6 A. Yes.

7 Q. In looking at that, do you remember what your
8 phone number was at that time?

9 A. [REDACTED].

10 Q. Thank you. So, Mr. Zipfel, like I say, coming
11 back to the night, could you tell me what you were doing in
12 the hours leading up to 4:00 a.m. on September 14th?

13 A. Driving around.

14 Q. And did the defendant buy scratch off tickets at
15 that point?

16 A. Yes.

17 Q. And did you get into an argument with the
18 defendant at that time?

19 A. Yes, always ended in an argument for periods of
20 time.

21 Q. And during that argument, did you break up?

22 A. Yeah, I pretty much said I was going to leave.

23 Q. Where were you going to go?

24 A. Back to Tennessee.

25 Q. And why were you going to do that?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 A. Because I was tired of everything.

2 Q. Did you just want to get away from her?

3 A. I wanted away. I just -- I didn't want to be here
4 to begin with. I didn't like it here. And I just wanted to
5 go back to Tennessee.

6 Q. In trying to go back to Tennessee, did you have
7 the means to get back?

8 A. I had gotten -- my mom had sent me a hundred
9 dollars for gas to get back.

10 Q. Okay.

11 A. But it was a storm, I couldn't get to Western
12 Union -- get the money from Western Union because everything
13 was closed.

14 Q. Did you need money for gas?

15 A. Yeah, I just needed gas to get out of here. To
16 get somewhere where I could get to Western Union. I was
17 going to try to get on the other side of the state.

18 Q. But you didn't have any cash on you at that point?

19 A. No. I never had any cash on me really.

20 Q. So as you're driving around did she ever instruct
21 you to go to [REDACTED] Ward Avenue?

22 A. Yes.

23 Q. And what was your understand of what you were
24 going to do there?

25 A. She wanted me to help her get in the house.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 Q. Did she tell you what you would do if you took her
2 there?

3 A. Well, I would get gas money.

4 Q. And what was your understanding of how you were
5 going to get gas money?

6 A. She was going to get it in the house.

7 Q. And did she say she was going to pick up money
8 from a friend?

9 A. At first that's what she told me, she was going to
10 go pick up some money. She said take her there. She told
11 me to go knock on the front door and whatnot. And I said
12 there's nobody here. And then she said -- you know, we
13 walked around the back of the house and she said she told me
14 to take the air conditioning unit out, so I did.

15 And then she went in the home. I proceeded to put
16 the air conditioning unit back into the window and then I
17 went back to the car.

18 Q. So coming back to leading up to it, did your
19 opinion of what was going to happen at that house change
20 when you got there?

21 A. Yeah.

22 Q. When you got there what did you think was
23 happening?

24 A. It was dark, if figured she was going to break in.

25 Q. And would that be how she would get the money?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 A. Yes.

2 Q. So you told us a little bit about the lead up
3 getting to the house. Did she tell you to go knock on the
4 door?

5 A. Yes.

6 Q. And what was your understanding of why you were
7 doing that?

8 A. To see if someone was there.

9 Q. And did anybody answer the door?

10 A. No.

11 Q. What did she tell you to do next?

12 A. She told me to go around the house and look. I
13 went around the house and looked. I didn't see anything, so
14 she went with me around the house.

15 Q. Were the lights off in the house?

16 A. Everything was off, it was dark.

17 Q. Did it appear anybody was home?

18 A. No.

19 Q. Mr. Zipfel, do you remember around the time this
20 was?

21 A. Around 4:30 in the morning, it was before dawn.

22 Q. So was it dark outside?

23 A. Yes, it was dark.

24 Q. And whenever you got there, was it just y'all two?

25 A. Yes, just the two of us.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 Q. There wasn't another person --

2 A. No.

3 Q. -- in the car with you?

4 A. No, there was no one else in the car with us.

5 Q. So, I want to understand the logistics of how she
6 was getting into the house. You said you took the AC unit
7 off?

8 A. Yes, I did.

9 Q. If it was dark outside, how were you able to see?

10 A. There was a little bit of light in the area, so I
11 could see what I was doing. But, you know, she had her cell
12 phone flashlight she was using a little bit.

13 Q. Okay. And was she using that flashlight when she
14 got into the house?

15 A. When she walked in there.

16 Q. So you told us that you put -- she went in?

17 A. I put the -- picked the unit up off the ground, I
18 slid it back in the thing. I pushed it to the adjustors on
19 the side, back out and then I left and walked back and sat
20 in the car which was out in front.

21 Q. And if you were to see a picture of that window
22 would you recognize it?

23 A. Yeah.

24 MR. ABSHIRE: May I approach, Your Honor?

25 THE COURT: Yes, sir.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 BY MR. ABSHIRE:

2 Q. I'm going to ask you first, Mr. Zipfel, if you
3 were to see a picture of the house would you recognize it?

4 A. Yes, I think so.

5 Q. I'm showing you State's Exhibit 2, is this the
6 house that you drove to that night?

7 A. Yes.

8 Q. I'm showing you State's Exhibit 4, is that the
9 back window?

10 A. Yes, it is.

11 Q. With that same air conditioning unit?

12 A. Yes.

13 Q. Mr. Zipfel, what did you do after you put the AC
14 unit back on the house?

15 A. I walked back to the front of the house and sat
16 back down in my car.

17 Q. And what were you doing while you were sitting in
18 the car?

19 A. Fiddling with my fingernails.

20 Q. And could you see the flashlight moving around in
21 the house.

22 A. Not at first, but towards the end, when she came
23 towards the front door.

24 Q. So did she open the front door?

25 A. She opened the front door with her flashlight.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 And as she opened the door -- she opened the front door, she
2 had the flashlight in her hand like this facing the light
3 out towards me in the car.

4 And as that happened, a police officer I saw come
5 down the side of the front yard toward the door, but not at
6 the door, and he, you know, stated who he was and to stop.

7 Q. Could you hear him yelling?

8 A. Yeah, I heard him yelling clear as day.

9 Q. So just to be a hundred percent sure, you see her
10 with the flashlight?

11 A. In the doorway.

12 Q. Are you sure it was her?

13 A. Yeah.

14 Q. Not anyone else?

15 A. No.

16 Q. And did the door close?

17 A. When the cop alerted, the second it was him and
18 announced himself, the door slammed shut and I just sat in
19 the car.

20 Q. Did the officer follow in behind her?

21 A. He came towards the door, yes. And then he came
22 to the car.

23 Q. But did he stop at any point after the door closed
24 before he came to you? Let me reask that.

25 A. For like a hot -- maybe a hot second.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

- 1 Q. Okay.
- 2 A. It was kind of fast.
- 3 Q. Did he chase her into the house?
- 4 A. He went to the door, yeah.
- 5 Q. But did he go in?
- 6 A. I don't think he did.
- 7 Q. So during that time did more officers arrive?
- 8 A. It was in a few, like a minute, a minute and a
- 9 half, more officers arrived.
- 10 Q. Could you see all of this from your car?
- 11 A. Yeah, because I was sitting in my car watching the
- 12 whole thing happen.
- 13 Q. Where exactly was your car parked?
- 14 A. In the driveway that was in the front of that
- 15 apartment -- well, that duplex.
- 16 Q. So did you ever pull around back and park?
- 17 A. No. I was sitting in the front driveway right in
- 18 front of the house.
- 19 Q. Was that the same position you were in from the
- 20 time you got there?
- 21 A. Yeah.
- 22 Q. Until the officer came up to you?
- 23 A. Yes, I was.
- 24 Q. So during that time could you see the back window
- 25 from your car?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 A. No.

2 Q. Did you -- were you able to see anybody go out
3 that back window?

4 A. No.

5 Q. Talk -- will you talk to us a little bit about
6 when the officers came up to you?

7 A. The officers came up -- the officer came to the
8 car and he asked me what was going on and I was scared,
9 because, you know, I've never been in this situation before
10 I didn't know what to do. So I made up a story real quick
11 and said that I was taking somebody else there. Because I
12 had driven people around, you know, to make money.

13 So I told the officer that's what I was doing, I
14 had driven somebody there and I lied and said it was
15 somebody else.

16 Q. Did you say that you were an Uber driver?

17 A. Yes.

18 Q. Did you say that you were waiting to get paid?

19 A. Yes.

20 Q. Did you say that when the officers arrived a woman
21 took off?

22 A. Yes.

23 Q. Did you also tell them a different name?

24 A. Yes, I did.

25 Q. And what was that name?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

- 1 A. Tina.
- 2 Q. And is Tina a real person?
- 3 A. No.
- 4 Q. Were you scared of getting in trouble?
- 5 A. Petrified.
- 6 Q. Because of your involvement with...
- 7 A. Yes.
- 8 Q. Did they eventually take you to the police
- 9 headquarters?
- 10 A. Yes, they did.
- 11 Q. And do you remember sitting down with a detective?
- 12 A. Yes, I did.
- 13 Q. And what was that interaction?
- 14 A. I tried to tell a story about that way, and then,
- 15 with time, I couldn't do it anymore and just told them the
- 16 truth of what happened, that I had taken Sheena there.
- 17 Q. And did you tell them that it was just y'all two
- 18 there?
- 19 A. Yes, I told them it was just the two of us.
- 20 Q. And you told them that Tina was not a real person?
- 21 A. No, it was the same person, that it was Sheena,
- 22 that it was a name that she sometimes used?
- 23 Q. That you actually meant Sheena?
- 24 A. Yes, I meant Sheena.
- 25 Q. You told us that you eventually told her -- told

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 them her name, did you eventually tell them exactly what you
2 all were doing?

3 A. Yes, I did.

4 Q. What did you tell them?

5 A. Exactly what I told you here today. That I had
6 taken the window out, the AC unit out of the window, let her
7 in, I put the unit back in and went to my car, sat and
8 waited for her. And I saw her come to the door with the
9 light and the officer came. Because they had asked me --
10 told me that I was in the house, and I said, No, how could I
11 be in the house when I watched the officer come down, I
12 should have been on the body cam the whole time, how could I
13 run out of the house into the car if he was standing right
14 there.

15 Q. Did you tell them during that interview that you
16 all were there to...

17 A. Yes. She was there to get in the house.

18 Q. Mr. Zipfel, I want to talk to you -- we talked a
19 little bit about it about your phone.

20 A. Uh-huh.

21 Q. Did they take your phone after that interview?

22 A. They took it when I came out of the car.

23 Q. And I want to come back just real quick, do you
24 remember in the beginning of the interview were you read
25 your rights?

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

- 1 A. Yes.
- 2 Q. Did you understand your rights?
- 3 A. Yes.
- 4 Q. Did you waive those rights?
- 5 A. Yes.
- 6 Q. And then you told them what happened?
- 7 A. Yes.
- 8 Q. So they took your phone and did you ever see your
- 9 phone at a different point?
- 10 A. When they took me out of the interview, I saw my
- 11 phone sitting on the officer's desk and Sheena's phone was
- 12 next it.
- 13 Q. Okay. And how do you know it was Sheena's?
- 14 A. The case, she actually had just gotten it not long
- 15 before.
- 16 Q. And could you describe what that phone looked
- 17 like?
- 18 A. It was a pink and white, kind of, like a twisty,
- 19 kind of, looking colors mixed on the case.
- 20 Q. Was that the same phone she had --
- 21 A. Yes.
- 22 Q. -- at the house that night?
- 23 A. Yes, that's the same phone she had at the house.
- 24 Q. The same phone she was using as a flashlight?
- 25 A. Yes.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 Q. If you were to see that phone would you recognize
2 it?

3 A. Yes.

4 MR. ABSHIRE: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. ABSHIRE:

7 Q. Mr. Zipfel, I'm showing you State's Exhibit 6, if
8 you want to use a glove, you're more than welcome to.

9 Mr. Zipfel, is that the phone?

10 A. Yes.

11 Q. With the same design you were telling us about?

12 A. Uh-huh.

13 THE COURT: Yes?

14 THE WITNESS: Yes, it is.

15 THE COURT: Thank you.

16 BY MR. ABSHIRE:

17 Q. With the pink and white?

18 A. Uh-huh.

19 Q. Thank you, Mr. Zipfel, you can put that back in
20 there.

21 A. And she had just gotten the phone as well, the
22 phone it had fallen and it cracked up.

23 Q. So would it have been cracked at the time you all
24 were there?

25 A. Yes.

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

1 Q. Do you remember what her phone number was at that
2 time?

3 A. It was a 609 area code, but the number is all I
4 could remember. She had lots of different numbers.

5 Q. Is 609 -- what area code is 609?

6 A. New Jersey. Where we were from, 609 is the area
7 code for South Jersey.

8 Q. If you were to see her phone number would you
9 recognize it?

10 A. Yes.

11 MR. ABSHIRE: Beg the Court's indulgence, Your
12 Honor.

13 THE COURT: Yes, sir.

14 MR. ABSHIRE: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. ABSHIRE:

17 Q. I would direct your attention to right there. Can
18 you see that?

19 MR. FALK: Your Honor, may I see that?

20 THE COURT: Sure. Yeah, yes, sir.

21 BY MR. ABSHIRE:

22 Q. I'll direct your attention to right here. Were
23 you able to see that?

24 A. Yeah. Pretty sure that's it.

25 Q. Is that the...

ERIC ZIPFEL - DIRECT BY MR. ABSHIRE

- 1 A. Yeah, 609, yeah.
- 2 Q. I just want to make sure I heard you correctly.
- 3 A. Yes.
- 4 Q. Is that 609?
- 5 A. Yes.
- 6 Q. [REDACTED]?
- 7 A. Yes.
- 8 Q. [REDACTED]?
- 9 A. Yes, it is.
- 10 Q. And would you have had her phone number at that
- 11 time?
- 12 A. Yeah, it would be on my phone, as well.
- 13 Q. And in being engaged, would you have called her?
- 14 A. Yes.
- 15 Q. Would you have texted her?
- 16 A. Yes.
- 17 Q. Would you have her saved as Sheena in your phone?
- 18 A. Yes.
- 19 Q. Mr. Zipfel, throughout that night before you got
- 20 to the house, had you called her?
- 21 A. Yes.
- 22 Q. And had you texted her?
- 23 A. Yes.
- 24 Q. And would that have been a few times?
- 25 A. At least.

ERIC ZIPFEL - CROSS BY MR. FALK

1 Q. Would that appear in your call log on your phone?

2 A. Yes.

3 Q. And would those text messages appear on your
4 phone?

5 A. Yes.

6 MR. ABSHIRE: Beg the Court's indulgence.

7 THE COURT: Yes, sir. Take your time.

8 MR. ABSHIRE: Nothing further at this time, Your
9 Honor.

10 Mr. Zipfel, please answer anything Mr. Falk would
11 have for you.

12 THE COURT: All right. Mr. Falk,
13 cross-examination, sir?

14 MR. FALK: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. FALK:

18 Q. We were just talking about phone numbers. That's
19 not the -- you did not give that phone number to the police
20 when you were being interrogated; is that correct?

21 A. No.

22 Q. You gave them a different number?

23 A. Yes.

24 Q. Whose number was that?

25 A. It was an older phone number of hers.

ERIC ZIPFEL - CROSS BY MR. FALK

1 Q. So was that a number that you communicated with
2 her?

3 A. Before she had changed her number multiple times.

4 Q. So the [REDACTED], was that one of her telephone
5 numbers?

6 A. I'm pretty sure. Over a period she had a lot of
7 different phone numbers, so that's why.

8 Q. Okay. Now, was she wearing -- you said that you
9 were engaged. How long were you y'all engaged?

10 A. We had discussed it when I had come back from down
11 here.

12 Q. Well, wasn't she still married to
13 Mr. Ricciardelli?

14 A. According to her she had gotten a divorce in
15 Atlantic City.

16 Q. I beg your pardon?

17 A. According to her she had always told me she was
18 divorced in Atlantic City.

19 Q. Okay. Always divorced?

20 A. Well, she was divorced in Atlantic City in '94.

21 Q. Oh, Atlantic City. I'm sorry, I couldn't hear
22 that part. Thank you.

23 But you don't know whether or not they were
24 divorced; is that correct?

25 A. She had shown me a paper that she was divorced

ERIC ZIPFEL - CROSS BY MR. FALK

1 back in the -- we were living in -- she was living in
2 Atlantic City.

3 Q. So were you working when you were down here?

4 A. I was trying to find a job.

5 Q. What kind of business are you in?

6 A. I do restaurant. I was a chef in Atlantic City at
7 the Borgata Casino, I worked there as well. My dad did
8 roofing and siding, so I've done roofing and siding since I
9 was a child.

10 Q. But you were saying you couldn't find a job in the
11 restaurant business in Charleston?

12 A. I had to look for a good job in the restaurant
13 business here in Charleston.

14 Q. And so in order for you to get back to Tennessee,
15 you had to call your mom to send you money?

16 A. Yes.

17 Q. Now, did they tell you what -- so you were charged
18 with burglary first?

19 A. Uh-huh.

20 Q. Is that right?

21 A. Yes.

22 Q. What is the -- did they tell you what the
23 sentencing range is on that?

24 MR. ABSHIRE: Objection.

25 THE COURT: All right. Counsel approach.

ERIC ZIPFEL - CROSS BY MR. FALK

1 (WHEREUPON, a bench conference was had.)

2 THE COURT: All right. Ladies and gentlemen, a
3 matter has come up that's going to require me to take up a
4 couple of issues outside of your presence. I normally don't
5 like to break in the middle of a witness's testimony, but
6 this legal issue is going to take a few minutes. And so,
7 given the hour, what I'd like to do is go ahead and send you
8 to lunch, we'll pick back up, I'm going to ask you to be
9 back here at 1:30, okay. And then, I believe we'll be able
10 to proceed, and this gentleman will be back on the stand and
11 Mr. Falk could continue his cross-examination.

12 So, ladies and gentlemen, don't talk about the
13 case. See you back here at 1:30. And I hope you have a
14 good lunch. Thank you. Everybody else remain seated -- or
15 y'all can stand, but witness just stay right there for me,
16 sir.

17 (WHEREUPON, the jury exited the courtroom at 12:01
18 p.m.)

19 THE COURT: All right. Sir, during the lunch
20 break, I mean, you're free to do whatever you need to do,
21 you just can't talk with anybody about your testimony okay,
22 sir?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. And then at 1:30, we'll
25 come back and have you back on the stand. All right, sir?

ERIC ZIPFEL - CROSS BY MR. FALK

1 Thank you. Anything from the State before we -- and I think
2 I've got some jury charges maybe they're going to work on
3 getting copied that I can hand to you guys and take a look
4 at. I think what you've wanted is incorporated. There was
5 one issue I saw, you know, there's a failure to appear
6 charge, but then also, I don't know if you still want the
7 failure of defendant to testify. And kind of one basically
8 says, if someone is not here don't hold that against them.

9 So, if you want me I'll hear, if there's an
10 argument or if you want that.

11 MR. FALK: I haven't seen the failure to appear
12 charge.

13 THE COURT: All right. I've got a failure to
14 appear charge it should be in there. I'll let y'all look at
15 that also, because actually the charges aren't that long and
16 we'll be back in here probably about 1:20 and see if we can
17 find the answer. Somebody look up State versus Mizzell,
18 because I think that that case involves that matter.

19 MR. ABSHIRE: M-I-Z-Z?

20 THE COURT: M-I-Z-Z -- I think it's M-I-Z-Z-E-L-L,
21 or it may be M-I-Z-E-L-L, but that was a Colleton County
22 case. All right. So we'll see everybody back at -- and
23 were you witness -- is your other witness here, sir?

24 MR. ABSHIRE: Yes.

25 THE COURT: We're good to go. All right. Great.

ERIC ZIPFEL - CROSS BY MR. FALK

1 So we'll see everybody back here about 20 after,
2 and if you can give them copies of that sometime during the
3 break that would be good.

4 (WHEREUPON, there was a break held from 12:04 p.m.
5 until 1:20 p.m.)

6 THE BAILIFF: All rise.

7 THE COURT: Okay. What do you say about that
8 case?

9 MR. FALK: Well, Your Honor, in this case and
10 Gracelick (ph), they both say that it's open grounds for --
11 I can ask him not about only the maximum sentence, but I
12 also can ask about the mandatory minimum sentence that he
13 has and that is fertile ground for cross-examination, and
14 it's almost constitutionally required by the Confrontation
15 Clause.

16 THE COURT: Solicitor, what say you after -- maybe
17 there's some other case out there, but I think that case is
18 good law.

19 MR. ABSHIRE: Your Honor, I'm under the same
20 understanding that that is good law. Your Honor, we -- I
21 haven't seen anything to counter.

22 THE COURT: All right. I believe that is, in
23 fact, the law. I believe that the confrontation clause
24 allows it, because it goes to show bias. I think that's
25 what the -- and I think it stands for the proposition that

ERIC ZIPFEL - CROSS BY MR. FALK

1 he's got a real interest to be biased with this type of time
2 that's hanging over his head.

3 MR. ABSHIRE: Your Honor, the only thing that we
4 would ask is that if he is unaware for whatever reason, of
5 the minimum and the maximum, that it falls back to what you
6 said earlier that he's just aware that he could go to prison
7 for many years.

8 THE COURT: I'm -- no, sir. I think that he can
9 ask him a leading question. I think he can ask him, If you
10 were convicted of this you could spend the rest of your life
11 in jail. You're aware if you're convicted of it. You know,
12 this is cross-examination, he can lead. And I think the
13 case clearly stands for the proposition that that is
14 something that he can inquire into as it relates to bias.

15 That will be my order. I knew there was something
16 out there. It just took me a minute to remember it, okay.

17 Is there anything else before we bring the jury in
18 from the State?

19 MR. ABSHIRE: Your Honor, can we just confirm for
20 a minute before we bring the jury back in?

21 THE COURT: Sure. Sure.

22 Okay. Mr. Falk?

23 MR. FALK: Yes, there is something else. I'll
24 wait until they're done.

25 THE COURT: Okay.

ERIC ZIPFEL - CROSS BY MR. FALK

1 MR. ABSHIRE: Thank you, Your Honor. We're good.

2 THE COURT: All right. Yes, sir. Mr. Falk.

3 MR. FALK: I just think that I have to advise the
4 Court that while we were at lunch break I got a telephone
5 call from my client and she advised me she's been in the
6 hospital since 6:00 o'clock this morning.

7 THE COURT: Mr. Falk, I appreciate that, but, you
8 know, your client was supposed to be coming down here
9 yesterday. She didn't -- it's my understanding that -- you
10 informed the Court that she was on her way. That she never
11 showed, to the best of my knowledge. I assume you didn't --
12 I know we broke a few minutes early, but I'm assuming you
13 didn't see here on the way out of the courtroom, sir.

14 And so, again, she's been at the hospital for some
15 ankle injury that she may have sustained or may not have
16 sustained on a Moped Sunday night. Again, for the same
17 reasons, sir, there's just nothing for me grant a
18 continuance on or to not move forward with this case.

19 Quite frankly, when she -- do you know anything
20 about why she went back or are you just informing me that
21 that's what she told you, sir?

22 MR. FALK: I felt I had to inform the Court of
23 what I knew.

24 THE COURT: Right. And what I'm asking you is
25 there anything else that you know other than what you've

ERIC ZIPFEL - CROSS BY MR. FALK

1 told me.

2 MR. FALK: Well, she told me she had a reaction to
3 the medicine and her face is all swollen up and her eyes are
4 closed.

5 THE COURT: All right. Well, that's fine. We're
6 going to move forward and I appreciate you letting me know
7 that, sir.

8 All right. Anything else? We need the witness to
9 take the stand. I want him to be back on the stand before
10 we bring the jury in. Anything else before we bring the
11 jury in?

12 MR. ABSHIRE: No, Your Honor.

13 THE COURT: All right. Mr. Falk, you don't --
14 other than your client's phone call to you, you reached
15 out -- I don't want to get into attorney/client privilege,
16 but some communication was made at lunch.

17 MR. FALK: Yes.

18 THE COURT: And so other than her telling you
19 that, you've got no documentation of that or any way to
20 verify that other than what she's told you; is that correct,
21 sir.

22 MR. FALK: That's correct. Obviously, I have some
23 limitations in my ability.

24 THE COURT: Well, there's no limitations in your
25 ability, Mr. Falk, I think very highly of your ability, sir.

ERIC ZIPFEL - CROSS BY MR. FALK

1 MR. FALK: No, I meant as far as running to the
2 hospital.

3 THE COURT: Well, I understand that, but, you
4 know, you've got nothing else to show me. And it is my
5 understanding -- and now she's not available because of what
6 she's related as an adverse reaction to some medication that
7 was prescribed? Perhaps the Tylenol 3 that she was
8 prescribed Sunday night.

9 Are you aware of any additional medication, other
10 than Tylenol 3 that she would have been prescribed Sunday?
11 Are you aware of any medication that she would have been
12 prescribed yesterday, when she was supposedly in the
13 hospital, sir?

14 MR. FALK: No, Your Honor.

15 THE COURT: All right. I'm going to stand on my
16 ruling. I just think that there's some gamesmanship going
17 on here and I'm not going to continue this case or slow down
18 the -- or keep this jury waiting, I don't think it's fair to
19 them.

20 Let's go a head and bring the jury in and we will
21 continue with the testimony.

22 THE BAILIFF: Yes, sir.

23 (WHEREUPON, the jury entered the courtroom at 1:27
24 p.m.)

25 THE BAILIFF: All jurors are present, Your Honor.

ERIC ZIPFEL - CROSS BY MR. FALK

1 THE COURT: Thank you, Mr. Bailiff.

2 All right. Ladies and gentlemen, before we broke
3 for lunch, the state made an objection to a question that
4 Mr. Falk asked I'm going to overrule the State.

5 And, Mr. Falk, you can continue with your
6 cross-examination of Mr. Zipfel.

7 BY MR. FALK:

8 Q. Let me just kind of back into this.

9 So you were arrested at the scene; is that
10 correct?

11 A. Yes.

12 Q. And so you were taken to the detectives office,
13 and then you gave a statement to the detective, didn't you?

14 A. Yes.

15 Q. And you lied to the detective; is that correct?

16 A. Yes.

17 Q. And eventually you got charged with burglary
18 first; is that correct?

19 A. Yes.

20 Q. And you've been appointed counsel in this case; is
21 that right?

22 A. Yes.

23 Q. And I'm sure counsel told you what your sentencing
24 range is on burglary first, did he not?

25 A. Yes.

ERIC ZIPFEL - REDIRECT BY MR. ABSHIRE

1 Q. So you are aware that the minimum sentence for a
2 conviction for burglary is 15 years?

3 A. Yes.

4 Q. And you're aware that the maximum that you could
5 do is life in prison?

6 A. Yes.

7 MR. FALK: I have no further questions.

8 THE COURT: All right. Thank you, Mr. Falk.

9 Solicitor, any redirect -- any
10 cross-examination -- no, wait. I'm sorry.

11 All right. This was your witness, he crossed, do
12 you have any redirect, sir? I apologize.

13 MR. ABSHIRE: I do, Your Honor.

14 THE COURT: Go right ahead, sir.

15 REDIRECT EXAMINATION

16 BY MR. ABSHIRE:

17 Q. Mr. Zipfel, you told us -- did you give a
18 statement when you were sitting in your car as to what you
19 were doing there?

20 A. Yes.

21 Q. And is that when you said you were an Uber driver?

22 A. Yes.

23 Q. Was that untruthful?

24 A. It was untruthful.

25 Q. And then, like Mr. Falk asked, when you were taken

ERIC ZIPFEL - REDIRECT BY MR. ABSHIRE

1 to the station, did you initially give an untruthful
2 statement?

3 A. Yes.

4 Q. But did you eventually give a truthful statement?

5 A. Yes, I did. I told them exactly what happened.

6 Q. And why did you give them the truthful statement
7 then?

8 A. My conscious.

9 Q. And is that the same statement that you told us
10 today?

11 A. Yes.

12 Q. The same statement you told them then eventually?

13 A. Yes.

14 Q. What y'all did at that house?

15 A. Yes.

16 Q. And before -- you weren't charged before you gave
17 that statement?

18 A. No.

19 Q. Were you charged at any point before you told the
20 truth?

21 A. No.

22 Q. So would you have been aware of what the charge
23 was?

24 A. No.

25 Q. Would you have been aware of what it carried?

ERIC ZIPFEL - REDIRECT BY MR. ABSHIRE

1 A. Not in this state.

2 Q. Were you just focused on your conscious?

3 A. Yes.

4 Q. And just focused on telling the truth?

5 A. I wanted to tell them the truth and I wanted, you
6 know, I didn't feel right, I felt bad about what I said. I
7 was scared. I didn't know what to do at first. You know, I
8 was kind of startled with it unfolding right in front of me.

9 Q. And I spoke to you a little bit about it and
10 Mr. Falk spoke to you about it today, but are you aware of
11 why we're in trial today?

12 A. Yes, I am.

13 Q. Are you aware that the defendant is in this trial?

14 A. Yes.

15 Q. And who is the defendant in this trial?

16 A. Sheena Alston or Ricciardelli.

17 Q. And if you were to see a picture of her would you
18 be able to recognize her?

19 A. Yes.

20 MR. FALK: Your Honor, this is going beyond the
21 scope of my cross.

22 THE COURT: Overruled. I'm going to allow it.

23 MR. ABSHIRE: May, I approach Your Honor?

24 THE COURT: Yes sir.

25

ERIC ZIPFEL - REDIRECT BY MR. ABSHIRE

1 BY MR. ABSHIRE:

2 Q. I'm showing you State's Exhibit 11. Is this the
3 defendant in this during trial?

4 A. Yes, it is.

5 MR. ABSHIRE: Your Honor, the State would move to
6 let the record reflect that the witness has identified the
7 defendant as Sheena Alston in this trial.

8 THE COURT: Well, again, you asked for that
9 earlier. What I'm going to do is, I'm going to allow him --
10 I mean, the jury can -- that's evidence that the jury can
11 consider, sir.

12 MR. ABSHIRE: Thank you, Your Honor.

13 THE COURT: Mr. Falk, anything else, sir?

14 MR. FALK: No, Your Honor.

15 THE COURT: Was that it?

16 MR. ABSHIRE: Nothing further, Your Honor.

17 MR. FALK: Nothing further, Your Honor.

18 THE COURT: All right, sir, thank very much, you
19 can step down. If he's here pursuant to a subpoena can he
20 be released? Any objection him being released from the
21 State?

22 MR. ABSHIRE: No objection, Your Honor.

23 THE COURT: Mr. Falk?

24 MR. FALK: No, Your Honor.

25 THE COURT: All right, sir. Thank you very much,

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 you're free to go.

2 Hold on one second, sir, before you go.

3 Counsel approach.

4 (WHEREUPON, a bench conference was had.)

5 THE COURT: Sir, thank you so much and you're
6 excused.

7 All right. Solicitor, you can call your next
8 witness.

9 MR. ABSHIRE: The State calls detective Sam
10 Riedel.

11 SAM RIEDEL, having been duly sworn,
12 testified as follows:

13 THE COURT: Your witness, sir.

14 DIRECT EXAMINATION

15 BY MR. ABSHIRE:

16 Q. Good afternoon, Mr. Riedel.

17 A. Good afternoon.

18 Q. Could you explain for the jury what it is you do
19 for a living?

20 A. I'm employed by the City of North Charleston. I
21 am currently assigned to our Detective Bureau with the job
22 duties of performing digital forensics on cell phones,
23 computers, and other electronic media.

24 Q. And how long have you been doing that?

25 A. I began doing digital forensics in 2014.

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 Q. Any idea how many phones you've done over the
2 years?

3 A. A few thousand.

4 Q. And Detective Riedel were you in that current
5 position in 2018?

6 A. Yes.

7 Q. And did you work on this case?

8 A. I did receive items in reference to this.

9 Q. Did you receive two cell phones?

10 A. Yes.

11 Q. And could you walk us through just real briefly on
12 how you go about receiving these cell phones?

13 A. Phones or other digital evidence items that would
14 need to be examined are provided to me either by a direct
15 hand in from the submitting investigator or they're placed
16 into a set of lockers. When they're placed in or handed in
17 they're required to provide me with either a consent form or
18 a search warrant or advise me that the device belongs to a
19 deceased individual. So, therefore, I knew what my right to
20 search is.

21 Q. And did you retrieve those phones from that secure
22 location as this case?

23 A. Yes, I believe these were retrieved from the
24 lockers and both had search warrants with them.

25 Q. Okay.

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 MR. ABSHIRE: May I approach, Your Honor?

2 THE COURT: Yeah, sure.

3 BY MR. ABSHIRE:

4 Q. Detective Riedel, I'm going to hand you State's
5 Exhibit, I believe, 12. Detective Riedel, is this one of
6 the cell phones that you performed an extraction on in this
7 case?

8 A. Yes. This was the LG that was provided, which I
9 was able to perform an extraction analysis of the contents
10 on it.

11 Q. Okay. And I'm handing you State's Exhibit 6, was
12 this the other phone that you performed an extraction on?

13 A. Yes. This phone was provided. An extraction of
14 the contents on the SIM card of this device was performed,
15 however the device itself was locked and we were unable to
16 bypass that lock at the time of submission.

17 Q. Okay. Could you talk to us just a little bit
18 about the limitations of the equipment you were using at the
19 time as far as being able to access the phones?

20 A. So essentially for a data extraction to happen,
21 the extraction from it that we utilize must be able to first
22 connect to the device, communicate with the device, and then
23 retrieve the information that it is authorized to or allowed
24 to, and that's done by proprietary programming within the
25 extraction equipment. At times some locks are unable to be

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 bypassed because there is no, what's called an exploit, at
2 that time, or no way around the lock or encryption mechanism
3 that's programmed into a device.

4 Q. And I want to know if I heard you correctly, were
5 you able to fully access this device?

6 A. Yes.

7 Q. But were you able to not fully access this device?

8 THE COURT: What devices? This device?

9 MR. ABSHIRE: I apologize, Your Honor.

10 BY MR. ABSHIRE:

11 Q. Were you able to fully access State's Exhibit 12?

12 A. The LG, the black phone.

13 Q. And were you able to access fully State's Exhibit
14 6?

15 A. No. The one that was in the case was not able to
16 be accessed the device, the contents of the SIM card were
17 able to be obtained though.

18 Q. And if you are running these reports, are you able
19 to obtain information from the SIM cards?

20 A. Yes. We're able to obtain information from the
21 SIM cards or if they have memory cards inserted in them,
22 things like that, even if we're not able to access the
23 device itself.

24 Q. And what kind of information would you be able to
25 extract?

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 A. From the SIM card?

2 Q. From the SIM card?

3 A. From the SIM card, you usually get the MCC and
4 MNC, Mobile Country Code and Mobile Network Code, which
5 identifies your cell phone provider. As well as the ICCID,
6 Integrated Circuit Card Identifier, which is the one of the
7 numbers used to identify the SIM card itself to the network.

8 The MSISDN, which is the more commonly known as
9 the telephone number, can be retrieved from that. As well
10 as contacts, messages, used to be seen more prevalent than
11 now.

12 Q. And in working on State's Exhibit 6 and not being
13 able to fully access it, but being able to pull the
14 information, would a report be generated with that SIM card
15 information.

16 A. Yes.

17 Q. Would that include that phone number on it?

18 A. Yes.

19 Q. If you were to see the report that you generated
20 would you recognize it?

21 A. Yes, sir.

22 MR. ABSHIRE: Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 BY MR. ABSHIRE:

25 Q. Detective Riedel, I'm showing what you what is

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 marked as State's Exhibit 13. Could you identify what that
2 is?

3 A. This is the PDF report in reference to the device,
4 which I was unable to access, but was able to obtain the SIM
5 card.

6 Q. And just to be clear, is the report a more
7 condensable version with all the information on it?

8 A. Yes. It's the usable, readable, understanding
9 more information that our investigators and everybody can
10 take, examine, pull out, you know, whatever information they
11 deem relevant from that.

12 MR. ABSHIRE: Your Honor, at this time the State
13 would seek to admit State's Exhibit 13 into evidence.

14 MR. FALK: No objection.

15 THE COURT: All right. Admitted without
16 objection.

17 (WHEREUPON, State's Exhibit Number 13 was admitted
18 into evidence.)

19 BY MR. ABSHIRE:

20 Q. Detective Riedel, I'm going to bring you to Page 4
21 at the bottom. Could you read the title of what box at the
22 bottom says?

23 A. The box -- the category is SIM data.

24 Q. And would that be the area where the SIM card
25 information that we talked about would appear in the report?

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 A. Yes.

2 Q. And if you could -- are you able to identify the
3 phone number for that SIM card?

4 A. The phone number associated with the SIM card is
5 listed in this in Line 8 of the SIM data, and it is
6 1-609-██████.

7 Q. And just to be clear, was that SIM card found in
8 State's Exhibit 6?

9 A. Yes, that was removed from the device from this
10 report.

11 Q. Thank you. Now, Detective Riedel, I want to talk
12 to you about the other phone that you worked on in this
13 case. Were you able generate a report from the information
14 you gathered?

15 A. Yes.

16 Q. And in that report would it include the phone
17 calls?

18 A. It would include a wide variety of information,
19 yes, from calls, text messages, locations, emails, there
20 would be a whole number of items that would be contained in
21 that report because data was able to obtained from it.

22 Q. And would it include incoming and outgoing phone
23 calls and text messages?

24 A. Yes. It would have whatever record or phone calls
25 that the phone has would be pulled out for analysis.

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 Q. And would it include contacts?

2 A. Yes.

3 Q. And would you recognize that report if you saw it?

4 A. Yes.

5 MR. ABSHIRE: Your Honor, may I approach?

6 THE COURT: Yeah, sure. Yes, sir.

7 BY MR. ABSHIRE:

8 Q. Detective Riedel, I'm handing you State's
9 Exhibit 14. Can you tell us what that is?

10 A. This is a very small portion of the overall report
11 that was generated reference to the other device.

12 Q. How many pages could a report be?

13 A. I have had reports over 50 thousand PDF pages.
14 This one was not that big, but this is still a very, very
15 small portion of that, yes.

16 Q. Was this report over 400 pages?

17 A. Yes.

18 MR. ABSHIRE: Your Honor, at this time the State
19 would seek to admit State's Exhibit 14.

20 MR. FALK: If we could approach, Your Honor?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a bench conference was had.)

23 THE COURT: All right. Did you need to approach,
24 sir? I'm sorry, where were we?

25 MR. ABSHIRE: The State was seeking to admit, Your

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 Honor.

2 THE COURT: Okay. And so, Mr. Falk, any
3 objections, sir?

4 MR. FALK: No, Your Honor.

5 THE COURT: All right. So it's admitted without
6 objection. Thank you.

7 (WHEREUPON, State's Exhibit Number 14 was admitted
8 into evidence.)

9 BY MR. ABSHIRE:

10 Q. Detective Riedel, in State's Exhibit 14, could you
11 tell us what this top box is?

12 A. The top box on this page itself is also the SIM
13 data which was the box generated for the data pull from the
14 SIM card associated with the second device.

15 Q. And is that like the same SIM data that we talked
16 about on the other phone?

17 A. Same type of data, yes, different actual data.
18 The mobile number indicated here is different than the other
19 report.

20 Q. Would that be because it's a different device?

21 A. Yes, correct.

22 Q. And what is the phone number associated with that?

23 A. It is [REDACTED].

24 Q. If you come down to the box below, what is this
25 box?

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 A. This is the portion of the messages which were
2 retrieved from the device. So a small selection of the
3 overall.

4 MR. ABSHIRE: Your Honor, the State would seek to
5 publish at this time.

6 THE COURT: Any objection to the report that's
7 been entered into evidence being published, Mr. Falk?

8 MR. FALK: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 (WHEREUPON, a bench conference was had.)

11 THE COURT: All right. So right now I'm going to
12 sustain the objection to publish, but subject to -- subject
13 to a little better foundation. Go ahead.

14 BY MR. ABSHIRE:

15 Q. Detective Riedel, you talked to us about the
16 information you could pull from phones. Would that include
17 contact names?

18 A. Yeah. Pretty much depending on the level of data
19 extraction we're able to obtain would provide you with
20 different levels of data to be presented. And in the case
21 of the phone that I was able to get data off of, I was able
22 to get the most comprehensive data extraction. So what that
23 means is it's called physical. It means it takes a copy of
24 the memory chip which is inside the device, copies it from
25 beginning to end.

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 So a phone, or electronic device, essentially
2 stores all of your stuff like that. Now, more than likely
3 nobody can read this, correct? So by taking a copy of it, I
4 take a copy, I then put that copy into an analytics program.
5 The analytics program is able to read and decode because it
6 understands, in this case the Android language, and is able
7 to piece all of those individual bits and bytes together, to
8 form the overall same data you would see if you were looking
9 at the phone.

10 So by copying this tie, placing this in the
11 analytics program it would then -- you don't know what it
12 says now, however, if I put it in the analytics program, you
13 would understand that this tie says, Ties Suck.

14 That's essentially what the entire process does,
15 it takes this and turns it into something you can
16 understand.

17 Q. So if someone saves on their phone a contact under
18 Name would that appear in that report?

19 A. Yes.

20 Q. And would it be associated with phone numbers
21 saved in that phone?

22 A. Phone number, email address, however -- whatever
23 they the contact is.

24 Q. And do you know if there was a contact name
25 retrieved from this report?

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 A. Yes. Contacts were retrieved as a part of that
2 physical data extraction.

3 MR. ABSHIRE: Your Honor, at this time the State
4 would see to publish.

5 THE COURT: All right. Any objection to publish,
6 sir?

7 MR. FALK: No objection.

8 THE COURT: All right. So go right ahead, sir.
9 It's already admitted into evidence, feel free to publish,
10 sir.

11 BY MR. ABSHIRE:

12 Q. And Detective Riedel, you can draw on that screen,
13 but this table right here, is this the SIM card information
14 table?

15 A. Yes.

16 Q. And you read a phone number for us earlier could
17 you identify that on the screen?

18 A. This block right here, the MSISDN.

19 Q. And I think we can clear the drawing off of the
20 screen. Coming down to here, is this -- what is this table
21 right here?

22 A. This is the SMS text messages table which we
23 previously discussed.

24 Q. And like we talked about earlier, is this showing
25 sent text messages?

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 A. Shows -- this table has the ability to show sent,
2 received, drafts, unread, read, and it normally will
3 indicate the status of the message. It will always indicate
4 whether or not it is in the sent or outgoing mailbox or the
5 received incoming mailbox.

6 Q. And are there timestamps associated with when
7 these messages are sent?

8 A. Yes.

9 Q. What is the time stamp associated with Message
10 Number 1?

11 A. That would be the 14th of September, 2018, at an
12 adjusted time of 4:04:17 and seconds a.m. The UTC is
13 showing it's in Eastern Standard Time.

14 Q. So is there a number associated with who that text
15 message went to?

16 A. Yes.

17 Q. Could you read that for us?

18 A. 1-609-██████.

19 Q. And then we'll come to the next page. Come down
20 to -- what is this table right here?

21 A. This is the call log on that same device.

22 Q. And are there time stamps associated with that?

23 A. Yes. The time stamp, phone number, direction of
24 call, would indicate incoming, outgoing, missed.

25 Q. And you talked to us about an associated number.

SAM RIEDEL - DIRECT BY MR. ABSHIRE

1 What is the number on Line Number 3?

2 A. 1-609- [REDACTED].

3 Q. Is that the same number from the text message box?

4 A. Yes.

5 Q. And what's the name associated with that contact?

6 A. It is associated with that of the contact of
7 Sheena.

8 Q. Detective Riedel, are there multiple text messages
9 sent to that 609 numbers throughout that night?

10 A. Yes.

11 Q. And, again, are those text messages sent to the
12 contact that's saved as Sheena?

13 A. Yes. That is the same number. The program just
14 did not associate it with the actual contact because it's
15 pulled from a different location.

16 Q. But there's no change?

17 A. No, there's no change, it's still the same number.

18 Q. Detective Riedel, when you finish your analysis
19 with these phone, did you repackage them and put them in a
20 secure location?

21 A. They were returned to the submitting investigator.
22 Once I get done with them, they're given back to them just
23 in case they want to manually review them or have something
24 else to look at on the device. So I don't place them back
25 into evidence.

SAM RIEDEL - CROSS BY MR. FALK

1 Q. Were there any other phones that were submitted in
2 this case?

3 A. Not to my recollection.

4 MR. ABSHIRE: Thank you, Your Honor. Nothing
5 further.

6 THE COURT: All right thank you, sir.

7 Mr. Falk, any questions, sir?

8 MR. FALK: Just a couple.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. FALK:

12 Q. If you could look that exhibit -- do you have a
13 copy of that still?

14 A. No.

15 Q. On that first box under that heading SIM messages
16 161, that first box?

17 A. Yes.

18 Q. Where was that phone when that text message is
19 being sent? You have no idea where that phone was. And
20 your analysis can't provide that information where the phone
21 was at that time; is that correct?

22 A. For this specific one?

23 Q. Yes.

24 A. Not from my recollection. If I looked at the
25 location information I might see a location in there, but

SAM RIEDEL - CROSS BY MR. FALK

1 that's not amongst the data that's been presented to me.

2 Q. And this log that's depicted in that one column,
3 that isn't everything; is that correct?

4 A. Can you be more specific?

5 Q. Well, they all look like they're sent text
6 messages.

7 A. Well, there's a drafted text message in there.

8 Q. Okay. Except for that -- well, what does that
9 draft mean?

10 A. It means there was a draft that was not sent.

11 Q. Okay. But if this phone was receiving a text
12 message, would it -- if -- let me -- the best way to say it.

13 So you have the very top line you have a time
14 4:04, and then your bottom, the time associated with Row 14,
15 the time says 11:36, okay. You agree?

16 A. Yeah. If I could see the last row.

17 Q. Oh, I keep thinking you've got it in front of you,
18 I apologize.

19 A. Yes, I agree.

20 Q. Okay. So there were no incoming text messages
21 during that time; is that correct?

22 A. Doesn't appear so by what is presented on this
23 sheet.

24 Q. Because your report was to look for all traffic;
25 is that correct?

SAM RIEDEL - CROSS BY MR. FALK

1 A. Yes.

2 MR. FALK: No further questions.

3 THE COURT: All right. Anything on redirect?

4 MR. ABSHIRE: Nothing further, Your Honor.

5 THE COURT: All right. Thank you.

6 Thank you, Mr. Falk.

7 All right. The State can call their next witness.

8 MR. ABSHIRE: Your Honor, at this time the State
9 would rest.

10 THE COURT: All right. Ladies and gentlemen, the
11 State has rested their case. And as a result, there are
12 some matters of law that I will need to take up outside of
13 your presence. I would ask that you retire to the jury
14 room, please don't discuss this case, and I'll have you back
15 in here as soon as I can. Thank you.

16 (WHEREUPON, the jury exited the courtroom at 2:02
17 p.m.)

18 THE COURT: Mr. Falk, any motions, sir?

19 MR. FALK: Yes, Your Honor. At this time I think
20 it's appropriate for me to renew my motion for a mistrial,
21 renew my motion for a continuance in this case, and also
22 make a motion for a directed verdict.

23 I think the State's proof has failed to prove with
24 any reliable evidence that Sheena Alston was ever inside
25 that location. At best, they have a cell phone that was

1 located outside the home, nothing to show that she was
2 inside the home. There's conflicting testimony that their
3 first witness said it looked like two people were in the
4 house. The -- it's just insufficient testimony other than
5 from somebody who is highly motivated to try to work out
6 some kind of deal with the State.

7 THE COURT: All right. Thank you.
8 Solicitor?

9 MR. ABSHIRE: Your Honor, that State would oppose
10 the motion for directed verdict. It's the State's position
11 that in viewing all of the evidence in the light most
12 favorable to the State that it's not the position to view
13 the weight of the evidence, but only the existence or
14 nonexistence of the evidence. We have provided testimony,
15 both direct and circumstantial, as to each and every element
16 of this crime that it was -- that the defendant, Sheena
17 Alston, entered the dwelling without the consent of the
18 victim Soila, and that she did so with the intent to commit
19 a crime therein, and that it was done in the middle of the
20 night.

21 Your Honor, we believe that there is a
22 substantial -- there is enough for a jury to consider and
23 for that reason the State would oppose the directed verdict.

24 THE COURT: Anything else, Mr. Falk?

25 MR. FALK: No, Your Honor.

1 THE COURT: All right. As it relates to the
2 motion for a continuance, you know, again, I mean, I think
3 my prior ruling -- I think I made sufficient findings as to
4 why this was not a case that needs to be continued or needed
5 to be continued for lack of information or credible
6 information that was presented to me that showed me that she
7 was not able to attend the trial.

8 As far as the mistrial, sir, I think you protected
9 yourself on the record as it relates to that. And I believe
10 that the curative instruction that the Court has given in
11 this case and the juror following their oath, sir. I think
12 that sufficient protections have been given as it relates to
13 I think some brief testimony concerning possible obtaining
14 drugs, or something along those lines. So I'm going to deny
15 that.

16 As it relates to your motions, sir, as far as any
17 kind of directed verdict, I think I'm looking at the
18 existence of evidence, Mr. Falk, I'm not looking at the
19 weight of the evidence. And I think in this case that while
20 I agree with you that the witness, Mr. Zipfel, certainly
21 has -- certainly has a lot riding on his testimony, yes,
22 sir, I can understand your concern there. I think you
23 brought that out in cross-examination. I'm sure you'll
24 bring that out on closing arguments, sir. But I believe
25 that my recollection was that he indicated that he saw her

1 in the house as she slammed the door shut when law
2 enforcement went to call her or ask for folks to come out.

3 And I think that he testified for sure that he saw
4 her go into the house and that he saw her in the house. And
5 so for those reasons, sir, I'm going to respectfully deny
6 your motion, sir.

7 MR. FALK: Thank you.

8 THE COURT: All right. Any other matters that we
9 need to take up at this point from the State?

10 MR. ABSHIRE: Nothing at this time, Your Honor.

11 THE COURT: All right. Mr. Falk, anything we need
12 to take up?

13 MR. FALK: No, Your Honor.

14 THE COURT: All right. Mr. Falk, are you
15 intending to call any witnesses, sir?

16 MR. FALK: I am not.

17 THE COURT: Okay. So are you ready to rest?

18 MR. FALK: Yes.

19 THE COURT: Once I get the jury back out here,
20 I'll have you rest. All right. Have y'all had a chance to
21 look at these jury charges?

22 MR. ABSHIRE: We have, Your Honor.

23 THE COURT: Let's -- let's -- let's do this, if we
24 look at them -- and do y'all have them if we go to the first
25 page, gentlemen?

1 on the closing arguments and I'll give them a brief charge
2 on closing arguments of counsel. And then we'll do -- so
3 you're putting nobody on, so the first and last.

4 Is that correct gentlemen?

5 MR. FALK: That's correct.

6 MR. ABSHIRE: As far as I understand.

7 THE COURT: Thank y'all.

8 All right. Can we get the jury?

9 THE BAILIFF: Yes, sir.

10 THE COURT: All right. Thank you.

11 (WHEREUPON, the jury entered the courtroom at 2:51
12 p.m.)

13 THE BAILIFF: All jurors are present, Your Honor.

14 THE COURT: Thank you, Mr. Bailiff.

15 All right. Ladies and gentlemen, the State has
16 concluded and put on all their evidence.

17 Mr. Falk, I'm happy to hear from the defendant,
18 sir.

19 MR. FALK: The defense will rest at this time.

20 THE COURT: All right. Defense has rested.

21 All right. Ladies and gentlemen, the defense has
22 rested. And so what that means is that you've heard all the
23 evidence in this case. And so, ladies and gentlemen, now
24 that that's been done it's time for the attorneys to make
25 their closing arguments to you. The arguments of the

1 attorneys are not evidence in this case. Their statements
2 and arguments are meant to help you understand the evidence
3 and apply the law to the evidence. You should disregard any
4 remark, statement, or argument which is not supported by the
5 evidence presented during the trial or the law that I will
6 explain to you after these arguments.

7 Solicitor.

8 MR. ABSHIRE: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. ABSHIRE: Ladies and gentlemen, when I got up
11 here yesterday I told you that this entire case is about
12 somebody taking advantage of people. I believe that through
13 our day and a half together we presented evidence that shows
14 the extent of what the defendant is willing to do.

15 I believe that the evidence we've shown you,
16 proves that she's a predator. That she is willing to seek
17 out pray in her own community. And that she is willing to
18 take advantage of a family and enter their home.

19 Ladies and gentlemen, we are talking, as we've
20 learned, about someone that is willing to scope out a home
21 in this community in the middle of the night, arrive, break
22 in through the window, into the room as we've heard where
23 the children's bedroom is in search for personal gain.
24 Someone willing to violate the sanctity of that family's
25 safety in their own home for money.

1 Now, I anticipate that Mr. Falk is going to talk
2 to you about Eric Zipfel. And as we learned Eric Zipfel was
3 charged in this crime. Eric Zipfel was charged with the
4 same thing in this case. But I implore you to remember this
5 is not his day in court. This is Sheena Alston's day in
6 court. Mr. Zipfel's day will come. But that is not what
7 you are here to determine.

8 Your job as a jury in this case is to determine
9 whether the evidence presented to you, proves that Sheena
10 Alston, the defendant, committed burglary in the first
11 degree, not Eric Zipfel.

12 When I talked to you yesterday I threw the
13 elements up on the screen, but I just want to remind y'all
14 of what exactly we are required to prove beyond a reasonable
15 doubt. We, as the State, has to prove a person is guilty of
16 burglary in the first degree if a person enters a dwelling
17 without consent and with intent to commit a crime in that
18 dwelling. And then that the entering or remaining occurred
19 in the nighttime.

20 We're going to go through how we meet that burden
21 and what pieces of evidence fit into those boxes. But in
22 just a little bit the Judge is going to talk to you about
23 two different types of evidence.

24 We have direct evidence, which is something that
25 doesn't need corroboration. Direct evidence would be like

1 saying the sky is blue, we just outright know that.

2 Then, we also have circumstantial evidence, which
3 you can draw inferences from with surrounding facts. A good
4 example of this is you come across somebody with sandy feet,
5 they're sunburned, and they've got a towel, it is reasonable
6 to infer that they were just at the beach. That is a
7 circumstantial evidence.

8 Ladies and gentlemen, in every single element that
9 you see in this charge, we have both types of evidence. We
10 have both direct and circumstantial evidence, facts that
11 were established on that witness stand that will prove every
12 single element of this charge and get you to guilty.

13 Enters a dwelling without consent. First example
14 of direct evidence that we have is that we have Soila. She
15 came to the stand, she told all of us that she doesn't know
16 Sheena Alston. She didn't give her permission to go inside
17 her house. She didn't consent to her being inside the
18 house. And she definitely didn't okay her ripping the air
19 conditioning unit out of her back window in the middle of
20 the night.

21 We also have direct evidence from Eric himself.
22 He says that he pulled the air conditioning unit out after
23 he was instructed to help Sheena Alston. And then at that
24 point, she climbed into the window and he put the AC unit
25 back. Enters a dwelling without consent. Soila said that

1 she didn't know her. Soila wasn't there to tell Sheena
2 Alston that she could go in there.

3 Circumstantial evidence of entering a dwelling
4 without consent. We heard from Officer Macdonald and
5 Officer Owens, that they say the air conditioning unit on
6 the ground that night. Officer Macdonald told you that she
7 was setting up a perimeter, she came around back and then
8 she helped put the AC unit back in the window.

9 Now, she didn't see somebody dive out the back
10 window, but through circumstantial evidence you can come to
11 the conclusion that whoever came out of that back window
12 went out through the AC unit and because it was on the
13 ground and it had to be replaced and put back into the
14 window.

15 I submit to you that all of this could have been
16 cleared up if she was allowed to be in that house, and the
17 officers rolled up, that she could tell the officers, Hey, I
18 know this person. I'm allowed to be here.

19 MR. FALK: Objection, Your Honor.

20 THE COURT: Counsel, approach.

21 (WHEREUPON, a bench conference was had.)

22 THE COURT: All right. Ladies and gentlemen, I'm
23 going to sustain the objection. Ladies and gentlemen, the
24 State has the burden of proof. The defendant doesn't have
25 to prove anything. And it's not proper -- it's not proper

1 for the State to make the argument that the defendant was
2 under the duty or owed some duty to respond or answer
3 questions. All right. So that's going to be my ruling.

4 Solicitor, please proceed.

5 MR. ABSHIRE: Coming back to circumstantial
6 evidence proving that the defendant entered the dwelling
7 without consent. We heard from Soila that her plants
8 underneath that window were smashed. That there were
9 footprints all over the place and that there was dirt
10 everywhere.

11 This fact heard directly from Soila can lead you
12 to the conclusion that the AC unit that has been in question
13 this entire trial fell out that window as the defendant dove
14 out that back window and crushed those plants. Even if you
15 want to believe that the police were the ones who caused all
16 the footprints and the dirt everywhere, it is unreasonable,
17 I submit, to believe that the police are there destroying
18 evidence of a crime scene whenever they have not made an
19 arrest, but they are destroying these plants underneath the
20 window.

21 Ladies and gentlemen, we've run through these
22 examples, this is -- we have the direct evidence from what
23 Soila told us. The direct evidence of what Eric Zipfel told
24 us and all of the other circumstantial evidence surrounding
25 the entering of this dwelling without consent.

1 I submit to you that we've proven this element
2 beyond a reasonable doubt that the defendant is not
3 permitted, nor was she, to be inside that dwelling in the
4 early morning hours of September 14th of 2018.

5 The next element that we have to prove is with
6 intent to commit a crime inside. We spoke at the beginning
7 of this trial that intent is almost impossible to prove.
8 That you cannot get inside the mind of someone and know
9 exactly what they are thinking, but that you can infer
10 through the circumstances surrounding it what their
11 intentions were.

12 Now, this case is a little different, because we
13 actually do have direct evidence of what the intent was that
14 night. We have direct evidence from Eric Zipfel, a person
15 that participated in this crime of what they were there to
16 do.

17 We heard from Eric today that they were fighting
18 that night, they broke up, and he just wanted to get out of
19 town. We also heard from him that he tried to get money
20 transferred from his own mother so he could get out, but he
21 didn't have the means to pay for gas to leave Charleston.

22 We also heard from him that he understood that
23 they were going to this house, but once they got there his
24 understanding changed. You heard him tell us that his
25 understanding of what they were doing there was that she was

1 going to rob them. That she was going to get money out of
2 that house. And that he was going to get part of it so that
3 he could get out of town.

4 This is an example of direct evidence. It does
5 not need a support -- a supporting fact, you heard it
6 straight from his mouth from the person who was involved in
7 this crime, but we have even more on this, we have
8 circumstantial evidence.

9 The circumstantial evidence with intent to commit
10 a crime inside, we learned through the breakdown that Eric
11 told us about whenever they were there. He told us that
12 whenever they got there, they pulled up, she told him to
13 knock on the door. Why did you knock on the door? To see
14 if anybody was home. She told him to walk around the back.
15 Why did you do that? To see if anybody was home. He told
16 us that he didn't see any lights on that night, and that it
17 didn't appear that anybody was home.

18 This is circumstantial evidence of their intent to
19 do something that they don't want to get caught. This is
20 circumstantial evidence that they are trying to see if
21 somebody is home so that they can do what they then did,
22 break into the back window.

23 Other circumstantial evidence for intent to commit
24 a crime inside is, I asked Soila, What was your house like
25 before when you were there? She told us that she didn't

1 remember any clothes being anywhere, she didn't remember
2 pulling drawers out, she didn't do that. No one in her
3 family did that. And that there were clothes everywhere
4 throughout the house. This is circumstantial evidence that
5 somebody in that house, the defendant, was searching for
6 something of value. Committing a crime inside and taking
7 something that was not theirs.

8 Other examples of intent to commit a crime inside
9 is we heard about the lights. There were lights throughout
10 the house that were seen. We even heard that the defendant
11 was using her cell phone flashlight function to search
12 inside that house, in the middle of the night, in somebody
13 else's house, while it's dark, using a flashlight.

14 It is reasonable to infer that they did not want
15 to get caught for this. The defendant did not want to get
16 caught turning the lights on in the house, especially if she
17 knew someone wasn't home.

18 Finally, another example of circumstantial
19 evidence proving that there was a crime -- there was an
20 intent to commit a crime, is the slamming of the front door.
21 The front door was slammed and the defendant ran and jumped
22 out the back window. It is reasonable to infer that she
23 didn't want to get caught. It's reasonable to infer that
24 she wanted to distance herself from that police officer.
25 That she wanted to avoid trouble and not be caught in

1 someone else's house in the middle of the night.

2 Ladies and gentlemen, all of these factors
3 together, the direct and circumstantial evidence prove
4 beyond a reasonable doubt the element of intent to commit a
5 crime inside.

6 Finally, we have at nighttime. This is the third
7 element that has to be proven and I don't think that were
8 was much contest on this, but we heard that it was around
9 4:00 o'clock in the morning, it was dark out, you watched
10 the body cam where you couldn't really see anything. And we
11 also learned, like we spoke about, that flashlights were
12 being used. There's direct and circumstantial evidence
13 proving that the third element of this crime occurred during
14 the nighttime.

15 Ladies and gentlemen, going farther than these
16 elements, I want to point out other things that point to the
17 defendant's guilt. We learned about the investigation of
18 Sheena Alston after she was not found that night. We
19 learned that Officer Macdonald knew that she would go to the
20 Spinx on Midland Park Avenue. We learned that she went
21 there and in doing so she spoke with a clerk and said, Hey,
22 I'm looking for this person. She told us that she knew her
23 from the area and that a few days later she got a tip that
24 they had spotted the defendant.

25 We learned that the defendant hopped on her Moped

1 and drove to her apartment, which Eric and other officers
2 that arrived on the scene told us that it's just right
3 around the corner. Two officers followed her and both of
4 them said that it was a black female on that Moped.

5 Well, we also learned that there was an arrest
6 warrant from this incident. And they went into that house
7 and they found the person they were looking for. The person
8 that was hiding from the police officers, the defendant. It
9 is reasonable to infer that this is another example of her
10 wanting to get away from the police, of not wanting to get
11 caught.

12 Finally, we learned about the phones. We learned
13 that the night that Eric Zipfel got arrested, September
14 14th, for this burglary, that his phone was taken and they
15 ultimately searched that phone. They were able to identify
16 his phone number off the SIM card and fully access his calls
17 and his texts. I asked Detective Riedel, what is this
18 number? And he told us that Eric Zipfel's number was
19 [REDACTED]. I asked him, What is this number he's
20 communicating with, [REDACTED], saved as the contact,
21 Sheena, in his phone.

22 We also found that the phone that was found on
23 scene that Officer Macdonald told us was right next to the
24 window, they weren't able to fully access it, but thankfully
25 they were able to pull information from the SIM card. From

1 that SIM card we were able to identify that number, the 609
2 number, as that phone.

3 Going even a step further, I asked Eric, Is this
4 her phone? Yes. Is this the phone she was using during her
5 time inside the house with the flashlight? Yes. He even
6 told you that it had cracked beforehand. And you'll be able
7 to see for yourself this was the pink and white cracked cell
8 phone that belonged to Sheena Alston.

9 All of these facts, both direct and
10 circumstantial, get you to guilty. These are all facts that
11 point again and again and again the defendant's involvement
12 and guilt in this burglary charge.

13 In thinking about this case it reminded me of,
14 after a hurricane rolls you always see this interesting
15 phenomena where, after the storm has left, there's people
16 that decide to go buy generators, water bottles, and other
17 utilities, and then turn around and take advantage of
18 people. People that are just trying to make ends meet and
19 try to sell it to them for three, four, five, six times the
20 price. Taking advantage of people.

21 It's my opinion that the defendant in this case is
22 no different. She took advantage of a family that was just
23 trying to make ends meet. Broke into their home in search
24 of what? Money. In taking that money she violated the
25 sanctity of their home and the safety of their home.

1 Ladies and gentlemen, after the Judge talks to you
2 he's going to remind you again of direct and circumstantial
3 evidence, and I know I've said it a million times, but he
4 will also tell you that these both can bring you to guilty.
5 One of whom alone can bring you to guilty, but either
6 combination can bring you to the verdict of guilty.

7 That is why after the Judge speaks with you, we're
8 going to ask that you return the only verdict that is just
9 in this case, the only verdict that defines common sense and
10 the only verdict that is beyond all reasonable doubt that
11 you find the defendant guilty of burglary in the first
12 degree. Thank you.

13 THE COURT: Mr. Falk.

14 MR. FALK: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. FALK: Ladies and gentlemen, it's going to be
17 kind of a quick trial. Obviously, it's very, very important
18 to my client. And as I told you in the beginning of this
19 trial, y'all are going to be asked to make a huge decision
20 and it's going to have a huge impact on somebody's life and
21 somebody's liberty here and it is your job to make that
22 decision.

23 And I tell you I think your job would be easier to
24 make the decision if everybody else who is connected to this
25 case did their job. I think if you -- I would point out

1 where I think somebody, or some group of people, sort of
2 fell down on the job. It's only going to make it difficult
3 for all of us in here to really know what happened that
4 night.

5 Now, the State's done a fine job. The Solicitor's
6 done a fine job of putting on the case. He's put on the
7 case that he -- you know, he played with the cards that he
8 was dealt. The Judge is certainly doing his job as far as,
9 you know, making sure that the law is followed here. But I
10 think North Charleston Police Department kind of fell down
11 on their job. And I thought it was funny during the
12 opening -- during the State's opening argument he was kind
13 of defending North Charleston. Oh, North Charleston,
14 they're not going to do anything to kind of trample over any
15 evidence.

16 North Charleston did nothing to preserve this
17 crime scene. And we are all suffering for that today
18 because we don't know what happened. I mean, I know that
19 this is not like, you know, watching on TV, you know, it's
20 not always going to be like CSI. But there's no picture of
21 the crime scene. Those pictures that were taken were not
22 taken by North Charleston, the pictures that you saw were
23 taken much later. I mean, North Charleston didn't secure
24 the crime scene, there's no tape put out.

25 There's no picture of where the phone was found

1 and I submit that that's very important. I mean, why would
2 it have been that hard to not have given us a picture where
3 the phone was found? She said it was found right by the
4 window. She said it was found right by the window. I tried
5 to ask her about how far away it was. And then she said it
6 was also near the front of the car. Well, how far was the
7 car to the house? You know, it was really near. I said,
8 Well, is there anything that between the house and where you
9 saw the phone? And let me show you -- if we could put the
10 lights on?

11 You know, she's saying it was -- there was nothing
12 between, sort of, the house and where the phone was, excuse
13 me.

14 So was the car parked right on top of these
15 flowers pots right up by the house or where was the phone?

16 All it would take was a photograph and that might
17 have told us something. Because I think the State wants you
18 to infer that the phone sort of fell out of somebody's
19 pocket when they were leaving the house.

20 Well, you know, maybe if the phone is right up by
21 the house, yes, but not if it's out in the yard over by the
22 car. I don't know how long that phone was in the backyard
23 and neither does the State. And they haven't even tried to
24 offer any kind of evidence as to how long the phone was in
25 the backyard. Was it there in the afternoon? Was it there

1 at night? I don't know. We don't know.

2 And the other thing, the other person, who I was
3 really surprised did not testify today, because you heard
4 the first officer for the State, when he testified, and I
5 asked him who the complainant was, because he took the
6 police report, and I kind of do my work in these cases by
7 reading the police reports, and they said that the
8 complainant said this, The complainant saw two people remove
9 the air conditioning unit, go into the house, one of whom
10 might have been a woman, that's it.

11 Where was the complainant? The witness to this
12 whole thing? This whole case might have been a lot easier
13 to understand what was going on, whether or not it was two
14 men going into the house, or whether it was a man or a
15 woman, because the only witness to it wasn't sure. He said
16 it could have been a woman. Well, that's not beyond a
17 reasonable doubt, that's a speculation. Why the State
18 didn't call a witness who saw this.

19 They knew that Officer Owens knew the guy, kind of
20 knew where he lived all it takes is to go and find him and
21 have him come in here and testify. I don't know why they
22 didn't do that. But had they done that, we'd have done a
23 better job, we'd have an easier job today knowing what
24 happened that night.

25 Now, a lot of what the Solicitor was talking

1 about -- I mean, yeah, somebody was in the house, it's just,
2 my client wasn't in the house. My client wasn't one of the
3 two people who were in the house, because you heard Officer
4 Owens was pretty sure that he said there were two people in
5 the house because he saw two flashlights.

6 Now, they probably were two people using the
7 lights from their phones, maybe, I don't know.. But where's
8 this other person? The guy saw two people in the back,
9 could have been two men, I don't know.

10 You know, I guess it would have been -- I don't
11 know why -- first of all, if that's the way the air
12 conditioner looked at the time, I mean, I guess the plants
13 could have gotten crushed with the air conditioning unit
14 falling out of the window also. I mean, there's no evidence
15 that anybody pushed that air conditioning unit out, nobody
16 saw that. The only thing they're trying to say is that,
17 Well, this is perfect how the State is saying it, they say,
18 If this happens, then you can infer that happens.

19 Well, just because the air conditioner is outside
20 and the plants are crushed, you can't necessarily infer
21 beyond a reasonable doubt that the reason why the plants are
22 crushed is because the air conditioning unit fell on them.
23 But that's what the State -- the State needs you to do that
24 every step of the way here to make this jump, because
25 there's another possible explanation there.

1 I don't know hard it would have been to have
2 gotten fingerprint, to have gotten fingerprints off the
3 air-conditioning unit if they think that's how people got in
4 and out of the house. I don't know why there were no
5 fingerprints, and then maybe we would have known who those
6 two people were in the back of the house.

7 I don't know, it seemed to this clerk at the Spinx
8 seemed to know a lot about this case, and I don't know why
9 he wasn't here this week.

10 The only -- look at it this way, the State really
11 wants you to believe everything that Mr. Zipfel said because
12 without his testimony the State really doesn't have a case.
13 And all the other testimony from the State really doesn't
14 corroborate Mr. Zipfel's testimony. The only person who
15 puts my client at that house that night is Mr. Zipfel.

16 The fact that there was somebody in that house,
17 yeah, that could be true, and that house could have been --
18 I'm sure it was burglarized, that could be true. Mr. Zipfel
19 or somebody else could have burglarized it. The only --
20 none of the other stuff that the State has, really
21 corroborates the testimony of who was inside the house, you
22 had to rely on Mr. Zipfel.

23 And they also talk a lot about this tech expert.
24 I mean, there's a last -- and, you know, I think a lot of
25 times they're trying to ask for people to have some kind of

1 expert in here and, and so here's this guy that cracked into
2 the phones and they would tell us all of this information,
3 and I don't know what he really told us. He told us that
4 there were a lot -- there was a lot of communication from
5 one cell phone to another cell phone. He didn't tell us
6 where that cell phone was while it communicating. Nor, was
7 there evidence that the cell phone that they want to say was
8 in my client's hands at the time of the robbery, if that
9 person was ever communicating back to Mr. Zipfel. All those
10 messages were one way messages to the cell phone and that
11 the cell phone does not put my client inside that house.
12 They just want you to sort of make that leap.

13 You have to just believe Mr. Zipfel that she was
14 in possession of the cell phone at the time on that day,
15 because Zipfel and the other guy who robbed the house could
16 have had the cell phone, maybe they dropped it. I don't
17 know but nobody puts the cell phone in her hands that day.

18 So let's think a little bit now. So we have
19 Mr. Zipfel, 51 years-old. He is, I think, basically on the
20 stand here today, confessed to burglary first. He confessed
21 to taking another person to the house, helping that person
22 get in the house, waiting for that person to get out of the
23 house, so that he could drive them away.

24 He is basically admitting to, you know, aiding and
25 abetting, burglary first, South Carolina hand of one, the

1 hand of all. If you were a part of the plan, it doesn't
2 matter if you're the get-away driver or the bank robber.
3 He's already admitted to burglary first. He needs some kind
4 of a deal. He is hoping that the State is going to sort of
5 have some pity on him.

6 He's 51 years-old today, he's going to do -- if he
7 gets the -- you know, if the State decides to put him on
8 trial after he's already made this statement, he's going to
9 get 15 years at a minimum, he's going to be 66, 67 years-old
10 the earliest he could get out, or he could be in there for
11 life.

12 In South Carolina a life sentence means that you
13 go into the prison, you walk into the prison, you come out
14 in a pine box. I mean, that's what he's looking at. He
15 told the police -- he lied to the police. He lied to the
16 police about who was there. He lied to the police about the
17 telephone number, of my client's telephone number. He kept
18 lying until the police accepted his story, you know, he told
19 a story that the police was going to accept. He's got a lot
20 to lose.

21 And, you know, with somebody who's really that
22 biased, or potentially that biased, you would hope that
23 there would be more corroborating evidence backing up his
24 story. But there really is no corroborating evidence that
25 my client was the person who robbed. The State may be able

1 to corroborate that somebody else was there, but the State
2 can't corroborate that it was my client, you've just got to
3 believe that.

4 Mr. Zipfel's story -- now, the whole time he's
5 trying to minimize his role in this, you know. I think you
6 heard, She told him to go knock on the door, she told him to
7 walk around the back, she told him to do this, she directed
8 him to take the air conditioning unit out.

9 He's a 51 year-old man. I mean, and he's going
10 to -- you know, it's not like it's some big brute that's
11 telling him to do something, he can do what he wants. He's
12 he trying to draw sympathy at the Solicitor's Office, and
13 say, Hey, I was just under this person's control. She told
14 me to go to the house and just doing what she said, that
15 doesn't make any sense.

16 He's just trying to minimize his role so that the
17 State will give him some kind of a deal so that he doesn't
18 have to spend the next 15 years, possibly the rest of his
19 life in prison.

20 And another thing, please don't accept that some
21 circumstantial evidence that corroborates their case is that
22 she was hiding when the police were coming for her. And I
23 think how the story goes is that the people at the Spinx
24 sort of knew that there was a warrant out for her, so maybe
25 she knew there was a warrant out for her. And, maybe,

1 because, you know, there are people -- some people when they
2 know the police are looking, speed up and drive away, some
3 people hide. They don't have to be -- some people are just
4 are worried about it. And, you know, she had a good reason
5 to be worried, because she got arrested for something that
6 she didn't do. She knew the police were looking for her.

7 The thing that she was trying to avoid is what is
8 actually happened right here today, that she would get
9 brought into court and brought to trial for something that
10 she didn't do, that's what she's hiding from.

11 The State has to prove their case beyond a
12 reasonable doubt. And I was saying at the beginning, you
13 know, that's fair, because the State has a lot of weapons,
14 has a lot of manpower, a lot of resources that they can use.
15 And so, you know, they have to prove their case beyond a
16 reasonable doubt. I mean, that's most fair. You know,
17 that's our system, that's our constitution, that, you know,
18 before somebody -- before the State can lock somebody up,
19 they have to be -- they have to prove their case beyond a
20 reasonable doubt. That's just not a phrase, that has
21 meaning. What that means is that, we don't go back into the
22 jury room, you have to -- if you're going to follow your
23 oath, you have to think she is not guilty. You have to go
24 in there under the assumption that she is not guilty when
25 you walk into that jury room.

1 And, you know, one way to look at it is to sort of
2 write the word, Not Guilty, on the wall, so it's sort of
3 mentally with your head. And that anything that the State
4 maybe has proven that you think is convincing, maybe you can
5 of erase a little bit of that word Not Guilty. But only
6 until the -- you know, only in theory -- only until the
7 State has -- you've been thinking about this case, has told
8 you enough that you have to erase the holes in that.

9 But if there is even a little glimmer that there's
10 some problems with the State's case that the State maybe
11 hasn't proven, it's your job to acquit her, to find her not
12 guilty.

13 My client needs you to do your job. I need you to
14 follow the charges that the Judge is going to charge you
15 with. You need to follow those directions. You also need
16 to follow some of the directions that the Judge has made
17 during this trial of some of the stuff that you're supposed
18 to disregard.

19 Just because North Charleston didn't do their job
20 doesn't mean that y'all can cover for them. North
21 Charleston didn't their job, it's your job today to find her
22 not guilty. Thank you.

23 THE COURT: All right. Thank you, Mr. Falk.

24 Ladies and gentlemen, I'm going to ask you to
25 retire to your jury room for just one moment. Please don't

1 talk about the case. I'm going to get you back in here and
2 I'm going to read you my charges on the law. Thank you very
3 much.

4 (WHEREUPON, the jury exited the courtroom at 3:35
5 p.m.)

6 THE COURT: All right. Y'all can be seated.

7 I know we went over the jury charges and gave
8 everybody the opportunity to present me with additional jury
9 charges, and anything they wanted to have in the jury
10 charges. In looking and thinking about this during the
11 course of the closing arguments, I feel that it would be
12 important to add some language after absent defendant, if
13 you look to the absent defendant charge.

14 What I'm going to do is after I read the absent
15 defendant charge, I'm going to state, I further instruct you
16 that the defendant's failure to appear may not be construed
17 as admission of guilt. And I believe that's a reflection of
18 State v. Jackson, 301 SC 49. I'm further going to state
19 that, And the fact that the defendant did not testify could
20 not be used against her and is not to be considered by you
21 or discussed during your deliberations. I think that's a
22 fundamental right and I think that language needs to be
23 included.

24 Let me just ask -- and I'm happy to hear any
25 objections for the record and I'll let you state anything.

1 When I say -- I mean, I'll have to let you state anything
2 the State wants to say about that modification that addition
3 that I plan on adding. State?

4 MR. ABSHIRE: We have no objection, Your Honor.

5 THE COURT: Mr. Falk, I didn't think they would.
6 What I want to know is do you want that language in there?

7 MR. FALK: Yeah.

8 THE COURT: Okay. Well, Mr. Falk, I figured you
9 did, sir, but I wanted to let y'all know, okay? I don't
10 want anybody to come back and say, Well, I didn't have --
11 Oh, well, my whole closing argument is now -- I don't
12 think -- I think this is consistent with the law. I think
13 it's important that it's in there, and so I want to add
14 that, Mr. Falk.

15 MR. FALK: Thank you.

16 THE COURT: I didn't think you would object that,
17 sir.

18 MR. FALK: No, Your Honor, I do not.

19 THE COURT: Okay. All right. Then we'll get the
20 jury back in here. Of course, they're probably in a
21 bathroom break right now. It usually takes about 10 minutes
22 to cycle through, but as soon as they're ready we'll get
23 them back in here and then we'll present the jury charge and
24 I'll read the charge to them, go over the verdict and give
25 them the case, okay.

1 MR. FALK: Thank you.

2 THE COURT: All right. See if they're ready.

3 THE BAILIFF: They're not ready yet.

4 THE COURT: I knew it.

5 (WHEREUPON, a brief pause in the proceedings.)

6 (WHEREUPON, the jury entered the courtroom at 3:45
7 p.m.)

8 THE BAILIFF: All jurors present, Your Honor.

9 THE COURT: All right. Ladies and gentlemen,
10 you've now heard all of the evidence in this case. You've
11 the arguments of counsel and now it's my duty as judge to
12 charge you on the law in this matter.

13 And, ladies and gentlemen, I remind you that
14 during the trial you and I have had certain duties to
15 perform. As a trial judge, it's my responsibility to
16 preside over the trial of this case and I also have the duty
17 the rule the admissibility of evidence offered during this
18 trial. You are to consider only the competent evidence
19 before you. If there was any testimony ordered stricken
20 from the record in this case during the trial you must
21 disregard that testimony. You are to consider only the
22 testimony which has been presented from this witness stand,
23 ladies and gentlemen, and any exhibits which have been made
24 part of the record in this case and any stipulations of
25 counsel.

1 Now, ladies and gentlemen, I have the additional
2 duty to charge you the law applicable to this case. As the
3 presiding judge, I'm the sole judge of the law of this case
4 and it is your duty as jurors, ladies and gentlemen, to
5 accept and apply the law as I now state it to you.

6 If you already have any ideas as to what the law
7 is or what the law ought to be and it doesn't agree with
8 what I now tell you what the law is you must abandoned this
9 idea because you are sworn to accept the law and apply the
10 law exactly as I state it to you.

11 Ladies and gentlemen, in every case tried in this
12 court before a jury, the jury becomes the sole and exclusive
13 judge of the facts. The trial judge cannot -- the trial
14 judge cannot intimate, state, or comment on, or make any
15 statement about the facts to a jury, since you the jury are
16 the sole judge of the facts in the case.

17 Ladies and gentlemen, I'm going to tell you, you
18 are not to infer what I've said during the progress of this
19 trial in ruling upon the admissibility of evidence or
20 otherwise or anything that I say now during the course of
21 this instruction to you that I have any opinion about the
22 facts of this case. The law does not allow me to have an
23 opinion about the facts in this case. This is a matter
24 solely for you the jury to determine. As jurors it is your
25 duty to determine the effect, value, weight, and truth of

1 the evidence presented during the trial.

2 Now, ladies and gentlemen, I remind you that
3 indictment in this case charges the defendant with burglary
4 in the first degree. I remind you the fact that the
5 defendant was arrested, charged and indicted in this case is
6 not evidence in this case can cannot be considered by you as
7 evidence of guilt in this case, nor, does it create any
8 presumption or inference of guilt. This document is simply
9 the formal written instrument which contains the charges
10 made against the defendant. It's the formal document by
11 which this case in brought into court.

12 Now, ladies and gentlemen, there are two types of
13 evidence which are generally presented during a trial:
14 Direct evidence and circumstantial evidence. Direct
15 evidence directly proves the existence of a fact that does
16 not require deduction. Circumstantial evidence is proof of
17 a chain of facts and circumstances indicating the existence
18 of a fact. Crimes may be proven by circumstantial evidence,
19 the law makes no distinction between the weight or value to
20 be given to either direct or circumstantial evidence.

21 However, to the extent the State relies on
22 circumstantial evidence, the circumstances must be
23 consistent with each other and when taken together, point
24 conclusively to the guilty of the accused beyond a
25 reasonable doubt. If these circumstances merely portray the

1 defendant's behavior as suspicious the proof has failed.

2 The State has the burden of proving the defendant
3 guilty beyond a reasonable doubt. This burden, ladies and
4 gentlemen, rests with the State regardless of whether the
5 State relies on direct evidence, circumstantial evidence, or
6 some combination of the two.

7 Again, ladies and gentlemen, the State has the
8 burden of proving the defendant guilty beyond a reasonable
9 doubt. What is a reasonable doubt in the law? Ladies and
10 gentlemen, a reasonable doubt is the kind of doubt that
11 would cause a reasonable person to hesitate to act.

12 Proof beyond a reasonable doubt is proof that
13 leaves you firmly convinced of the defendant's guilt. We
14 know very few things in this world with absolute certainty
15 and in criminal cases the law does not require proof that
16 overcomes every possible doubt.

17 If, based on your consideration of the evidence,
18 you are firmly convinced that the defendant is guilty of the
19 crime charged, you must find the defendant guilty. On the
20 other hand, if you think that a real possibility exists that
21 the defendant is not guilty, you must give the defendant the
22 benefit of the doubt and find her in this case not guilty.

23 Now, ladies and gentlemen, the defendant has pled
24 not guilty to this indictment. And that plea puts the
25 burden on the State to prove the defendant guilty. A person

1 charged with committing a criminal offense in South Carolina
2 is never required to prove herself innocent. I charge you
3 that this is an important rule of law that the defendant in
4 a criminal trial, no matter the seriousness of the charge
5 may be, will always be presumed to be innocent of the crime
6 for which the indictment was issued unless guilt has been
7 proven by evidence satisfying you, ladies and gentlemen of
8 the jury, of that guilt beyond a reasonable doubt.

9 This presumption of innocence does not end when
10 you begin your deliberations, but it accompanies the
11 defendant throughout the trial until you reach a verdict of
12 guilt based on the evidence satisfying you of that guilt
13 beyond a reasonable doubt. The presumption of innocence is
14 like a robe of righteousness placed about the shoulders of
15 the defendant which remains with the defendant until it has
16 been stripped from the defendant by evidence satisfying you
17 of the defendant's guilt beyond a reasonable doubt.

18 The presumption of innocence is not mere legal
19 theory, ladies and gentlemen. It is not just a legal
20 phrase. It is a substantial right to which every defendant
21 is entitled unless you the jury are satisfied from the
22 evidence of the defendant's guilt beyond a reasonable doubt.

23 Now, ladies and gentlemen, you must determine the
24 credibility of the witnesses who have testified in this
25 case. Credibility means believability. It becomes your

1 duty as jurors to analyze and to evaluate the evidence and
2 determine which evidence convinces you it is true.

3 In determining the believability of witnesses who
4 have testified in this case you may believe one witness over
5 several witnesses or several witnesses over one witness.
6 You may believe a part of the testimony of a witness and
7 reject the remaining part of the testimony of that same
8 witness. You may believe the testimony of a witness in its
9 entirety or reject the testimony of a witness in its
10 entirety. You may consider whether any witness has
11 exhibited to you any interest, bias, prejudice, or other
12 motive in this case. You may also consider the appearance
13 and manner of a witness while on the witness stand.

14 Now, ladies and gentlemen, in order to establish
15 criminal liability, criminal intent is required. For
16 example, the mental state required to be proven by the State
17 for a particular crime might be purpose, intent, knowledge,
18 recklessness, or criminal negligence. Criminal intent must
19 be proven by the State beyond a reasonable doubt. Criminal
20 intent is always a matter that must be determined by the
21 jury from the circumstances surrounding the situation.

22 There's no way to prove intent to a mathematical
23 certainty, ladies and gentlemen. There's no way medical
24 science can dissect a person's brain and determine what the
25 person had in mind, so the law says that criminal intent may

1 be inferred from the circumstances shown to have existed.
2 This is how you make a determination of whether or not the
3 element of required intent was present.

4 It's not necessary to establish intent by direct
5 and positive evidence but intent may be established by
6 inference in the same way as any other fact by taking into
7 consideration that acts of the parties and all the facts and
8 circumstances of the case.

9 Criminal intent is a mental state. It's a
10 conscious wrongdoing. It's up to you to determine what the
11 defendant intended to do, based on the circumstances shown
12 to have existed. Criminal intent can arise from action or
13 failure to act, it may arise from negligence, recklessness,
14 or an indifference to duty or to consequences that is
15 considered by the law to be the equivalent of criminal
16 intent.

17 Now, ladies and gentlemen, in this case, under the
18 laws of this state a defendant may be tried even if the
19 defendant does not attend the trial, but the fact that the
20 defendant is not present may not be considered against the
21 defendant in any manner whatsoever. I further instruct you
22 that the defendant's failure appear may not be construed as
23 an admission of guilt. Finally, ladies and gentlemen I will
24 instruct you that the fact the defendant did not testify
25 could not be used against her and not to be considered by

1 you or discussed during your deliberations.

2 Ladies and gentlemen, the defendant is charged
3 with burglary in the first degree. The State must first
4 prove beyond a reasonable doubt that the defendant entered a
5 dwelling without consent. A dwelling, ladies and gentlemen,
6 is any building or portion of a building in which a person
7 ordinarily sleeps. A building constructed as a dwelling
8 that has never been occupied cannot be considered a dwelling
9 for purposes of burglary. But a building is a dwelling even
10 if the residents are temporarily absent from the building.

11 In order to prove that the defendant entered the
12 dwelling, the State does not have to show that the
13 defendant's entire body entered the dwelling, the smallest
14 entry, ladies and gentlemen, is sufficient. It may be any
15 part of the body such as a hand, a foot, even an instrument
16 such as a hook, or any other instrument for that matter.

17 In addition the State does not have to prove that
18 force was used to gain entry. If a person enters a building
19 by using deception, artifacts, tricks, or misrepresentation
20 to get consent to enter, this is an entry without consent.

21 Ladies and gentlemen, next the State must prove
22 beyond a reasonable doubt that the defendant intended to
23 commit a crime, either a felony or misdemeanor, at the time
24 of the entry. The mere entry into a dwelling without
25 consent is not burglary. If the intent to commit a crime is

1 formed after the entry, it's not burglary.

2 On the other hand, if the defendant intended to
3 commit a crime at the time of the entry, is it burglary even
4 if the intent was abandoned after entry. It does not matter
5 that the intended must not crime was not completed. Intent
6 may be shown by acts and conduct of the defendant and other
7 circumstances from which you may naturally and reasonably
8 infer intent.

9 Finally, ladies and gentlemen, the State must
10 prove beyond a reasonable doubt that the defendant entered
11 or remained in the dwelling in the nighttime. The nighttime
12 period is between sunset and sunrise during which there is
13 not enough daylight to recognize a person's face except by
14 artificial light or moonlight.

15 Now, ladies and gentlemen, you've been chosen and
16 sworn to give the parties in this case a fair and impartial
17 trial. When you've done so you will have completed your
18 oath and no one will have a right to criticize your verdict.
19 You must not be influenced by opinions or expressions of
20 opinions you may have heard from outside the courtroom, but
21 rather you should base your verdict solely on the testimony
22 of the sworn witnesses who took the stand, the exhibits
23 received into evidence, and the law which I've stated to
24 you.

25 You should not be swayed by caprice, passion,

1 prejudice, or other improper sympathy for or against anyone
2 in this case. Remember, you have no friends to reward or
3 enemies to punish, ladies and gentlemen, and all parties are
4 entitled to a fair and impartial trial.

5 It's your duties as jurors to consult with one
6 another and to deliberate in an effort to reach an
7 agreement. Each of you must decide this case with yourself
8 and only after impartial consideration of all of the
9 evidence with your fellow jurors. In the course of your
10 deliberations do not hesitate to reexamine your own views
11 and change your opinion if you become convinced it is
12 erroneous.

13 However, ladies and gentleman, do not surrender
14 your honest convictions as to the weight or depth of the
15 evidence solely because of the opinion of your fellow jurors
16 or for the mere purpose of returning a verdict.

17 As I stated earlier, you are the judges, the
18 judges of the facts. Your verdict must represent the
19 considered judgment of each juror. In other words, ladies
20 and gentlemen, your verdict must be unanimous.

21 Now, you may have noticed that I've read these
22 instructions to you and I've done so to give you the law as
23 accurately as possible. You must consider the instructions
24 as a whole and not follow some and ignore others.

25 Madam Foreperson, it's going to be your duty to

1 preside over the deliberations of the jury. If, during your
2 deliberations you should desire to communicate with the
3 Court, please reduce your message or question to write it,
4 signed by you, the Foreperson, and pass the note to the
5 Bailiff who will bring it to my attention. I'll then
6 respond as promptly as possible either in writing or by
7 having you return to the courtroom.

8 I caution you, however, that with regard to any
9 message or question you may send that you should never state
10 or specify the numerical division at the time. So I don't
11 ever want any breakdown, if there's a question, I don't want
12 anybody to break down, you know, so many for, so many
13 against, so no numerical breakdowns, just write whatever
14 that question is and give it to me and I'll try to get an
15 answer and get you back into the courtroom or I'll send a
16 message back to you as it relates to the question, okay.

17 Now that you've heard the evidence and heard the
18 law, Madam Foreperson, you will indicate on the verdict form
19 and then sign and date your verdict. But now, remember,
20 although the Foreperson is the only one juror who writes the
21 verdict, it's not the Foreperson's verdict alone, the
22 verdict has to be unanimous. And to my Foreperson, you're
23 not authorized to write the verdict until all of you have
24 agreed on the verdict.

25 Now, ladies and gentlemen, I'm going to send you

1 back to the jury room but do not begin your deliberations
2 until you have the verdict form and the exhibits and once
3 you have received these it will be your signal to begin your
4 deliberations. Once you begin your deliberations, you will
5 deliberate until you have reached a verdict. After you have
6 reached a verdict, you will knock on the door, advise the
7 bailiff, and we'll bring you back in the courtroom to
8 receive the verdict.

9 Now, Madam Forelady, the verdict form, quite
10 frankly, in this case, just right here, As to the charge of
11 burglary in the first degree on September 14th, 2018, we the
12 jury unanimously find the defendant, Sheena Alston, okay,
13 not guilty, guilty.

14 Don't attach any significance by the fact that the
15 Court put not guilty in front of guilty, you've got to put
16 one first. That's the one I put down, but don't -- that
17 doesn't apply or mean anything, one of them's got to be
18 first, okay.

19 So all you're going to do is put your initials
20 right there by whichever one it is, sign your name as
21 Foreperson, and date it, if you reach the decision today,
22 today is August 2nd, and then you would knock on the door
23 and let the Bailiff know and he'll get you back into the
24 courtroom.

25 So for right now, I'm going to ask that you retire

1 to the jury room, do not discuss the case. I want to make
2 sure that there's no additional information that I missed in
3 my charges. Then we're going to get the verdict form and
4 the exhibits back to you and at that time you can commence
5 with your deliberations.

6 Thank you, ladies and gentlemen.

7 (WHEREUPON, the jury exited the courtroom at 4:04
8 p.m.)

9 THE COURT: All right. Any exceptions or
10 additions from the State?

11 MR. ABSHIRE: No, Your Honor.

12 THE COURT: From the defense?

13 MR. FALK: No, Your Honor.

14 THE COURT: All right. Great.

15 Now, gentlemen, what I'd like to do is if y'all
16 would come up front, I'd like you to look at the exhibits
17 and let's make sure that everything that's supposed to be
18 going back, goes back. And then I want to ask you on the
19 record, Do we have everything, okay?

20 MR. FALK: Your Honor, I'd like to be heard. The
21 juror in the second row, did you notice her asleep a lot?
22 Long blonde hair and blue shirt -- I mean, blue dress.

23 THE COURT: I did not, sir.

24 MR. FALK: Okay.

25 THE COURT: I mean, I did not.

1 MR. FALK: Okay. Thank you.

2 THE COURT: Yes, sir. All right. So if you
3 gentlemen would go and please...

4 (WHEREUPON there was a brief pause held to examine
5 exhibits.)

6 THE COURT: All right. So let me ask you this:
7 Does it appear that we've got all the exhibits that are
8 supposed to be going back and the verdict form, State?

9 MR. ABSHIRE: Yes, Your Honor.

10 THE COURT: Defense?

11 MR. FALK: Yes, Your Honor.

12 THE COURT: All right. So then, Mr. Bailiff, will
13 you -- if you would come get these exhibits that they've
14 agreed to. Take the verdict form -- now, gentlemen, it
15 would be my -- do you just want to go ahead and bring the
16 two jurors -- the two alternate jurors out and then allow me
17 to discharge those jurors?

18 MR. ABSHIRE: That's fine.

19 MR. FALK: Yes.

20 THE COURT: So, why don't you come -- no, come on
21 and get -- come on and get these. These are all the
22 exhibits, all this needs to go back; is that correct,
23 Solicitor?

24 MR. ABSHIRE: Yes, Your Honor.

25 THE COURT: All right. So if you would gather

1 that up and take all of that back along with this verdict
2 form.

3 THE BAILIFF: Yes, sir.

4 THE COURT: And then what I'd like you to do is,
5 if you will get the two alternates.

6 THE BAILIFF: Yes, sir.

7 THE COURT: As you hand them the evidence and the
8 verdict form and tell them they can commence at the same
9 time you bring those alternates back. Or, actually, you can
10 the alternates out of the room and then you can tell them
11 they can commence, okay?

12 THE BAILIFF: Yes, sir.

13 THE COURT: If you'll bring the alternates to me.

14 Thank you so much, sir.

15 Is that satisfactory with the State?

16 MR. ABSHIRE: It is, Your Honor.

17 THE COURT: Mr. Falk?

18 MR. FALK: Yes, Your Honor.

19 THE COURT: All right. Great thank you, sir.

20 (WHEREUPON, a brief pause held during the
21 proceedings.)

22 THE COURT: Come on up. The bad new is you don't
23 get to stay and deliberate. The good news is you're done
24 for the week. So sorry that you had to sit here and go
25 through everything and then not be able to participate in

1 deliberations. The law requires that I only have 12 people
2 back there deliberating at any one time.

3 THE JUROR: I was going to ask.

4 THE COURT: Yes, sir. The law states that only
5 12. Now, in all honesty, what we could do is, we could
6 basically go and stick you in some room over here and wait
7 and, if something happens, then bring somebody back in. But
8 we're not going to do that, both parties have agreed to
9 discharge you at this time, okay.

10 So what would happen now is we would basically go
11 and wait and see, the jury may have a question, I don't
12 know. A question could arise and at some point hopefully
13 we're going to be able to reach a verdict, okay.

14 If they weren't able to reach a verdict then that
15 would be basically a hung jury and we'd end up having to try
16 this case again at some other time.

17 If they reach a verdict, then what happens is they
18 come out, they then bring me the verdict, and at that point
19 then I would go and hear some additional motions, and
20 depending on the outcome of those motions, more than likely
21 what would happen is I would then impose the sentence, and I
22 would sentence shortly after receiving the verdict.

23 Other questions?

24 THE JUROR: I have a questions. If this goes long
25 enough tonight where you send everybody home and come back

1 and something happened to one of the jurors over night, just
2 curious?

3 THE COURT: Under that scenario, what would happen
4 is we would just probably go with 11.

5 THE JUROR: Oh, really and the lawyers can agree
6 with that?

7 THE COURT: They can agree to that, okay. They
8 can agree to that.

9 Well, I can't do that now, because I already told
10 you what would go on.

11 THE JUROR: Is there a way that this is a public
12 record that we can find out what the verdict was?

13 THE COURT: There is -- well, there's a public
14 index, but how long that takes to get on there. You can get
15 onto the -- if you just -- if you go on and -- what,
16 Charleston County Clerk of Court?

17 MR. ABSHIRE: It would be in the Court Plus.

18 THE COURT: Right. If you go and Google
19 Charleston County Public Index, then basically what you
20 would do is, they ask you something like, Do you agree, and
21 who knows what that means, hit that button, pop up, and then
22 go to a name, you type in the last name, and, bam, it will
23 pop up and it will list and you can look and it will say
24 disposition and see what that says.

25 THE JUROR: Okay.

1 THE COURT: And, you know, the other thing is, if
2 you want, you certainly can stick around for a little bit,
3 who knows. I mean, a verdict could come back in -- my
4 experience it would take ten minutes to get everybody set,
5 you know. I mean, bathroom breaks, cookie, coke, whatever,
6 and then they begin deliberating.

7 So, my inclination would be to let them
8 deliberate, quite frankly, for a while and see where it
9 goes. But they could have a verdict in no time, or it could
10 take a long time. But if you would like to stick around,
11 you've got your stuff and you want to stick around in the
12 courtroom.

13 THE JUROR: Is that all right with you?

14 THE COURT: Oh, yeah. Whatever y'all want to do
15 is all right with me.

16 THE JUROR: I'm kind of invested at this point.

17 THE COURT: You do and I appreciate it. I just
18 want to let you know, you know, when I said yesterday about
19 it's a week to serve, I mean, it is a good week to serve.
20 It's never convenient to do this. I understand that. They
21 appreciate your service, they know it's a sacrifice. But,
22 if people didn't come, we wouldn't be able to get this
23 resolved. And you see we deal with very important matters.

24 THE JUROR: For sure, yeah. This is foreign to
25 me, so I'm finding it interesting.

1 THE COURT: All right. Well, good. If y'all want
2 to stick around, you can, if you want to go, you're finished
3 for the week. Thank you for your service. You're good for
4 three years, not in federal Court or magistrate Court, or
5 city court, okay.

6 THE JUROR: Okay. Thanks a lot. I appreciate it.

7 THE COURT: All right.

8 (WHEREUPON, a pause was held during jury
9 deliberations.)

10 THE COURT: All right. Folks, we have a question
11 from the jury and the question reads: Is it possible to see
12 if the body cam video has a time stamp on? Signed by the
13 Foreperson.

14 So here's the note. If y'all want to come up and
15 take a look at that, feel free.

16 So what say the State?

17 MR. ABSHIRE: Your Honor, I checked with my
18 investigator, I don't believe there is a time stamp on that
19 video.

20 THE COURT: I guess that's the issue, because
21 they -- what's been entered into evidence, it's either got a
22 time stamped video or it doesn't have a time stamped video.

23 Do we know?

24 MR. ABSHIRE: I couldn't honestly tell you off the
25 top of my head. I'd have to go back and check my copy of it

1 back at the office to see if it does have a time stamp on
2 it.

3 THE COURT: Well, Mr. Falk?

4 MR. FALK: I don't care. I mean, I don't think
5 I've got it, it's an issue one way or the other. I just --
6 I'm hoping we can come to a solution where we don't just
7 have to play the video again to see if there's a time stamp.
8 I'll accept their word that if it's on or it's not.

9 MR. ABSHIRE: I'm happy to go confirm.

10 THE COURT: Well, I mean, you know, we've done
11 this much, we owe it to them to confirm that fact. I mean,
12 if you want, you can go get the original they've got, bring
13 it out, throw it in the computer and let's see.

14 MR. ABSHIRE: I don't have a computer here, Your
15 Honor.

16 THE COURT: But, I mean, it either does or it
17 doesn't. If it doesn't, then I don't think they get it, if
18 it does, I think they are entitled to it. So let's look and
19 see.

20 All right. We'll make this a Court's Exhibit.

21 (WHEREUPON, Court's Exhibit Number 7 was marked.)

22 (WHEREUPON, a brief pause in the proceedings.)

23 THE COURT: Okay. Any objection to the Clerk
24 retrieving the disk for the jury from the State?

25 MR. ABSHIRE: No, Your Honor.

1 THE COURT: Defense?

2 MR. FALK: No objection.

3 THE COURT: All right. Thank you.

4 (WHEREUPON, a brief pause in the proceedings.)

5 MR. ABSHIRE: There's a date stamp, but there's no
6 time stamp.

7 THE COURT: All right. So there is no time stamp
8 on the original disk that was entered into evidence. That's
9 my understanding?

10 MR. ABSHIRE: That's correct.

11 THE COURT: And that's correct Mr. Falk?

12 MR. FALK: Yes, Your Honor.

13 THE COURT: All right. Well, then would an
14 appropriate response be that there is no time stamp on the
15 video -- on the body cam?

16 MR. FALK: I think that's correct.

17 MR. ABSHIRE: Your Honor, we would want more of an
18 answer along the lines if the file has a date stamp at the
19 bottom in the beginning, but there is no time stamp on the
20 video.

21 MR. FALK: You're saying in the file in the video?

22 MR. ABSHIRE: Right. In the very beginning that
23 white lettering that disappears after the first three
24 seconds.

25 MR. FALK: Uh-huh. That's the date stamp.

1 MR. ABSHIRE: That has the date stamp right there,
2 the 180914.

3 MR. FALK: How is that a date stamp?

4 MR. ABSHIRE: That would be 9/14/2018.

5 THE COURT: Okay. So their contention is that we
6 should go and tell them there's not a time stamp, but there
7 is a date stamp, and the date stamp is whatever that date
8 is. Mr. Falk, what say you? It's a specific question.

9 MR. FALK: I think it requires a specific answer.

10 THE COURT: I would have to agree, gentlemen. The
11 questions is: Is there a time stamp? And the answer is,
12 No. And I just think that, you know, they asked for a date
13 and time. Thank you very much.

14 All right. What I'm going to do -- is it possible
15 to see if the body cam has a time stamp on it? What I plan
16 to do is I've made a copy of what is Court's Exhibit 7. I
17 plan on writing, if it meets with everybody's approval,
18 There is no time stamp on the body cam video, Judge Bonds.

19 And I know your exception, if you're going to make
20 an exception to the record as it relates to we need to
21 include the date, that's fine. But as it relates to -- I
22 mean, I'm not asking to consent, but I want to make sure
23 there's not a problem with the language that I'm using.

24 MR. FINCH: I'm splitting semantic hairs, the
25 question is really: Is it possible to see? The answer is,

1 Yes, it's possible to see, but the answer is, No. So there
2 is no time stamp, Yes, correct.

3 THE COURT: All right. So what I'm sending back
4 to them -- gentlemen come take a look.

5 All right. So that's what's going back to them.
6 I'm going to have the Bailiff take this back to them.

7 Let's go ahead and mark this as Court's Exhibit 8
8 and at the conclusion I'm going to need to get this back,
9 Mr. Bailiff.

10 (WHEREUPON, Court's Exhibit Number 8 was marked.)

11 THE COURT: All right. And you want to take back
12 the video also.

13 Okay. We'll be at ease.

14 (WHEREUPON, a break in proceedings while the jury
15 deliberations continued.)

16 THE COURT: All right. I'm informed that we have
17 a verdict, so anything before we bring the jury in from the
18 defense?

19 MR. ABSHIRE: No, Your Honor.

20 THE COURT: Excuse me, from the State?

21 MR. ABSHIRE: No, Your Honor.

22 THE COURT: From the defense?

23 MR. FALK: No, Your Honor.

24 THE COURT: All right. Let's get the jury.

25 (WHEREUPON, the jury entered the courtroom at 5:12

1 p.m.)

2 THE BAILIFF: All jurors are present, Your Honor.

3 THE COURT: All right. Thank you so much.

4 Madam Foreperson, I understand the jury has
5 reached a verdict?

6 MADAM FOREPERSON: Yes, Your Honor.

7 THE COURT: Would you pass that to the Bailiff who
8 will bring that up to me, please?

9 All right. Madam Clerk, if you'll announce the
10 verdict.

11 MADAM CLERK: In the State of South Carolina,
12 County of Charleston, in the Court of General Sessions, the
13 State of South Carolina versus Sheena Alston, defendant,
14 Indictment Number 2019-GS-10-02504, as to the charge of
15 burglary in the first degree, on September 14, 2018, we the
16 jury unanimously find the defendant, Sheena Alston, guilty.
17 Signed by the Foreperson on August 2nd, 2022.

18 THE COURT: All right. will there be any motions
19 from the State as it relates to the jury before I release
20 them?

21 MR. ABSHIRE: No, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. FALK: I would just ask to poll the jury.

24 THE COURT: Absolutely. Madam Clerk, will you
25 poll the jury for me, please.

1 MADAM CLERK: If you all could rise, please.

2 Actually, you can sit down, sorry.

3 Ladies and gentlemen of the jury, I will call out
4 your number and when I do please raise your hand. I will
5 then ask you each two questions, please answer Yes or No.

6 Juror Number 91, is this your verdict? You can
7 raise your hand, please. Is this your verdict?

8 JUROR: It is.

9 MADAM CLERK: Is it still your verdict?

10 JUROR: It is.

11 MADAM CLERK: Once these two questions are
12 answered by each juror the Clerk --

13 THE COURT: You can go ahead and sit down, sir,
14 that's all they need. They just want to ask you was it your
15 verdict or is it your verdict and is it still your verdict,
16 they just want, individually, each one to say that if that
17 is the case or, if it's not, just to answer that question,
18 okay? Go ahead, Madam Clerk.

19 MADAM CLERK: Juror Number 28, is this your
20 verdict?

21 JUROR: Yes.

22 MADAM CLERK: Is it still your verdict?

23 JUROR: Yes.

24 MADAM CLERK: Okay. You may be seated.

25 Juror Number 62, is this your verdict?

1 JUROR: Yes.

2 MADAM CLERK: Is it still your verdict?

3 JUROR: Yes.

4 MADAM CLERK: Juror Number 208, is this your
5 verdict?

6 JUROR: Yes.

7 MADAM CLERK: Is it still your verdict?

8 JUROR: Yes.

9 MADAM CLERK: Thank you. Juror Number 33, is this
10 your verdict?

11 JUROR: Yes.

12 MADAM CLERK: Is it still your verdict?

13 JUROR: Yes.

14 MADAM CLERK: Juror Number 156, is this your
15 verdict?

16 JUROR: Yes.

17 MADAM CLERK: Is it still your verdict?

18 JUROR: Yes.

19 MADAM CLERK: Thank you. Juror Number 212, is
20 this your verdict?

21 JUROR: Yes.

22 MADAM CLERK: Is it still your verdict?

23 JUROR: Yes.

24 MADAM CLERK: You may be seated.

25 Juror 175, is this your verdict?

1 JUROR: Yes.
2 MADAM CLERK: Is it still your verdict?
3 JUROR: Yes.
4 MADAM CLERK: Thank you. Juror 230, is this your
5 verdict?
6 JUROR: Yes.
7 MADAM CLERK: Is it still your verdict?
8 JUROR: Yes.
9 MADAM CLERK: Juror 56, is this your verdict?
10 JUROR: Yes.
11 MADAM CLERK: Is it still your verdict?
12 JUROR: Yes.
13 MADAM CLERK: Thank you. Juror 240, is this your
14 verdict?
15 JUROR: Yes.
16 MADAM CLERK: Is it still your verdict?
17 JUROR: Yes.
18 MADAM CLERK: Thank you. Juror 93, is this your
19 verdict?
20 JUROR: Yes.
21 MADAM CLERK: Is it still your verdict?
22 JUROR: Yes.
23 MADAM CLERK: Your Honor, the jury has been polled
24 and the verdict stands.
25 THE COURT: Thank you so much, Madam Clerk.

1 Any other motions before I release the jury from
2 the State or defense?

3 MR. ABSHIRE: No, Your Honor.

4 THE COURT: Mr. Falk?

5 MR. FALK: I will direct my motions after you
6 discharge the jury.

7 THE COURT: Yes, sir. What I plan on doing is
8 allowing you to assert any motions after I discharge the
9 jury, sir. Is that satisfactory?

10 MR. FALK: Yes, Your Honor.

11 THE COURT: All right.

12 Ladies and gentlemen, I told you it's going to be
13 a short week, okay. And so, to that extent, first of all, I
14 want to thank you for being here, honoring your summons,
15 your willingness to serve, we appreciate it. As you can see
16 we're dealing with serious matters here. And without your
17 being here, we wouldn't have had this matter resolve. Your
18 good for three years in circuit court, not magistrate court,
19 city court, or federal court.

20 Now, by way of letting you know what's going to
21 happen now, I'm going to allow you to leave and thank you
22 for your service, but what I want you to know is that we
23 will immediately proceed to some post trial motions that
24 will be made. And from there I would expect that we would
25 then move into sentencing, okay. And so what I would tell

1 you is this: If you want to stay for that, you can. If
2 you're ready to go, because it's 20 past 5:00 and traffic is
3 already going to be bad, head out. We appreciate your
4 service, but if you'd like to stay, if you've got any
5 personal items in the back, you certainly can come back,
6 they'll show you where to come, you can back in the
7 courtroom. If not, again, thank you so much for your
8 service this week, we appreciate it.

9 You are discharged. Thank you.

10 (WHEREUPON, the jury was discharged and exited the
11 courtroom at 5:19 p.m.)

12 THE COURT: Mr. Bailiff?

13 THE BAILIFF: Yes.

14 THE COURT: Come here for one second, please.

15 THE BAILIFF: Yes.

16 THE COURT: Sir, you're going to retrieve -- there
17 was a document I sent back to them like this that's got some
18 writing on it and it should be back there and you're going
19 to retrieve that, because I marked it as a Court's Exhibit,
20 okay?

21 THE BAILIFF: I'll get all of the evidence.

22 THE COURT: All right. It's probably back there.

23 Okay. Thank you.

24 All right. We'll be at ease for just a moment.

25 In the event that any jurors want to come back in here, I

1 want to give them a moment to gather any personal belongings
2 and walk back around and then I'm happy to hear from you and
3 your motions, sir.

4 MR. FALK: I think the procedure is the sentence
5 is sealed.

6 THE COURT: Yes, sir.

7 MR. FALK: Well, you said to come back for
8 sentencing.

9 THE COURT: Well, and, you know, that may have
10 been a bit of tease in this situation except that I would
11 say that it is sentencing. And so it's just that I would
12 pass sentence and seal the sentence, yes, sir.

13 MR. ABSHIRE: Your Honor, I'm going to have to go
14 back to the office and bring you a sentencing sheet.

15 THE COURT: Go ahead and do that and we'll take
16 that, okay. That's great. No problem. Thank you.

17 (WHEREUPON, there was a brief pause in the
18 proceedings.)

19 THE COURT: Post trial motions. Mr. Falk, I'm
20 happy to hear from you, sir.

21 MR. FALK: Yes, Your Honor. You know, I wanted to
22 renew my motion for the continuance. I had provided some
23 information to you as to why she was in the medical facility
24 today. And I also wanted to renew my motion for a mistrial.

25 And just so -- I'm not sure when we had the bench

1 conference the record reflected that my argument was during
2 the State's closing argument that part of his argument
3 tended to become a burden shifting argument where he was
4 suggesting that my client could have come in here today and
5 say that she wasn't there. That was the grounds for my
6 objection.

7 And, you know, when you compare -- when you add
8 that to the drug use, we certainly spent some time trying to
9 keep that out. I think both of those factors certainly
10 combine to question whether or not the jury was able to
11 reach a decision based solely on the evidence they had
12 before them or they weren't possibly influenced by some
13 other factors, you certainly can't un-ring the bell which
14 was rung. So I'm renewing my motions for a mistrial --

15 THE COURT: All right.

16 MR. FALK: -- and move for a directed verdict. So
17 that's all I've got.

18 THE COURT: And so in response to this for the
19 mistrial, I'm happy to hear from you, Solicitor, he's
20 renewing those motions.

21 MR. ABSHIRE: Your Honor, as far as the drug use,
22 setting that first. Again, whenever we spoke at the bench,
23 the State was not intending to solicit that. We had
24 conversations with his counsel about not going into that.
25 It's the State's position that that could be cured through a

1 curative instruction. That was, as you know, given.

2 And then, Your Honor, with regard to the comment
3 made during closing, I was simply referring to the evidence
4 as far as the officer interaction. I understand where
5 Mr. Falk is coming from, but that was not the intent of the
6 State. And, again, we feel that the jury instruction was
7 enough to remedy any error there may have been.

8 THE COURT: All right. Again, you know, for the
9 same reasons I set forth earlier, I think that the drug --
10 he either mentioned they went to try to buy some drugs or
11 find some drugs or something along those lines. It was
12 stopped immediately. I don't -- I don't think there was any
13 intention from the State to try to elicit that information.
14 I just don't think that it was so prejudicial to your
15 client, sir, as to defeat her from having a jury render a
16 fair and impartial verdict. Particularly, given the
17 instruction that I gave them to disregard this matter, that
18 that was irrelevant and not for their consideration.

19 As it relates to the second argument sir,
20 concerning the closing argument, I agreed with you. I
21 thought that the Solicitor's argument was beginning to touch
22 on some burden shifting, sir. As a result of that, I mean,
23 clearly I -- I just don't think there's any doubt that the
24 jury was aware that, number one, I said that your client has
25 no burden at all, that the State has the burden of proving

1 guilt beyond a reasonable doubt. She doesn't have to do
2 anything. And that that was improper argument for the
3 defense to make and for them to disregard it. And I really
4 don't think I got a little harsher than that. I called him
5 down in front of the jury to make a point.

6 And, sir, no disrespect to you. What I'm trying
7 to do is just make sure they realize that that is something
8 that's not for their consideration. And I just think that
9 that cured any -- cured any improper argument on the part of
10 the State in this matter.

11 Other matters?

12 What about the document that you showed me just a
13 few moments ago, did you -- did you make that a Court's
14 Exhibit or what's up? I can't remember.

15 MR. FALK: No, I did not. I just showed that to
16 you.

17 THE COURT: All right. Well, what do you want to
18 do with that?

19 MR. FALK: If the State would permit me, I guess I
20 would want to make it a Court's Exhibit.

21 THE COURT: I'm going to let you make it a Court's
22 Exhibit, sir. I'm not going to prohibit you from making it
23 a Court's Exhibit. If you would mark that, Madam Court
24 Reporter, and let me take a look at that, please.

25 (WHEREUPON, Court's Exhibit Number 9 was marked.)

1 COURT REPORTER: What is this document called?

2 MR. FALK: I guess this would be Court's Exhibit
3 -- this is a Trident Health Form from 8/2/22.

4 THE COURT: All right. And it consists of how
5 many pages, Mr. Falk?

6 MR. FALK: That's what I was going to talk about.

7 THE COURT: Hold on -- hold on. Go ahead, sir.

8 MR. FALK: This says --

9 THE COURT: Solicitor.

10 MR. FALK: This says: 1 of 15. I mean, the two
11 pages I want to use are 1 of 15, and 2 of 15.

12 THE COURT: Okay.

13 MR. FALK: The other 14 or 13 pages, I don't think
14 are relevant to the point I'm trying to make. It's just
15 more of care issues, you know.

16 THE COURT: I'm sorry?

17 MR. FALK: You know, keep the leg elevated, go see
18 a dentist, those kinds of things.

19 THE COURT: All right.

20 MR. FALK: I mean, it's not specific to her today.

21 THE COURT: Okay. Go ahead. That's fine. So
22 you're marking that, let me take a look at that, sir.

23 Thank you.

24 All right. That's fine, sir. If this is what you
25 want to make an exhibit, that's fine with me, I don't have

1 any objection to that.

2 MR. FALK: Okay.

3 THE COURT: And so what you've done is you made,
4 as Exhibit 9, Pages 1 and 2 of 15, and it's a note from
5 Trident Health Emergency Department. All right.

6 Is there any other argument or anything else you
7 want to state, Mr. Falk?

8 MR. FALK: You Honor, so my argument was --
9 obviously, I think my case is stronger if I'm sitting next
10 to the defendant as opposed to not. And I do think that she
11 potentially was prejudiced by her failure to be, which I do
12 not think was any type of effort to avoid, you know,
13 consequences of this trial. I think she had -- I'm taking
14 her at her word that she had good reasons for not being
15 here. The first one she said she had an accident on Sunday
16 night. She then reinjured the ankle on Tuesday, putting her
17 back in Roper and that she had --

18 THE COURT: Was that Monday morning? Today is
19 Tuesday, isn't it?

20 MR. ABSHIRE: It is, Your Honor.

21 MR. FALK: You're right, Your Honor. I apologize.
22 She reinjured her ankle on Monday morning. And then when
23 she woke up this morning she had other symptoms, swollen
24 face, swollen eye, and she went to the emergency room.

25 THE COURT: All right. Well, Mr. Falk, I think

1 what -- I think what I've been provided with this week is
2 information -- the best information, sir, that's been
3 provided to you. And you, in turn, sir, provided the Court
4 with that information as an officer of the Court.

5 MR. FALK: Yes.

6 THE COURT: And so what I would say is, in looking
7 at this, I just want to go ahead -- Monday morning, I was
8 originally informed that this was a Moped accident. It's my
9 understanding that no law enforcement responded. There was
10 no EMS at the scene. And that Sunday night she went to
11 either an emergency room or some other type of emergent care
12 facility.

13 She may have been given some medication at that
14 time. I'm a little unclear as to when -- whether she got it
15 that night or got it yesterday. But, in any event, that's
16 all I know and I haven't seen any records as it relates to
17 the initial injury and treatment. And, again, as both you
18 gentlemen know this is a four-year-old case.

19 Yesterday I was informed that while she was trying
20 to come here she fell or the ankle gave way and she returned
21 to or went to the emergency room. And I assume it's the
22 emergency room, she had a -- she had a bracelet, and I saw a
23 photograph of a bracelet that was made an exhibit. And I
24 saw basically what I call sort of a patient responsibility
25 form that kind of outlined the bill and the date that

1 reflected yesterday. Though, I think maybe it was at noon,
2 but that doesn't necessarily mean when she was admitted, I
3 don't -- I don't have any information about that as to when,
4 the time of day.

5 And then, finally, I was provided a photograph of
6 her wristband and an ankle -- a closeup of an ankle wrapped
7 in what appeared to me to be an ACE bandage.

8 Beyond that, I really just -- I didn't hear or see
9 any other evidence -- you know, I didn't have anything from
10 a doctor or a nurse indicating that she couldn't come and
11 participate in this trial on Monday. I was, in fact,
12 informed Monday afternoon that I believe -- I think early
13 afternoon -- that Mr. Falk's client was on the way to the
14 courthouse, I believe that was the information that he
15 relayed to the Court, that was probably the information that
16 he received.

17 We were here close to 5:00 o'clock and never saw
18 his client. She was not here. This morning inquire was
19 made, and I believe it's been indicated that she was at the
20 ER, and I have been provided with a document that's been
21 marked as Court's 9. And what's interesting for two thing
22 as Court's 9, is that it -- I guess the complaints: Facial
23 swelling, swelling right lower eyelid, dental cavity, dental
24 abscess, conjunctivitis right eye.

25 The instructions, I guess the discharge

1 instructions that have been provided says, follow up with
2 her dentist and primary care physician at the first
3 available appointment. Take all antibiotics, she was given
4 amoxicillin. And I believe that this is follow-up care
5 primary dentist.

6 So what I see in this is, I see, quite frankly,
7 somebody now who has a dental problem, a cavity, a dental
8 abscess, and I'll be honest, certainly something that
9 doesn't sound to me like it arose Sunday. And this note
10 that I've got as 9 doesn't mention an ankle or leg.

11 Now, again, of course, we've got nothing from a
12 doctor or any medical care provider saying that she couldn't
13 come, shouldn't come, can't participate in this -- in the
14 trial of this case.

15 And so what I would say is, for all of those
16 reasons, sir, I think that as it's moved along it's really
17 done nothing but to confirm my belief that it was the
18 appropriate decision not to continue the case. And, again,
19 I have received -- I don't anything, in my opinion, of any
20 real substance that moves the needle to grant a continuance
21 of this case. So that's why I didn't. I understand your
22 motion to reconsider this matter to raise it again and renew
23 it, I understand that, but I wanted state my reasons on the
24 record.

25 MR. FALK: Thank you, Your Honor.

1 THE COURT: So those would be my reasons, okay.

2 All right. Good. All right. Anything further
3 before we move into sentencing?

4 MR. FALK: No, Your Honor.

5 MR. ABSHIRE: No, Your Honor.

6 THE COURT: Solicitor, do you have a sentencing
7 sheet?

8 MR. ABSHIRE: I do, Your Honor.

9 THE COURT: All right. All right. What, do you
10 want to tell me? Go ahead, thank you, Solicitor.

11 What do you want to tell me about this, Solicitor?

12 MR. ABSHIRE: Your Honor, there was some mention
13 by Mr. Falk earlier as you heard this week, but the
14 defendant has two other pending burglary charges with our
15 office and those involve somewhat similar facts where she
16 was scouting out Hispanic families, she would remove air
17 conditioning units, break into the house, and be looking for
18 something of value.

19 Your Honor, her record includes a 2003 possession
20 of greater than 50 grams of marijuana out of New Jersey,
21 criminal mischief, possession of a weapon for unlawful
22 purpose, all out of New Jersey. A 2004, possession of a
23 controlled substance, New Jersey. A 2005 possession of a
24 controlled substance out of New Jersey. A 2007 DUI out of
25 Pennsylvania. A 2008 DUI out of Pennsylvania. As well as a

1 violation of drug and cosmetic act, again, out of
2 Pennsylvania. A 2011 hindering oneself and giving false
3 information in New Jersey. A 2014 possession of a
4 controlled substance out of New Jersey. A 2015 out of New
5 Jersey, criminal restraint, theft, and possession of a
6 controlled substance.

7 Basically, Your Honor, the State's made a
8 recommendation of 20 years. And we feel that that is a
9 reflection of not only the facts you've heard in this trial,
10 as far as the defendant's willingness to break into
11 somebody's home whether it be -- whether they be home or
12 not, but also that was made in conjunction with her record
13 as well as the two other pending charges in which one of
14 those other pending charges, the family actually was home
15 whenever she was caught inside. So, again, the State's
16 recommendation would be for 20 years.

17 THE COURT: Mr. Falk, I'm happy to hear from you,
18 sir.

19 MR. FALK: I don't think it's appropriate for us
20 to consider the facts of a case that hasn't been adjudicated
21 yet.

22 THE COURT: I agree and I won't.

23 MR. FALK: And so I think we have to look just
24 strictly on the facts of this case. It seems from her
25 criminal record up to date, it's really not a violent

1 criminal record, it's mostly the typical record we all see
2 with somebody who has an addiction problem.

3 There was maybe a theft, but it didn't seem to --
4 it didn't -- you know, there's never been any indication of
5 a weapon. I think this is probably her only violent
6 offense, just because burglary first is violent conviction,
7 the rest of them all being drug convictions. So I don't
8 think she has a violent criminal past. Assuming, you know,
9 I don't want to -- I know that the Court has possibly -- I
10 say this with all due respect -- has some concerns my
11 client's veracity for her reasons for not being here today,
12 and I don't think it would be fair for the Court to also
13 factor that into the sentencing in this case. We would just
14 ask the Court to impose the minimum 15-year sentence.

15 THE COURT: All right. How old is your client,
16 sir?

17 MR. FALK: That's a specific -- I've got to give
18 you a specific answer I think it's mid 30s, but I'll have to
19 look. 42.

20 THE COURT: This says she's 42. Any reason to
21 doubt that?

22 MR. FALK: I have no reason to doubt that. I'm
23 terrible at guessing ages.

24 THE COURT: All right. You know, when I look at
25 sentencing, number one, I'm not going to take into account

1 allegations in other matters. I mean, and I appreciate you
2 telling that, but as it relates charges that are pending,
3 I'm just not going to put a whole lot of weight on that, if
4 any.

5 You know, as it relates to her credibility, or
6 believability, what I would say to that, sir, is that all
7 I'm doing is judging the facts and the information that have
8 presented to me as it relates to the information and my
9 deciding whether or not to continue the case. And what I
10 say is that those facts, I'm not -- I'm not saying per se
11 that your client is being untruthful, I'm just saying the
12 facts and information presented to me just don't move the
13 needle enough to continue a four-year-old case.

14 And as a result of that, I want to let you know
15 that I'm not going to factor that into or hold your
16 client -- hold your client in any bad light or hold that
17 against her. You know, what I -- the jury -- the jury has
18 found the woman guilty beyond a reasonable doubt.

19 And what I will say is in this case, you know, to
20 me -- I mean, here's a lady doing what she's supposed to do,
21 evacuate. And you got somebody coming along and taking
22 advantage of people when they are at their most vulnerable,
23 perhaps, double vulnerable, because clearly, she doesn't
24 have a command of the English language. Maybe the lady --
25 maybe your client knew or didn't know she was Hispanic, I

1 don't know, but I'm not -- but I think she took advantage of
2 somebody when they were supposed to be and probably doing
3 the right thing to evacuate. And now, you know, it makes me
4 wonder will that lady will ever leave again. The hurricane
5 was here -- and we have a hurricane -- well, it's August a
6 little early. September of this year, we have a hurricane,
7 and what I wonder is, when evacuation orders come out, what
8 is she going to do? I think she testified she lives in the
9 same place, she going to leave? Take a chance of her home
10 being ransacked? You know, that bothers me.

11 Solicitor, this is a violent offense and a most
12 serious offense, correct?

13 MR. ABSHIRE: It is, Your Honor.

14 THE COURT: Mr. Falk, you would agree with that?

15 MR. FALK: Yes, Your Honor.

16 THE COURT: All right. So as a violent offense
17 then she would have to serve 85 percent of the time before
18 she would become eligible for parole?

19 MR. ABSHIRE: Yes, Your honor.

20 THE COURT: Is that your understanding, Mr. Falk?

21 MR. FALK: Yes, and I don't have a clear
22 understanding of how Department of Corrections -- let's
23 just -- we'll use a different case. You know, it's a
24 10-year mandatory minimum on armed robbery. And I asked
25 Bigelow, the general counsel there how they treat that, and

1 they treat that as being serve eight-and-a-half years and
2 you're parole eligible. I know that on murder.

3 THE COURT: That's day for day.

4 MR. FALK: That's day for day, and I just --

5 THE COURT: That's like a Class A, I think.

6 MR. FALK: I just don't know if this is day for
7 day.

8 THE COURT: Don't think this is a Class A.

9 MR. ABSHIRE: It's parolable.

10 THE COURT: After 85 percent.

11 MR. FALK: So, I mean, you don't have to do 15
12 years, day for day?

13 MR. ABSHIRE: No.

14 MR. FALK: Okay. That's what I --

15 THE COURT: That's my understanding. I would have
16 confirmed that with the Solicitor.

17 Now, I mean, listen, I'm not the be all end all
18 when it comes to SCDC calculations, I'm merely asking is
19 that your general understanding? The Solicitor has affirmed
20 that. And now I'm asking you, sir, if that's your general
21 understanding?

22 MR. FALK: It was my understanding that it would
23 be 85 percent regardless of the sentence, because that's how
24 you treat the armed robbery in a similar situation.

25 THE COURT: All right. And, Solicitor, is it also

1 your understanding having been convicted of burglary in the
2 first degree, sir, that there is a mandatory minimum of 15
3 years and that would prohibit me from entering a sentence
4 less than 15 years; is that your understanding?

5 MR. ABSHIRE: It is, Your Honor.

6 THE COURT: Mr. Falk?

7 MR. FALK: Yes, Your Honor.

8 THE COURT: And that this sentence actually
9 carries up to life, which, in that case, if I sought that, I
10 could have actually incarcerated her the balance of her
11 life; is that your understanding, Solicitor?

12 MR. ABSHIRE: It is, Your Honor.

13 THE COURT: Mr. Falk?

14 MR. FALK: Yes, Your Honor.

15 THE COURT: All right. Give me one minute.

16 All right. I'm going to give her credit -- was
17 she wearing an ankle monitor?

18 MR. FALK: Yes, Your Honor.

19 THE COURT: All right. What I'll do on -- I'll
20 give her credit for her time served, but I don't give credit
21 for ankle monitoring time.

22 MR. FALK: Yes, Your Honor. I should have asked
23 for you to consider that.

24 THE COURT: Well, you could -- you could -- you
25 could ask, sir, but it is the -- I mean, unless there's some

1 unbelievable compelling circumstances, I don't give time,
2 credit for ankle monitoring time.

3 MR. FALK: Yes, Your Honor.

4 THE COURT: We got time served, do you know what
5 her time served is, sir?

6 MR. ABSHIRE: I do not, Your Honor.

7 THE COURT: Then I'll just leave it blank, I'll
8 check it and then SCDC will find out what that is.

9 MR. FALK: Thank you.

10 MR. ABSHIRE: Your Honor, I could pull up the
11 website right now, if you'd like me to.

12 THE COURT: It doesn't matter to me, I mean.

13 MR. FALK: Well, the statute is what it is, right?

14 THE COURT: Well, generally, what they do is they
15 calculate it, and as long as I'm not giving them less
16 than -- I can give them more, they'll calculate it, but if I
17 give them less, they'll give what they're supposed to get,
18 is my understanding, gentlemen.

19 All right. So, Solicitor, since she's being tried
20 in her absence would it be your understanding, sir, that it
21 would be necessary for me to seal this sentence, sir?

22 MR. ABSHIRE: That is my understanding, Your
23 Honor.

24 THE COURT: Mr. Falk?

25 MR. FALK: That's my understanding.

1 THE COURT: All right. So I've sealed the
2 sentence. On the outside I've put the sentence of the State
3 versus Sheena Alston, 2019-GS-10-02504, Judge Bonds. I've
4 included -- I sealed the envelope and signed my name across
5 the back. I'm going to hand this to the clerk. All right.

6 So any other matters that we need to take up
7 concerning this case from the State?

8 MR. ABSHIRE: No, Your Honor.

9 THE COURT: Anything from the defense?

10 MR. FALK: No, I just had questions as to the
11 logistics of when she gets sentenced.

12 THE COURT: Well, the way -- the way I understand
13 it to work is this, basically whenever she gets -- there's a
14 bench warrant for her arrest. At some point she's going to
15 get picked up. When she gets picked up she'll be brought
16 back before the court and she will wait until there's a
17 criminal term of court, and then that judge, whoever it is,
18 not necessarily me, I mean, I won't be back here -- they're
19 thankful, I won't be back here until -- September 5th. I'm
20 going to be back September 5th, but it may not be me. So
21 anybody who is holding criminal court, it's my
22 understanding, they could go and basically have her appear,
23 and then they would open and read the sentence and then the
24 sentence would be imposed.

25 That's the way I understand it to work, Mr. Falk.

1 MR. FALK: So there's no requirement that she's
2 sentenced within X hours of getting picked up?

3 THE COURT: Not that I'm aware of. It would just
4 be at the next term of court.

5 MR. FALK: So it could be scheduled?

6 THE COURT: Sir?

7 MR. FALK: So it could be scheduled?

8 THE COURT: I would think it -- I would think that
9 the Clerk's Office and law enforcement would work with you,
10 sir, such that could be scheduled at an adequate time. And
11 any time that she's served or picked up or locked up on
12 that, she'll get credit for it.

13 MR. FALK: Thank you.

14 THE COURT: All right. Okay great.

15 Well, we'll be at ease. I enjoyed it. You guys
16 did a good job. You all made it easy for me. I appreciate
17 it.

18 MR. ABSHIRE: Thank you.

19 (WHEREUPON, the proceedings ended at 6:05 p.m.)

20 END REQUESTED TRANSCRIPT
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25

1 STATE OF SOUTH CAROLINA IN THE GENERAL SESSIONS COURT
2 COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT

4 STATE OF SOUTH CAROLINA,

5 vs.

CASE NO. 2019-GS-10-02504

7 SHEENA ALSTON,

TRANSCRIPT OF SENTENCING HEARING

8 Defendant.

10 TRIAL BEFORE:

THE HONORABLE ROBERT BONDS

11 DATE:

SEPTEMBER 7, 2022

12 REPORTED BY:

KYMBERLEE M. WILLIAMS, CSR/RPR

14 APPEARANCES:

16 Attorney for the State

17 Philip Abshire, II, Esq.
18 Assistant Solicitor
19 State of South Carolina Solicitor's Office
20 Ninth Judicial Circuit
21 101 Meeting Street, Suite 400
22 Charleston, South Carolina 29401

23 Attorney for the Defendant

24 James Falk, Esq.
25 38 Broad Street #401
 Charleston, South Carolina 29401

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I N D E X

PROCEEDINGS	3
END OF PROCEEDINGS	6
CERTIFICATE OF REPORTER	7

1 PROCEEDINGS

2 ***

3 TUESDAY, SEPTEMBER 7, 2022

4 CHARLESTON, SOUTH CAROLINA

5 (The following proceedings were held in open court. The
6 defendant was present along with his attorney and the attorney
7 for the State of South Carolina.

8 ***

9 THE COURT: Solicitor. Yes, sir.

10 MR. ABSHIRE, II: Your Honor, this is, I believe an
11 unsealing of a Burg first trial that took place the first week
12 of August.

13 THE COURT: All right. So we're here in the matter
14 of the State v. Sheena Alston. Case Number 2018-GS-10-02504.
15 This is a case that was tried before me when? Do we have a
16 date?

17 MR. ABSHIRE, II: August 1st and 2nd of 2022. The
18 case was -- Ms. Alston was tried in her absence. A jury
19 convicted her on the charge on burglary in the 1st degree. I
20 then imposed sentence, and I sealed the sentence. So I think
21 we are here for the opening of the sealed sentence and for the
22 Court to announce the sentence.

23 Is that correct from the State?

24 MR. ABSHIRE, II: It is, Your Honor.

25 THE COURT: Is that correct, Mr. Falk?

1 MR. FALK: Yes, Your Honor. I just wanted to clarify
2 for my client that before you wrote that number down, I had
3 argued for mitigation, and the Solicitor argued as well. There
4 is nothing more to do now.

5 THE COURT: No, there is nothing more to do. What
6 happened was that you were tried in your absence, ma'am.
7 Basically, what happens is that the jury found you guilty.
8 What happens is the rules require me at that point to go and
9 impose sentence. What I do is -- the rules also require that I
10 don't tell anyone the sentence, which I have not, and that I
11 seal in an envelope, which I have done. There is my signature
12 across the back so I know that no one has opened it.

13 So what would happen at this point is that I would
14 open the sentence, and I would read the sentence.

15 Have you discussed with her the parameters of the
16 sentence, Mr. Falk?

17 MR. FALK: I spoke to her last night.

18 THE COURT: So she understands that.

19 MR. FALK: Yes.

20 THE COURT: So with that having been said, is there
21 anything else that we need to take up? Is there any
22 conversation or anything that you need to ask, ma'am? You
23 certainly can ask your lawyer. If you want to ask him
24 something right now like you do, I am happy to see if it's a
25 question that we can entertain. Go ahead.

1 (Discussion off the record between the defendant and
2 counsel.)

3 MR. FALK: She was just advising that she had proof
4 that she needed emergency medical care. I think that was also
5 what I handed to the Court.

6 THE COURT: Right. So what happens is, ma'am, in
7 regard to that as it relates to the medical situation, I know
8 there were some issues concerning that when this case was
9 tried, ma'am. So what happened is, that was a matter that your
10 lawyer brought up to the Court. He argued that this matter be
11 continued. To that extent, based on the arguments of counsel
12 from the State, arguments of your lawyer, information that your
13 lawyer did, in fact, provide me and it was made exhibits. I
14 think it's information that you provided him. There was some
15 paperwork. Those were made exhibits.

16 So what I ended up doing is, I ended up then deciding
17 whether I believe there is enough information to continue the
18 case or allow the case to go forward.

19 What I did was, based upon all of that, I allowed the
20 case to go forward. What I will tell you is this. Your lawyer
21 will certainly talk to you about what your rights are moving
22 forward; about the possibility of someone else or a group of
23 people evaluating decisions that I make. There are certain
24 steps that you might want to take or talk with him about, and
25 you certainly are free to do that. That would be the

1 appropriate time to address those matters and not here today.

2 The purpose of today's hearing is just for me to open
3 this and pass the sentence; okay?

4 If you have any other questions, I know he will
5 answer them for you, and you can move forward from there.

6 What I am going to do now is, I am going to open the
7 sentence.

8 (Judge unseals folder.)

9 THE COURT: All right. In Case Number
10 2019-GS-10-02504, State v. Sheena Alston.

11 Ma'am, having been found guilty of this matter, I
12 sentence you to the South Carolina Department of Corrections
13 for a term of 16 years. I am going to -- whatever time. There
14 was a question about any time served that you have served. I
15 am giving you credit for that time served; however, I am not
16 allowing credit for time spent on monitored house arrest.

17 So that would be the order of this Court.

18 Any questions from the State?

19 MR. ABSHIRE, II: No, Your Honor.

20 THE COURT: Any from the defense?

21 MR. FALK: No, Your Honor.

22 THE COURT: All right. Thank you.

23 (At 9:50 a.m. the proceedings were concluded.)

24 ***

25 END OF TRANSCRIPT

1 CERTIFICATE OF REPORTER

2 * * *

3 I, KYMBERLEE M. WILLIAMS, Registered Professional
4 Reporter, do hereby certify that the foregoing transcript is a
5 true, accurate, and complete record of the matter held in the
6 Court of General Sessions for the Ninth Judicial Circuit in the
7 State of South Carolina.

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

11 Witness my hand, I have hereunto affixed my official
12 seal this 5th day of December, 2022 at Charleston County, South
13 Carolina.

14

15

16

17 Kymberlee M. Williams, CSR/RPR
18 Official Circuit Court Reporter III
19 State of South Carolina
Fourteenth Judicial Circuit
kwilliams@sccourts.org

20

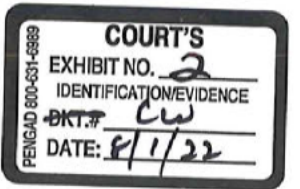
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ST. FRANCIS
HEALTHCARE

(843) 724-2000

ESTIMATED PATIENT FINANCIAL OBLIGATION SUMMARY

EMERGENCY DEPT VISIT - [REDACTED]

Patient Name:	SHEENA ALSTON	Date of Birth:	[REDACTED] 1980	Service Date:	08/01/2022
Physician:		Account Number:	[REDACTED]	Visit ID:	[REDACTED]
Primary Insurance:	Self Pay	Policy Number:	[REDACTED]	Group Number:	

The information provided in this worksheet is a best estimate based on the information we currently have and is not a guarantee of what you will be charged. Please understand that in many cases it is impossible to predict the final charges that will result, as there are variables involved in your actual services such as: the length of time spent in surgery or recovery, specific equipment, supplies and medications required, additional tests required by your physician, and/or any unusual special care or unexpected conditions or complications. This estimate does not include any physician charges (e.g. office visit, surgeon, anesthesiologist, emergency room physician, radiologist, pathologist, consulting physicians, etc.). If you have insurance, your benefits will

required by your physician, and/or any unusual special care or unexpected conditions or complications. This estimate does not include any physician charges (e.g. office visit, surgeon, anesthesiologist, emergency room physician, radiologist, pathologist, consulting physicians, etc.). If you have insurance, your benefits will ultimately determine the amount you owe (including deductibles, co-pay, co-insurance, and out-of-pocket maximums).

Estimated Charges	Facility
Charges	\$1,975.00
Self Pay Allowable	\$1,283.75
Patient Est. Amount	\$1,283.75
Additional Prompt Pay Discount	\$0.00

ID-19 vaccine. Patients who do not have
to schedule vaccination appointments.

PENGAD 800-631-6583	COURT'S
	EXHIBIT NO. <u>3</u>
	IDENTIFICATION/EVIDENCE
	DATE: <u>8/1/22</u>

COURT'S
EXHIBIT NO. 4
IDENTIFICATION/EVIDENCE
DATE: 8/1/2022



Roper
 316 Calhoun
 Charleston, SC
 (843)

ESTIMATED PATIENT FINANCIAL OBLIGATION SUMMARY

EMERGENCY DEPT VISIT - 99284

Patient Name:	SHEENA ALSTON	Date of Birth:	05/13/1980	Service Date:	08/01/2022
Physician:		Account Number:	2221301573	Visit ID:	99284
Primary Insurance:	Self Pay	Policy Number:	152905243	Group Number:	

Information provided in this worksheet is a best estimate based on the information we currently have and is not a guarantee of what you will be charged. Please understand that in many cases it is impossible to predict actual charges that will result, as there are variables involved in your actual services such as: the length of time spent in surgery or recovery, specific equipment, supplies and medications required, additional tests ordered by your physician, and/or any unusual special care or unexpected conditions or complications. This estimate does not include any physician charges (e.g., office visit, surgeon, anesthesiologist, emergency room physician, radiologist, pathologist, consulting physicians, etc.). If you have insurance, your benefits will help determine the amount you owe (including deductibles, co-pay, co-insurance, and out-of-pocket amounts).

Estimated Charges	Facility
	\$1,975.00
Insurance Allowable	\$1,283.75
Estimated Amount	\$1,283.75
Estimated Prompt Pay Discount	\$0.00



Patient: ALSTON,SHEENA
Account No: D00072827646
Unit No: D000971946
Location: TMC EMERGENCY DEPART...
Physician: Beatty,Timothy B DO
Date: 08/02/22

Patient Visit Information

You were seen today for:

Facial swelling
Swelling of right lower eyelid
Dental cavity
Dental abscess
Conjunctivitis, right eye

Staff

Your caregivers today were:

Physician: Beatty,Timothy B DO
Practitioner: RIGGS,SARAH K

Patient Instructions Reviewed

Dental Abscess with Facial Cellulitis
Bacterial Conjunctivitis
Dental Cavity

received 08/02/22 - 1352

Activity Restrictions or Additional Instructions

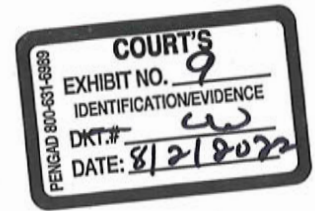
Follow up with the dentist and primary care physician at the first available appointment. Take all of the antibiotics as prescribed. Use antibiotic eyedrops as prescribed. Do not wear contact lenses for two week until resolution of symptoms. Take Tylenol and Motrin as indicated for pain and inflammation. Apply a warm compress to the eye area for 15 minutes at least 4 times per day for the next 5 days. Return to the ER immediately if symptoms change or worsen.

Medication Dose and Instructions

AMOXICILLIN (AMOXIL) 500 MG CAP
500 MG ORAL (by mouth) EVERY 8 HOURS 10 Days, #30 CAP REF 0
08/02/22 1:41pm Status: VERIFIED
CVS/pharmacy #0626 (843)414-0710
8995 UNIVERSITY BOULEVARD CHARLESTON,SC 29406

POLYMYXIN B SULF/TMP 10,000UNITS 1 MG/ML (POLYTRIM) 10 ML OPTH.SOLN
2 DROP RIGHT EYE EVERY 6 HOURS #10 ML REF 0
08/02/22 1:41pm Status: VERIFIED
CVS/pharmacy #0626 (843)414-0710
8995 UNIVERSITY BOULEVARD CHARLESTON,SC 29406

Follow-up





TRIDENT
HEALTH
a new tradition

Patient: ALSTON,SHEENA
Account No: D00072827646
Unit No: D000971946
Location: TMC EMERGENCY DEPART...
Physician: Beatty,Timothy B DO
Date: 08/02/22

Please contact the following to make an appointment for follow-up care:

.PRIMARY DENTIST

Follow-up Plan: 3-5 Days

Note: Your health care plan may require a referral from your primary care provider prior to making an appointment.

DOCKET NO. 2019-GS-10-02504

The State of South Carolina
County of Charleston

AGENCY CASE NUMBER

2018-027847

ARREST WARRANT NUMBER

2018A1021000812

DATE OF ARREST

09/20/2018

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury MAY 07 2019 Date:

VERDICT

Foreperson of Petit Jury Date:

FILED

5/10/2019 11:39:59 AM
JULIE J. ARMSTRONG
CLERK OF COURT

COURT OF GENERAL SESSIONS

MAY TERM 2019

THE STATE

VS.

SHEENA ALSTON A.K.A.
B/F DOB: [REDACTED]-1980

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311
CDR Code: 0079

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened May 2019, the Grand Jurors of Charleston County present upon their oath:

BURGLARY FIRST DEGREE

That in Charleston County, South Carolina on or about September 14, 2018, the Defendant Sheena Alston, did enter the dwelling of Soila Vecina without consent and with the intent to commit a crime therein. That, in addition, said entry or remaining occurred in the nighttime; in violation of § 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SHANNON ELLIOTT
ASSISTANT SOLICITOR

RECEIVED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

SEP 16 2022

STATE

SC Court of Appeals

INDICTMENT/CASE#: 2019-GS-10-02504

VS.

SHEENA ALSTON

AKA:

Race: Black

Sex: FAge: 42

A/W#:

2018A1021000812

Date of Offense:

09/20/2018

S.C. Code §:

16-11-0311

DOB:

SS#:

CDR Code #:

0079

Address:

City, State,

Zip:

SENTENCE SHEET

DL#*

SID# SC02297660*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary First DegreeIn violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Phillip Abshire, Assistant
Solicitor

104533

SC Bar #

Defendant

Attorney for Defendant

80125

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 16 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of \$____; provided that upon the service of ____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with **probation** for ____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.*NO Credit for
time spent on monitored house
arrest*

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

STATE SHEENA ALSTON INDICTMENT/CASE#: 2019-GS-10-02504

VS. _____

☐ PTUP after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$128.75

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____S Ferland
DorpPresiding Judge: _____
Judge Code: 2170
Sentence Date: 8/2/22

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,

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Sep 27 2023

SC Court of Appeals



Breen R. Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 27th day of September, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Sep 27 2023

SC Court of Appeals

Appeal from Charleston County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHEENA ALSTON,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS) this 27th day of September, 2023.



Breen R. Stevens
Appellate Defender